



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 662 OF 2020

BETWEEN

GRACE NYAMBURA KAMAU.....CLAIMANT

VERSUS

CLEANSHELF SUPERMARKETS.....RESPONDENT

RULING

1. The Claimant seeks Judgment against the Respondent, for the total sum of Kshs. 2,939,544 in her Statement of Claim dated 30th September 2020. She also seeks general and exemplary damages, costs, interest and any other suitable orders.
2. The Respondent filed its Statement of Response, dated 24th November 2020. At paragraph 3, the Respondent states that the Claimant's contract was terminated lawfully and fairly, on account of redundancy, and that her rightful redundancy dues, amount to Kshs. 367,269. She has refused to collect this rightful amount.
3. On the strength of this offer, the Claimant has applied for partial Judgment, in the sum of Kshs. 367,269. The Application is dated 21st January 2021, supported by the Affidavit of the Claimant, sworn on the same date.
4. The Respondent opposes the Application. While conceding that the offer was made, the Respondent holds that this was subject to the Claimant signing a discharge voucher. It was agreed that the Application is argued through Written Submissions. These were confirmed to be on record at the last mention before the Court, on 16th July 2021. Ruling was reserved for 7th October 2021, but is ready for delivery, on the date indicated below.

The Court Finds: -

5. There is a clear and unqualified admission by the Respondent, that it owes the Claimant Kshs. 367, 269. This is shown at paragraph 3 of the Statement of Response. Paragraph 3 is not pleaded on without prejudice basis.
6. There is no justification in compelling the Claimant to execute discharge upon receipt of the admitted sum, while the rest of the dispute remains in Court. If there is no more debt found due by the Court, the Respondent is protected by the Court, and no further debt shall be paid by the Respondent. There is absolutely no prejudice to be occasioned to the Respondent, by honouring its acknowledged debt.
7. The Claimant however, would not be able to justify the outstanding prayers, if she was compelled to state, that she has no further claims against the Respondent. She would be prejudiced, if payment is based on her admission that the sum paid, is the totality of her Claim. The Claim that redundancy was unfair and unlawful would probably weaken or collapse. Discharge is an enforceable contract.
8. She ought to be allowed to prosecute her remaining prayers, without being hampered by what is received by her, on admission of the Respondent. Both Parties have the protection of the Court, and need not sign papers outside the Court, apportioning, or discharging each other from, any liabilities. The amount paid shall be acknowledged to have been received by the Claimant, or in any event, payment recorded as an order of the Court. There is no need to execute discharge.
9. The Application for partial Judgment on admission is merited.

IT IS ORDERED: -

a. Judgment on admission is entered for the Claimant in the sum of Kshs. 367,269.

b. The rest of the Claim to be scheduled for hearing upon satisfaction of pre-trial procedures.

c. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 24TH DAY OF SEPTEMBER 2021.

JAMES RIKA

JUDGE