



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAKURU
CAUSE NO.16 OF 2019

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS & HOSPITAL WORKERS.....CLAIMANT**
VERSUS
THE MANAGEMENT, MAGNOLIA HOTELRESPONDENT

JUDGEMENT

The claimant is a registered trade union and representing the grievant, Susan Peninah Anyango. The respondent is a limited liability company.

The grievant was an employee of the respondent from 29th January, 2010 working as a cleaner at a wage of ksh.3,000 and which was increased to ksh.5,000 per month and from which wage ksh.1,800 as deducted for house allowance.

In February, 2017 the grievant's employment was terminated unfairly. No terminal dues were paid. There was no notice terminating employment, no reasons or hearing was allowed and terminal dues were not paid.

The claim is for the payment of the following dues;

Compensation for unfair termination of employment at ksh.121, 285.20;

Notice pay ksh.10, 107.10; 6 days worked in February, 2017 ksh.2, 021.40;

Arrears in underpayments Kshs. Service gratuity for 7 years Ksh.35, 374.85;

Work during public holiday's ksh.47, 166.45;

Annual leave ksh.21, 225.00; Certificate of service; and Costs.

The grievant testified that on 19th January, 2010 she was employed by the respondent as a cleaner and paid ksh.3,500 less Ksh.900 house allowance each month. On 14th October, 2013 she was moved to the hostel side where she was paid Ksh.5, 500 less house allowance with net pay at Ksh.3, and 700 per month. The respondent provided housing.

On 6th February, 2017 employment was terminated abruptly without notice of payment of terminal dues.

In cross-examination, the grievant testified that her employment with the respondent was from 19th January, 2010 to 13th October, 2013. The respondent also owns Serene Hostel. The respondent issued notice that work had ended and placed her with Serene Hostels. It was not a transfer but part of the respondent's entity. It was the same employer under different names.

The grievant testified that she is still housed by the respondent as she has no cash to pay rent or move out. While working for the respondent, the due rent would be deducted from her wages until 6th February, 2017 when work with Serene ended. She has since not been able to pay rent. From January, 2018 she started paying rent for two units.

The defence is that the grievant was employed by the respondent in the year 2010 as a cleaner but the business was closed 5 years ago due to

rampant cases of thefts and mismanagement of facilities and to allow for renovations and notice was issued to the employees at the time.

At the time of closure, all addressed and settled. The grievant. There was request employees were paid their dues and all complaints claimant did not make any claims with regard to the to be allocated work elsewhere and was hence placed with Serene Hostels where she worked until the year 2017 when the entity closed as well after termination of its contract with PCEA Nursing College.

During employment, the grievant was given two housing units for which the respondent paid rent for her and was required to pay a small amount as subsidy.

After the businesses were closed, the claimant continued to occupy the houses allocated to her without paying rent. After Serene Hostel closed down, the claimant remained housed by the respondent for two years without paying rent and when asked to vacate she filed suit.

There was no dismissal from employment. The business closed down and the grievant was paid her terminal dues. The claims made should be dismissed with costs.

The respondent filed a witness statement but no witness was called.

The respondent also filed notice terminating employment issued to all its employees and dated 15th October, 2013 on the grounds of continued theft by employees and mismanagement of its facilities.

The claimant has not contested the defence and attachments filed.

At the close of the hearing both parties filed written submissions.

The claims filed against the respondent entity, the Management of Magnolia Hotel. The claimant testified that she worked for the respondent from 19th January, 2010 to 14th October, 2013 when she was taken to Serene Hostel.

There is notice dated 15th October, 2013 issued to all employees of the respondent terminating employment. This notice is not contested by the claimant.

The grievant also testified that upon the notice terminating employment by the respondent she was placed with Serene Hostel until February, 2017 when her employment was terminated.

Where employment with the respondent terminated on 14th March, 2013 by operation of section 90 of the Employment Act, 2007 all claims due and owing therefrom should have been addressed within three (3) years thereof. Such time lapsed as of 13th March, 2016.

The claim herein was filed 4th March, 2019. This is after a period way after the lapse of 3 years contemplated under the mandatory provisions of section 90 of the Employment Act, 2007.

Where the claimant was placed with Serene Hostel, such entity is not a party herein. Even where such entity is said to be owned by the respondent, there is no evidence in this regard as the respondent terminated the employment relationship as of 15th October, 2013.

Where the respondent was party to the grievant's employment to Serene Hostel, which is not demonstrated herein, such entity then ought to have been enjoined herein for any claims relating to employment from 15th October, 2013 until employment terminated under such entity.

The employment under the respondent thus addressed as above, the claims made with regard to a third party cannot stand.

Accordingly, the claims against the respondent are found time barred. The suit is hereby dismissed. Costs to the respondent.

Delivered at Nakuru this 13th day of February, 2020.

M. MBARU

JUDGE

In the presence of: