



**REPUBLIC OF KENYA**

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

**CAUSE NO. 400 OF 2015**

**HELLEN BUSOLO KHASUNGU.....CLAIMANT**

**VERSUS**

**MOHAMED SAEED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 6th March, 2020)

**JUDGMENT**

The claimant filed the memorandum of claim on 17.03.2015 through Khalwale & Company Advocates. It is her case and evidence that she was employed by the respondent as a house-help at Kshs.7,000.00 per month effective 05.07.2014 and the pay was below the minimum statutory wage of Kshs.11, 248.09 per month. The claimant's case and evidence is that the contract was oral and she reported at work from 9.00am to 6.30pm including on Saturdays without pay for the overtime. She worked for 7 months and she was not housed or paid house allowance. It is her case and evidence that on 15.01.2015 she reported on duty as usual and she was told that her services had been terminated. NSSF and NHIF were not remitted and she was not paid the 15 days worked in January 2015. She was not given a certificate of service. Her Advocate made a demand on 06.02.2015 but no reply was received. She says that her termination was unfair for want of a notice and hearing under section 41 of the Employment Act, 2007.

The claimant prays for judgment against the respondent and in view of the prayers, the evidence and submissions the Court makes findings on prayers for:

- a) Salary in lieu of notice Kshs.11, 248.00 which the Court finds she is entitled to under section 35 and 36 of the Act but only at **Kshs.7000.00** per month as the due monthly pay per evidence.
- b) 15 days worked in January Kshs.3, 949.00 which by evidence is due but only at **Kshs. 3,500.00** of the monthly pay of Kshs.7, 000.00.
- c) Prorate leave of Kshs.2, 633.00 which the Court finds was not due because the claimant had not served for 12 months as per section 28 of the Act.
- d) Under payment at Kshs.4, 248.00 x 7 making **Kshs.29, 736.00** per the prevailing wage order and which is will succeed because the respondent offered no evidence to dispute the claim or the law on minimum wages..
- e) House Allowance of **Kshs. 7, 350.00** is claimed and the same will succeed because the evidence was that the claimant was not housed and submitted for the respondent that indeed she had not been housed.
- f) Compensation for unfair termination at 12 months' pay will fail because the claimant's evidence was that she was simply told that her services were no longer required. The Court finds that the claimant was misconceived in claiming that she deserved a notice and a hearing under section 41 of the Employment Act. 2007 whereas it was not her evidence that she had been terminated on account of poor performance or ill health or misconduct as envisaged in the section. The Court returns that in the instant case the pay of one month in lieu of notice meets the ends of justice per sections 35 and 36 of the Act. The Court has considered that the claimant testified that on 15.01.2015 the respondent had alleged some theft against the respondent and which allegation led to her termination. However that evidence is contradictory to the claimant's pleading at paragraph 9 of the memorandum of claim that she was terminated and at paragraph 7 of her witness statement where she stated that no reasons for termination were given. Such contradiction in the claimant's case are unbelievable and the termination was not unfair at all as the claimant is bound by her own pleadings.

The respondent filed the statement of response on 10.04.2015 through Oruejo Kibet & Company Advocates but despite service did not attend the hearing and call a witness. The respondent had pleaded that the claimant was a casual employee earning Kshs.500.00 per month and that the claimant's last date at work was on 14.01.2015 and thereafter she never reported at work again. The respondent prayed that the claim be

dismissed with costs and filed final submissions. The respondent provided no evidence to support the allegations or submissions and the Court finds for the claimant as already stated earlier in this judgment.

The claimant has significantly succeeded in her claim and she is awarded costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) Payment of **Kshs.47, 586.00** by 01.05.2020 failing interest to be payable thereon at Court rates from the date of this judgment till the date of full payment.
- b) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered in court at Nairobi this Friday, 6th March, 2020.**

**BYRAM ONGAYA**

**JUDGE**