



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAKURU**

**CAUSE NO.74 OF 2017**

**PURITY ITHIMA MURITI.....CLAIMANT**

**VERSUS**

**BEST ENTERPRISES.....RESPONDENT**

**JUDGEMENT**

The claimant was employed by the respondent as a tailor in November, 2015 at a daily wage of Ksh.400 and worked until 18<sup>th</sup> October, 2016 when employment was terminated without notice of being given reasons.

The claim is that there was underpayment, no leave was allocated or payment in lieu of notice.

The claimant is seeking the following dues;

- a) Notice pay at ksh.17,090.50;
- b) Pro-rated leave Ksh.12,653.50;
- c) Underpayments ksh.73,595.50;
- d) Unpaid house allowances ksh.28,199.30; and
- e) Compensation.

the claimant testified that he was employed as a tailor by the respondent in dress making and paid ksh.12,000 per month and without a letter of appointment working from 8am to 5pm from Monday to Saturday. No off day or annual leave was allowed. He worked for 11 months when he was dismissed without being given any reasons. He reported to the labour officer but the respondent refused to attend. the respondent only filed a Memorandum of Appearance and no defence save for objections with regard to the entity of the respondent not having a legal persona to be sued. The respondent did not urge its objections.

Upon cross-examination of the claimant and closing of the claimant's case, the court directed the Labour Officer to investigate the entity of the respondent and filed a report dated 2<sup>nd</sup> December, 2019 with a finding that;

*On the 25<sup>th</sup> November 2019, Mr Balbir Singh ... confirmed to this officer that he employed Purity Ithima Miriti at Best Enterprises as a general worker for almost 10 month. She was employed in the tailoring section on a daily wage of ksh.400.00/= she used to report to work from Monday to Saturday from 8am to 5pm but on Saturday would leave at 1pm. It was also established that the she was not paid on her rest days.*

*Best enterprises is a registered business entity that deals in school uniforms, it has one director Mr Parminder Singh ... and is located along ...*

Of essence from the Labour Officer's report is that the respondent is a registered entity with one director. It is therefore properly sued under its business name.

The claims thus not opposed the respondent having failed to file any defence, both parties having participated in the proceedings and the respondent having summarised its case in the written submissions, the court shall assess the claims made on the merits.

Section 47 of the Employment Act, 2007 requires the employer to justify the grounds of termination, Section 43 of the Act requires the employer to prove the reasons for termination, Section 45(2)(a) and (b) of the Act requires an employer to prove that the reasons for termination were valid and fair reasons, and Section 41(2) of the Act obligates the employer to hear and consider any representations an employee may wish to make where summary dismissal is envisaged for fundamental breach of contractual obligation or gross misconduct; the respondent submitted that the claimant did not discharge its obligations under the Act. see **Muthaiga Country Club versus Kudheih Workers [2017] eKLR** and in the case of **Kenfreight (E.A) Limited versus Benson K. Nguti [2019] eKLR** the court held that;

*... under Sections 43(1) and 47(5), the burden of proving unfair termination rests on the employee while the burden of justifying the grounds of termination rests on the employer. Additionally, that a party who relies on a contractual term to terminate a contract of employment in accordance with Sections 35 and 36 of the Employment Act, such a party cannot be said to not have a valid reason or not to have justification for termination.*

The respondent has not discharged its mandate under the law. without a defence, the claim that there were termination of employment was without notice, reasons or a hearing. Such is prohibited under the provisions of section 45 of the Employment Act, 2007. In this regard, termination of employment is found unfair and compensation is due under the provisions of section 49 of the Act. the claimant had worked for less than a year, 10 full months and an award of one (1) months compensation is hereby found appropriate.

The claimant was working without a written contract. The findings of the labour officer were that she was a general worker in the tailoring department of the respondent's business. Such general duties under the applicable wage orders entitled the claimant to a daily wage of ksh.484.30 and the monthly wage at ksh.10,107.10.

The claimant pleaded that she was paid ksh.400 per day and in her sworn testimony in court was that she was earning Ksh.12,000 per month. Such amount is above the minimum wage.

Even where the claimant was earning 10,107.10 the due house allowance on such amount is ksh.1,516 thus the total gross wage Ksh.11,623.

With the payment of ksh.12,000 per month as confirmed by the claimant there was no underpayment and a good compensation for her work and time with the respondent.

The due compensation is thus to be paid at the last earned wage of ksh.12,000 and notice pay at ksh.12,000.

The claim for underpayment is without merit.

Section 28 of the Employment Act, 2007 give the right to annual leave. Where there is no service for a full year, the employee is entitled to 1.75 leave days for each full month. For the 0 full months the claimant worked and based on the basic wage of ksh.10,107 for 17.5 due leave days all being Ksh.5,895.75.

On the claim for a house allowance, the claimant having been paid Ksh.12,000 per month for general work this was a fair compensation for her work.

**Accordingly, judgement is hereby entered for the claimant against the respondent for an award of compensation of ksh.12,000; notice pay of ksh.12,000 and costs of the suit.**

**Delivered at Nakuru this 6<sup>th</sup> day of February, 2020.**

**M. MBARU**

**JUDGE**

In the presence of: .....