



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 299 OF 2015

NAOMI NZOMO.....CLAIMANT

VERSUS

EVOLUTION MEDIA AND SOUND LTD.....RESPONDENT

J U D G E M E N T

1. The Claimant averred she was employed by the respondent in November,2013 at a salary of Kshs. 20,000/=. She served dutifully until June 2014 when the respondent terminated her service and failed to pay her salary for April, May and part of June and other terminal benefits. The Claimant further averred that during the existence of her contract she was overworked and underpaid.
2. The respondent on its part admitted employing the Claimant but denied terminating her service as alleged. According to the respondent, the Claimant deserted duties in April, 2014 without any justification or prior notice to the respondent thus effectively bringing her employment relationship with the respondent to an end.
3. According to the respondent the Claimant left with respondent’s confidential information including email passwords and social media password, as a result, the respondent lost business contacts. The respondent further stated that during the subsistence of her employment, the Claimant was fully paid her dues.
4. At the hearing only the Claimant attended and further stated that she was employed in November, 2013 and issued with a letter of offer. She adopted her witness statement in which she stated that she was employed as an office administrator but worked as a personal assistant to the Director. She worked until end of June, 2014 when she was forced to leave because the respondent had not paid her salary for April, May, and June, 2014.
5. At the time she was leaving the respondent owed her Kshs. 47,495 in salary arrears and Kshs. 16,250/= as leave days. She also claimed payment in lieu of notice.
6. The respondent in their response to the claim stated that the Claimant absconded duty but never produced any letter or message sent to the Claimant to resume work or lose her job. In an allegation for termination on account desertion the employer has the duty to demonstrate that reasonable effort was made to contact the employee including notice to Show Cause why the employment should not be terminated or account of desertion.
7. The respondent further never attended Court to rebut the Claimant’s allegations. The Court therefore declares the termination of the Claimant’s service unfair and awards her as follows: _

Kshs.

(a) One month’s salary in lieu of notice	20,000
(b) Unpaid salary arrears	47,495
(c) Pending leave days	16,250
(d) Six months’ salary as compensation	
For unfair termination	<u>120,000</u>

202,745

(e) Costs of the suit.

(f) Items (a), (b), (c and (d) subject to taxes.

8. It is so ordered.

Dated at Nairobi this 13th day of March, 2020

Abuodha Jorum Nelson

Judge

Delivered this 13th day of March, 2020

Byram Ongaya

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.