



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1488 OF 2016

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

JACLINE KASEI MONYE.....CLAIMANT

VERSUS

AFRICA SPIRITS LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant has brought a claim against the Respondent for unlawful termination and damages for loss of future employment. She filed her memorandum of claim dated 29th July 2016.
2. She gave her evidence in chief on 1st August 2021 on her own behalf.
3. The Respondent did not put a response and did not therefore have the opportunity to defend its claim. This therefore is an undefended suit. Kelvin Mogeni the Claimant's Advocate in his affidavit of service said he served summons on Africa Sprits Limited (the Respondent) on 29th July 2016.

The Claimant's Case

4. The Claimant states that she was employed by the Respondent from 2006 and her work was to pack bottles. She says she worked for the Respondent for 8 years and her salary was Kshs.16,000/= per month.
5. She says in 2013 she got injured when packing bottle sand the Respondent paid for her medical expenses.
6. She says she continued working for the Respondent until 2015 when she got a letter terminating her employment.
7. The Claimant states the Respondent did not inform her or give her reasons for her termination. She says she was not paid terminal dues.
8. She says that after her termination she reported the matter to Industrial Area Labour Office and the Labour Office gave her a letter containing assessment of the dues she should be paid by the Respondent. The same totalled Kshs.244,751/=. She says she demanded the same from the Respondent but they never responded.
9. She then filed a memorandum of claim dated 29th July 2016 and her prayers are: -

(i) Compensation for injury of 244,757/= as per letter from Occupational Health and Safety Office dated 28th

October 2016

(ii) Compensation for unlawful termination

(iii) Costs and interest.

The Respondent's Case

10. The Respondent was served with summons on 13th October 2017 but did not put a response. The suit proceeded therefore as an undefended claim.

Determination

11. Issues for determination are: -

- (i) Was the Claimant unfairly terminated;
- (ii) Is she entitled to be awarded her prayers.

12. Section 45(1) and 2 of the Employment Act provides that termination of employment by an employer is unfair if the employer fails to prove

- (a) The reason for termination is valid
- (b) The reason for termination is fair reason
 - (i) Related to employee's conduct capacity or compatibility or
 - (ii) based on operational requirements of the employer and
- (c) That the employment was terminated in accordance with fair procedures.

13. The Claimant did not produce the termination letter unfortunately so the Court cannot refer to it.

14. Section 41 of the Employment Act was also breached by the Respondent. According to Section 41 of the Employment Act it provides that –

41. Notification and hearing before termination on grounds of misconduct

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

15. Suffice to say that the Respondent did not present any evidence to prove that they gave the employee reason for their termination and also whether they followed the requisite procedure in terminating the employment.

16. There are numerous cases that provide that termination must be conducted in a procedurally fair manner according to employment law and the rules of natural justice *inter alia* **Samuel Muchiri Gikonyo v Henkel Chemical EA Ltd (2014) eKLR**.

17. I have considered carefully the pleadings, evidence and concluded the Claimant worked for the Respondent for eight years. At the end of her sojourning with the Respondent, she got a termination letter without any valid reason.

18. The Claimant's Advocate unfortunately did not file in submissions within the period given by the Court or at all so the Court did not have the benefit of the same.

19. Nevertheless in view of the foregoing, the Court finds the

Claimant was unlawfully and unfairly terminated by the Respondent for want of a valid reason and failure to follow lawful procedure.

20. As regards the reliefs sought, I have considered the evidence presented and the prayers sought and I am only persuaded to give compensation for injury as per the Occupational Health and Safety Office letter amounting to Kshs.244,751/=.

21. The Court also has considered Claimant worked for the Respondent for eight years at a salary of Kshs.16,000/=. It is fair to award her compensation for 4 months totalling to (16,000 x 4) **Kshs.64,000/=**.

22. **Judgment is entered therefore in favour of the Claimant for Kshs.308,751/=.**

23. **Costs are also awarded to the Claimant. Interest awarded at Court rates. Payments will be less any statutory deductions**

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF OCTOBER 2021

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE