



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1001 OF 2017

MARGARET AMANGO JUMBA.....CLAIMANT

VERSUS

JULIE ONDEYO.....RESPONDENT

JUDGMENT

1. The Claim herein seeks the following orders:-

- i) A declaration that the termination of the Claimants employment and/or dismissal was unfair and in breach of the Claimant's contract of employment.
- ii) A declaration that the Respondent fundamentally breached her statutory obligations under the Constitution of Kenya and the Employment Act, 2007.
- iii) An order directing and/or compelling the Respondents to pay the claimant Kshs. 526,503.47 as particularized in paragraph 22 of the statement of claim with interest at court rates from the date of filing of this suit.
- iv) An order directing and/or compelling the Respondent to issue a certificate of Service to the claimant in accordance with section 51 of the Employment Act, 2007.
- v) An order that the costs of this suit be awarded to the claimants with interest thereon at court rates from the date of filing of the claim.
- vi) Any other reliefs as the court would deem just and expedient to grant.

2. The Respondent did not file defence despite being served with summons by the claimant. Consequently the suit proceeded as undefended.

3. The Claimant's case is that she was employed by the respondent as a housegirl for a monthly salary of Kshs. 5500/- in September 2010. At the start of March, 2014 she went for a 4 months maternity leave but no salary was paid during the said leave. However when she reported back in July 2014, her salary was raised to Kshs. 7000 per month but according to her the said salary was below the minimum salary under the Regulation of Wages Order. She further contended that she was not paid house allowance and the employer never remitted NSSF and NHIF contributions for her to the relevant agencies.

4. The Claimant further contended that on 21.6.2016, the respondent terminated her services by SMS without any prior notice and for no valid reason. She further averred that she was not accorded any fair hearing before the termination. She therefore averred that the termination was unfair and prayed for the reliefs sought in her suit.

Issues for determination

5. The Respondent did not file defence and as such the averments by the claimant in her pleadings have not been controverted including the fact that the claimant was employed by the respondent as a househelp from September 2010 to 21.6.2016. The issues for determination are:

- (a) Whether the claimant's contract was unfairly terminated.
- (b) Whether the claimant is entitled to the reliefs sought.

Unfair termination

6. The Claimant's contention that she was dismissed from work on 21.6.2016 by SMS without prior notice or valid reasons and without being accorded a fair hearing has not been rebutted by evidence from the respondent. Under section 45 (2) of the Employment Act termination of employees contract of service is unfair if the employer fails to prove that it was grounded on a valid and fair reasons, and that a fair procedure was followed.

7. The Respondent neither filed defence nor tendered evidence and as such the burden of proving valid reasons for the termination and that a fair procedure was followed has not been discharged. Consequently, I return that the termination of the claimant's services herein was unfair within the meaning of section 45 of the Employment Act.

Reliefs

8. In view of the foregoing holding, I make declaration that the termination of the claimants services was unfair. Flowing from the said declaration, I award him one month salary in lieu of notice plus 3 months salary as compensation for the unfair termination considering her serviced of over 5 years without any disciplinary issue and also the fact that she did not contribute to the dismissal through misconduct. The award is based on the minimum salary under the Legal Notice No. 116 of 2015 being Kshs. 10954.70 per month.

9. The Claim for the house allowance is exaggerated and based on the salary for 2016. I therefore only award house allowance for one year at the rate of 15% of the basics pay of Kshs. 10954.70 equalling to Kshs. 19718.45. Likewise I award the claimant the claim for salary under payment for only 12 months under the same legal Notice No. 116 of 2015. Hence $Kshs. 20954.70 - 7000 + 3954.70 \times 12 = Kshs. 47456/-$.

10. I further award the claimant service pay for the 5 years of complete service at the rate of 15 days pay year.

Hence $15/26 \times Kshs. 10954.70 \times 5 = 31600.100$

11. The claim for maternity allowance is not substantiated by evidence and it is declined.

Conclusion and Disposition

12. I have found that the claimant's services were unfairly terminated by the respondent and I now proceed to enter judgment for the claimant as against the respondent in the following terms:

Notice.....Kshs. 10,954.70
Compensation.....Kshs. 32,864.10
House allowance.....Kshs. 19718.45
Salary underpayment.....Kshs. 47456.40
Service pay.....Kshs. 31,600.10
TOTAL.....Kshs. 142,593.75

The said award is subject to statutory deduction but in addition to costs plus interest from the date hereof.

Dated,signed and delivered in open court at Nairobi this 21st day of February, 2020

ONESMUS N. MAKAU

JUDGE