



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

ELRC CAUSE NO. 1594 OF 2018

NANCY WARIGIA IRUNGA.....CLAIMANT

VERSUS

WILD EARTH WELLNESS CENTRE LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein instituted this claim against the Respondent vide a Memorandum of Claim filed on 10th December 2018. She avers that on or around 5th January 2015 she was employed by the Respondent as a Receptionist at the Respondent's premises in Westlands, Nairobi and was earning a basic salary of Kshs. 24,065/- per month. The Claimant averred that despite her diligence at work, the Respondent announced on or about 7th or 8th October 2017 that her employment was being terminated on account of redundancy as the business environment was tough. She further avers that the Respondent communicated the termination to her orally and without any valid legal reason. The Claimant avers that considering she was not a member of a Trade Union, she was not given any written reasons for the redundancy contrary to statute. She avers that termination of her employment was unprocedural, unlawful, arbitrary, unjustified and illegal. The Claimant also avers that she was not paid housing allowance during her tenure at the Respondent company and that she also claims leave allowance, severance payment and damages for unlawful termination. She prays for:

- a) An order compelling the respondent to pay the sums claimed in paragraph 12 of this Memorandum of Claim.
- b) A declaration that the termination of the claimant's employment was unlawful and unfair.
- c) A declaration that the respondent do issue a Certificate of Service to the claimant.
- d) Costs of the suit together with interest to be borne by the respondent.
- e) Any other relief the Honourable Court may deem just and fit.

2. The Claimant stated during formal proof before Court that on or about 7th or 8th October they were told by word of mouth that they were being terminated and would not be working from November. She further stated that no termination letter or anything official was given and it was an accountant named Moses Wachira who had told them and that they were informed the Company was unable to maintain them. She asserted the Respondent only paid the salary for October and confirmed she was not a member of a Trade Union. That she was shocked because she had just come back from maternity leave and had a 3-month old baby, a first born in school, a house to pay and household to pay.

3. In her Written Submissions, the Claimant submits that Section 40(1)(b) of the Employment Act, 2007 guides employers on the procedure that ought to be adopted prior to terminating an employment on grounds of redundancy and since she was not a member of a trade union, the Respondent should have notified her personally in writing and also notified the Labour Officer. The Claimant submitted that failure by the Respondent to follow the laid out statutory procedure together with absence of consultation renders the termination of her employment unfair. The Claimant submitted that this Honourable Court should adopt the reasoning in **Kenya Airways Limited v Aviation and Allied Workers Union & 3 Others [2014] eKLR** where Maraga JA (as the then was) opined that the consultations are meant to cause parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementation if it is unavoidable. She further submits that Section 40(1)(f) and (g) of the Employment Act stipulates that dues ought to be given to an employee upon redundancy and which include: one month notice pay and severance pay. The Claimant submitted that this Honourable Court should thus award her the said dues as compensation for failure to follow statutory procedure and that the payslips attached to her List of Documents indicate that no housing allowance was paid to her, which was contrary to Section 31 of the Employment Act. It is the Claimant's submission that she has proven her case beyond a balance of probabilities and she urges this Court to award the damages as prayed and the orders sought in the Statement of Claim.

4. The Claimant was declared redundant in a process that offended the provisions of Section 41 of the Employment Act as she was verbally notified of the redundancy on 8th October 2017 when her termination was scheduled to end on 31st October 2017. In her claim she sought payment of housing allowance which she asserts was never paid. In the payslips presented as exhibits, the Claimant received a basic of 24,065/- with no house allowance. She was therefore entitled to house allowance which is only payable for one year of default as this was a continuing wrong for which action should have been commenced within a year. As such having commenced the suit in 2018 she only will recover for 2017. In respect to this amount, a sum of 15% of her basic is due as house allowance each month in terms of Section 31 of the Employment Act. Her salary per month should have been Kshs. 27,674.75. In the final analysis the Claimant is entitled to:-

- i. House allowance dues unpaid for 2017 – Kshs. 43,317/-
- ii. Three months salary as compensation for unlawful dismissal – Kshs. 83,024.25/-
- iii. Costs of the suit
- iv. Interest on the sums in i) and ii) above from the date of judgment till payment in full.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF SEPTEMBER 2021

Nzioki wa Makau

JUDGE