



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/296/2017

CITATION: JOSEPHINE NYONGESA NANJALA VS ROAN PATEL/ KOSYIN HARDWARE

JUDGMENT

ON 2021-07-02 BEFORE HON. JUSTICE J. N. ABUODHA

JUDGEMENT

1. The Claimant pleaded that she was employed by the respondent on 5th November, 2016 and worked until 5th June, 2017 when the respondent unlawfully terminated her service and refused to pay her dues.
2. The Claimant contended that prior to termination her Union was not informed about it and was not given a months' notice or pay in lieu and that she was not given an opportunity to be heard before termination.
3. The Claimant further averred that during her employment she was grossly underpaid contrary to Wages Order in force. She further claimed that she worked overtime without pay and also worked over rest days and public holidays without pay.
4. The Claimant therefore sought from the respondent compensation for unlawful termination as well as her terminal dues totaling to Kshs. 156,958/48.
5. The respondent filed a response to the claim and averred that the Claimant was engaged as a casual labourer hence could not be said to be an employee within the meaning of the Employment Act capable of seeking and remedies sought in the claim.
6. The respondent further averred that the termination of the Claimant was in line with provisions of section 41 of the Employment Act. According to the respondent the Claimant left employment on her free will due to her failing health and even requested the respondent to terminate her contract and both parties agreed on terminal pay.
7. Regarding working hours, the respondent stated that the Claimant only worked for four days a week and would seek medical leave and would sometimes leave work without notifying the respondent.
8. At the hearing, the Claimant informed the Court that she worked at a hotel and that she would adopt her statement filed with the claim as her evidence in Chief. According to her, she used to work for the respondent as a cook. She once got unwell and was given two days sick off but on the 3rd day she was not still feeling well. It was her evidence that she had documents to show she was unwell. Concerning working hours, she stated that she used to report to work at 8.00 am and leave at 6.30 pm and was never paid overtime. The Claimant further stated that she never went on leave during the period she worked.
9. In cross-examination the Claimant denied that she used to work in a hardware shop. She further stated that she worked for seven months and that she paid her hospital bills. It was her evidence that she borrowed money from the respondent to be deducted from her salary. She denied ever failing to report to work but admitted that she would take short breaks to rest.
10. The respondent's witness Mr. Roham Patel informed the Court that the Claimant used to work as a house help and worked for about seven months. It was further his evidence that the Claimant used to work 6 days a week. That is from Monday to Saturday and one day a week the Claimant would be absent from work. The Claimant salary was Kshs. 10,000/= per month and was provided with breakfast and lunch.
11. Concerning leave he stated that the Claimant went on leave during Christmas and would further take time off to attend to personal issues.

12. It was Mr. Roham's evidence that the Claimant was a good worker except that she would at times come late and on some days, she would absent herself without permission. He sat her down and told her he needed someone who was available continuously. So, they both agreed to terminate the contract and pay the Claimant her dues. According to Roham, he calculated the Claimant's dues and paid her less advances she took.

13. In cross-examination he stated that the Claimant was employed in November, 2016 and that she reported to work from 8.30 am and would leave around 6.00 pm. He denied the Claimant worked overtime and further that she ever worked during public holidays. It was his evidence that the parties agreed to mutually end the contract. Upon termination the Claimant was paid Kshs. 5,600/= after some deductions. He deducted money advanced for hospital bills.

14. The Court takes cognizance of the fact that domestic workers relationship with their employers have largely remained informal. Few if any ever care to reduce the engagements in writing. The termination of such contracts therefore usually remain just as informal as they are contracted.

15. The Court has had the advantage of reviewing the pleadings herein and listening to evidence by both sides. It was not disputed that the Claimant worked for the respondent for about 7 months. The Claimant further stated that she was not living at the respondent's premises during the period she worked but was staying in her own house.

16. Further the Claimant did not seem to seriously deny that she would absent herself from work on medical grounds. She exhibited one of the sick offs she had been issued with once when unwell.

17. It was the Claimant's evidence that her termination arose when she was given two days sick off and was still not feeling well on their day.

18. Termination of employment will be considered unfair if the reasons for termination are not proved by the employer or unsustainable. Further, if the procedure followed in the process of termination is unfair.

19. As observed earlier, the relationship between the parties herein remained largely informal and domestic hence the rigours of formal employment imposed by the Employment Act may not fit if one was to look at all the necessary elements.

20. The Claimant had only served the respondent for seven months. In the circumstances the Court will treat the separation as a normal termination and award the Claimant as follows.

- (i) One month's salary in lieu of notice 10,000/=
- (ii) House allowance (7 months) @ 1/3
- (iii) Pro rata leave (13 days leave) 4,333/= Less paid 47,333/=
- (iv) Costs of the suit 5,600/= 41,733/=

21. It is so ordered.

DATED AT ELDORET THIS 19TH DAY OF OCTOBER, 2021 DELIVERED AT ELDORET THIS 19TH DAY OF OCTOBER, 2021

GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON 2021-10-19 10:46:53

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-10-19 10:46:53