



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAKURU
CAUSE NO.397 OF 2014

NEDDY LILLIAN GWASTIMA.....CLAIMANT

VERSUS

THE BOARD OF TRUSTEES, GEO POWEER WELFARE CLUB....1ST RESPONDENT

GEO POWER WELFARE CLUB.....2ND RESPONDENT

JUDGEMENT

The claimant is an adult female. The 1st respondent is the trustees of the 2nd respondent which is a registered association.

The claimant was employed by the respondent as a waitress, chef, supervisor and club manager on 8th December, 2003 lastly earning Kshs. 17,000 per month.

The claimant resigned from her employment on 10th May, 2014. But the respondent refused and or failed to pay terminal dues. This was in violation of the Employment act.

The claim is for the following dues;

- a) Travelling allowance Kshs. 9,000;
- b) House allowance at Kshs. 2,250 x 36 all Kshs. 81,000;
- c) Severance pay at Kshs, 15,000 x 10 Kshs. 150,000;
- d) Certificate of service;
- e) A declaration that there was unfair, wrongful and unlawful termination of employment;
- f) Costs.

The claimant testified in support of the claims. Upon employment the claimant worked diligently from 8th December, 2003 to 10th May, 2014 when she resigned but the respondent failed to pay terminal dues. Such was unlawful, wrongful and unfair.

The defence is that the claimant was employed as a waitress, a chef and supervisor but not the club manager as alleged. At the time of her resignation, the claimant was earning Kshs. 16,030 and not Kshs. 17,000.

The defence is also that on 7th May, 2015 the respondent issued the claimant with a notice to show cause why her employment should not be termination with regard to allegations made against her and was required to respond. On 10th May, 2014 the claimant presented her defence and together with letter of resignation which was to take effect on 12th May, 2014.

In view of the abrupt resignation of the claimant, the respondent had no choice but to abandon the show cause notice.

On 15th June, 2014 the respondent issued the claimant with a letter of recommendation.

Upon resignation, the claimant was paid her terminal dues in accordance with her contract of service. There was no provision for a travelling allowance, the wage paid was all inclusive, upon resignation there was no severance pay and the claims made should be dismissed with costs.

The respondent filed work records.

No witness was called save to file witness statement.

At the close of the hearing, both parties agreed to file written submissions. Only the claimant complied.

It is common cause that by letter and notice dated 10th May, 2014 the claimant resigned from her employment with the respondent. The resignation was to take effect on 12th May, 2011 a period of 2 days. No reason is given for the termination of employment.

Part of the records filed by the respondent is letter of employment as club supervisor dated 4th November, 2011. The wage due was Kshs. 10,000 consolidated plus the overtime worked. There was provision of *transport allowance: daily transport provisions are offered to late hours worked and very early morning assignments.*

The transport allowance was hence conditional. A daily provision for late hours worked and very early morning assignments. Did the claimant work daily? Did she work late hours? And did she work very early morning hours?

In her evidence, statement and pleadings, the claimant did not outline her claims to prove daily work, late work, or work very early morning hours. Her claims were generally made. Such general averments and claims for travelling allowances on the face of the letter dated 4th November, 2011 are lost.

The claim is also for payment of house allowance.

In the payment statement filed by the claimant for December, 2013 she had a basic wage of Kshs. 17,000 per month and other benefits applied there was a gross wage.

By letter dated 1st May, 2013 the respondent reviewed the claimant's wage with effect from such date to Kshs. 16,030. There is no payment statement filed by the respondent with regard to the claimant.

At the time, the claimant was a supervisor vide letter dated 4th November, 2011. The claimant was working in Naivasha. a supervisor basic wage as at 10th May, 2014 was earning Kshs. 17,617.50 basic wage and the same inclusive of the due house allowance all is Kshs. 2,642.60 all at Kshs. 20,260.12.

Without any work records to confirm the claimant was allocated accommodation by the respondent under the provisions of section 31 of the Employment Act, 2007 the claim for a housing allowance is justified. Save for the letter of 4th November, 2011 confirming the claimant as the club supervisor, there is no other record of employment setting out the employment terms and conditions. Without a payment statement showing the claimant had a provision of a house allowance, the claimant claims for a house allowance at 2,250 for 36 months is modest and is hereby awarded at Kshs. 81,000.

On the claim for severance pay, the claimant resigned from her employment, severance pay is only available upon a redundancy. This is not due in this case.

A certificate of service is due under section 51 of the Employment Act, and not a recommendation letter which is optional.

On the claim that there was unfair, unlawful and wrongful termination of employment, the claimant resigned on her own accord and even where the non-payment of the due terminal dues is not paid, the same shall be paid with costs and interest.

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

- a) House allowance assessed at Kshs. 81,000;**
- b) Certificate of service shall issue under the provisions of section 51 of the Employment Act, 2007;**
- c) The dues (a) shall be paid with interest from the 12th May, 2014 until paid in full;**
- d) Costs of the suit.**

Delivered at Nakuru this 20th day of February, 2020.

M. MBARU

JUDGE

In the presence of: