

d. Payment in lieu of notice	Kshs. 28,000/-
e. Claimant incurred expenses	<u>Kshs. 20,000/-</u>
Total Amount in Claim	<u>Kshs. 91,825/-</u>

f. Cost of the Claim herein

g. Any other or further relief the Honourable Court may deem fit in the interest of justice to grant.

8. The Respondent in its Reply to the Memorandum of Claim and counterclaim filed in Court on 12th October, 2012 admitted having employed the Claimant herein as from 15th February, 2011 to 15th September, 2011 when her services were terminated.

9. The Respondent further denied having summarily and unfairly terminated the Claimant's employment as alleged. It however maintained that the Claimant was given a chance to be heard on her performance and that it paid her all her dues at the time of her separation and has no claim as against it.

10. The Respondent further contended that the Claimant absconded duty without giving notice or paying a month's salary in lieu of such notice. It is on this basis that the Respondent sought for judgment in terms of one month's salary in lieu of the notice.

11. In conclusion, the Respondent urged this Honourable Court to dismiss the Claim herein and allow its counterclaim as prayed.

12. The matter thereafter proceeded for hearing on 12th October, 2017 with the Claimant testifying on her own behalf as CW1. The Respondent on the other hand did not call any witness and its case was marked as closed.

Claimant's Case

13. In her evidence in chief the Claimant (CW1) sought and was allowed to have his witness statement filed in Court on 30th June, 2017 adopted as her evidence in chief. In her statement, CW1 reiterated the averments made in her Memorandum of Claim. She further sought and was allowed to have the documents as annexed to her Memorandum of Claim adopted as exhibits in this matter.

14. CW1 further urged this Honourable Court to allow her Claim as drawn.

15. On cross-examination, CW1 confirmed that the termination letter that was issued to her gave her one month's notice and as a result she reported to duty the next day.

16. CW1 further confirmed that despite working, her salary was not paid fully explaining the arrears for Kshs.1,825/-. She further confirmed that she incurred expenses of Kshs. 20,000/- in following up the instant case and therefore urged this Honourable Court to allow her Claim under the head.

17. On re-examination CW1 confirmed that she resumed duty after being served with the letter for termination but was not allowed to continue working by the Respondent.

18. The Parties thereafter agreed to file written submissions to the main Claim.

Submissions by the Parties

19. The Claimant submitted that the Respondent failed to adhere to the provisions of Sections 43 and 45 of the Employment Act, 2007. She further submitted that the allegations of poor performance or non-performance are not supported by evidence of any specific performance targets, appraisals and results thereof.

20. The Claimant further contended that the Respondent did not set any targets during the subsistence of her eight (8) months of her employment with the Respondent and that she was not accorded a disciplinary hearing on account of the alleged poor performance.

21. The Claimant maintained that her termination failed the procedural fairness as enshrined under the provisions of Sections 41 and 45 of the Employment Act, 2007.

22. It is on this basis that the Claimant maintained that she is entitled to the reliefs sought in her claim by dint of Section 49 of the Employment Act, 2007 and Section 12 of the Industrial Court Act, 2011. To fortify her argument the Claimant cited the case of **Daniel Kiplagat Kipkeibut Vs Smp Deposit Taking Micro Finance Limited (2016) eKLR.**

23. In conclusion, the Claimant urged this Honourable Court to allow her Claim as prayed.

24. The Respondent on the other hand failed to file its submissions to the Claim herein.

25. I have examined all the evidence and submissions before me. The Claimant was able to establish her employment relationship with the

Respondent.

26. The Respondent admitted the existence of an employment relationship with the Claimant but the Respondent failed to call any evidence or file any submissions. The Claimant's case thus remained uncontroverted.

27. It is clear that though the Claimant was given a month's notice, she was not allowed to continue working for the Respondent and neither was she paid her salary for the month in question.

28. She is therefore entitled to payment of her salary pending before termination= 1,825 for July and 28,000/= for August + 14,000/= for September upto 15/9/2011.

29. She is also entitled to payment in lieu of notice, which I award her accordingly.

Total awarded = 71,825/=

30. Plus costs and interest at Court rates with effect from the date of this judgement.

Dated and delivered in Chambers via Zoom this 30th day of April, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for parties