



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.2392 OF 2016

MAUREEN NYABOKE.....CLAIMANT

VERSUS

CREATIVE CONSOLIDATED SYSTEM LIMITED.....RESPONDENT

JUDGEMENT

On 24th November, 2016 the claimant filed the Memorandum of Claim and served summons upon the respondent on 6th December, 2016. There was no appearance or response filed by the respondent. There are returns to confirm service upon the respondent.

The claim is that on 14th July, 2008 the respondent employed the claimant at a wage of Ksh.9, 800 per month but on 21st July, 2016 terminated employment without notice, reason or due process.

The claimant is seeking the following dues;

- a) Notice pay at Ksh.9,800;
- b) Unpaid leave for 8 years Ksh.78,400;
- c) Unpaid overtime for 48 days ksh.23,520;
- d) Service pay for 8 years Ksh.39,200;
- e) Unpaid salary for July Ksh.9,800; and
- f) Costs

The claimant is also seeking payment of compensation for unfair termination of employment and punitive and aggravated damages for breach of constitutional rights.

The claimant testified in support of the claim that upon employment by the respondent she worked diligently, the wage remained ksh.9, 800 per month, there was not NSSF paid for her until 21st July, 2016 when her employment was suspended without being given any reasons, notice or a hearing which led to unfair termination of employment and the claims made should be allowed with costs.

Determination

In her pleadings, the claimant does not state the position she held with the respondent. the wage paid as ksh.9, 800 can only apply to a general labourer and without any skills.

In the absence of the respondent, no defence filed or work records, the claims made are not challenged.

Employment must terminate pursuant to the provisions of section 35, 41, 43 and 45 of the Employment Act, 2007. The employer must issue the employee with notice, allow the employee a hearing, give reasons leading to termination of employment and apply the due process.

The failure to abide the due process, termination of employment is unfair and compensation is due pursuant to section 45 and 49 of the

Employment Act, 2007.

The claimant worked for 8 years as noted in her pleadings and evidence. compensation of 3 months gross wage is hereby found appropriate all at ksh.29, 400.

Notice pay is due for lack of due process and pursuant to section 35 of the Employment Act all at Ksh.9, 800.

The claimant is seeking leave pay for 8 years. pursuant to section 28(2) of the Employment Act, leave can only be accumulated for 18 months and what is due is Ksh.14, 700.

On the claim for unpaid overtime for 48 days, the claimant in her pleadings and evidence did not outline as to how this claim arose. Equally on the claim for service pay, save to urge the court that her NSSF as not paid, there is no case as to the nature of employment. such claims are declined.

Salary for work done is payable whatever the reasons leading to termination of employment. for the 21 days the claimant is entitled to ksh.6, 860.

Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;

- a) Compensation Ksh.29,400;**
- b) Notice pay ksh.9,800;**
- c) Leave pay Ksh.14,700;**
- d) Unpaid wages for July Ksh.6, 860.**
- e) Costs of the suit.**

DELIVERED IN COURT AT NAIROBI THIS 20TH DAY OF DECEMBER, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and