



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 342 OF 2015**

***(Before Hon. Justice Mathews N. Nduma)***

**JANE AUMA OMOLLO.....CLAIMANT**

**VERSUS**

**AMFA HOLDINGS LIMITED T/A**

**(TIN TO LER GUEST HOUSE .....RESPONDENT**

**JUDGMENT**

1. The suit was filed on 16<sup>th</sup> September 2015 by the claimant praying for:

- (a) Damages for unlawful termination.
- (b) One month salary in lieu of notice in the sum of Kshs. 11,743.30.
- (c) Payment in lieu of leave days not taken Kshs. 18,498.70
- (d) Underpayments in the sum of Kshs. 92,022.70.
- (e) Provision of Certificate of service.
- (f) Costs and interest.

2. The claimant pleaded that she was employed by the respondent on 16<sup>th</sup> September 2013 in the position of a Receptionist/Room Attendant. That the claimant worked in this capacity for a period of one and a half years until 30<sup>th</sup> March 2015. That the respondent terminated her employment without any justifiable cause. That the claimant was paid a monthly salary of Kshs. 6,900 which amount constituted an underpayment by virtue of schedule 2(g) of the Regulation of wages (General) Amendments Order 2013 which provided for a minimum monthly salary of Kshs. 11,743.30 for a receptionist.

3. That the claimant was not issued a notice of intention to terminate the claimant's employment and was not given a reason for termination. That the claimant was not given any hearing before the termination nor was she afforded a representative of choice to help in explaining why her employment should not be terminated. That the claimant was not paid in lieu of notice and was not issued a certificate of service. The claimant prays to be awarded as set out under paragraphs 10 and 14 of the statement of claim.

4. The respondent filed a statement of defence on 19<sup>th</sup> November 2015 in which the respondent makes general denial of all the particulars of claim.

5. The claimant filed a verifying affidavit to authenticate her pleadings as facts and a witness statement together with the statement of claim on 16<sup>th</sup> September 2015. The witness statement, salary vouchers and a letter of summary dismissal of the claimant by one Musa Makokha, a manager of the respondent were produced by consent of the parties entered into on 14<sup>th</sup> March 2019 and signed by Mr. Njoga Advocate for the claimant and Mr. Ken Omollo Advocate for the Respondent. The claimant filed written submissions.

6. The respondent had been granted leave in terms of the consent entered into by the parties to file list of documents and witness statements within 10 days from 14<sup>th</sup> March 2019. The respondent did not file any of the said documents in terms of the consent entered into.

7. The suit by the claimant remains undefended, the defendant having only made a general denial unsupported by any witness statement or any documentary evidence.

8. The court finds that the claimant has proved the particulars of claim on a balance of probabilities that she had worked for the respondent as a Receptionist/Room Attendant from 16<sup>th</sup> September 2013 up to 20<sup>th</sup> March 2015 when she was summarily dismissed without notice, notice to show cause or being afforded an opportunity to explain herself.

9. That the respondent violated provisions of *Sections 36, 43 and 45 of the Employment Act, 2007* in that it did not provide any valid reason to summarily dismiss the claimant nor did it follow a fair procedure in summarily dismissing the claimant. The court finds accordingly.

10. The claimant is entitled to compensation in terms of *Section 49(1) (c) and (4) of the Employment Act, 2007*. In this respect, the claimant had served diligently for a period of one and a half years. The claimant was not paid the mandatory statutory wage for the position she held and has proved that she was underpaid. The claimant was not given notice of termination nor was she paid in lieu of notice. The claimant suffered loss and damage as a result of the sudden loss of job. The claimant was not compensated for the job loss. The claimant was not given certificate of service to help her get another job. The claimant lost prospects of career progression in the hotel industry. The court awards the claimant the equivalent of two (2) months salary in compensation for the unlawful dismissal in the sum of Kshs. 23,486.60.

11. Furthermore the claimant is awarded terminal benefits as follows:

(a) Ksh. 11,743.30 in lieu of one month notice.

(b) Kshs. 18,498.70 in lieu of leave days not taken.

(c) Kshs. 92,022.70 in respect of underpayments for the entire

**Total award Kshs. 145,741.30**

12. Accordingly, judgment is entered in favour of the claimant against the respondent in the sum of Kshs. 145,741.30 payable with interest at court rates from date of filing suit till payment in full and costs of the suit.

13. The respondent is to provide the claimant with a certificate of service within 30 days of judgment.

**Judgment Dated, Signed and delivered at Nairobi this 16<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Njoga for claimant

Mr. Ken Omollo for Respondent

Chrispo – Court Clerk