



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 879 OF 2017**

**(Before Hon. Justice Hellen S. Wasilwa on 21<sup>st</sup> May, 2020)**

**CHRISTINE KATUNGE KITALE.....CLAIMANT**

**VERSUS**

**STATPACK INDUSTRIES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed a Statement of Claim on 11/5/2015. She avers that she was employed by the Respondent as a Sales and Marketing Co-ordinator vide an appointment letter dated 21/8/2019.
2. She avers that in September 2016, she expressed interest in furthering her studies abroad and requested to take sabbatical leave to undertake her Masters in International Business Administration in the United Kingdom.
3. She contends that she was informed that her visa application had been denied and therefore resumed work on 3/10/2016. She avers that on that day about 12 noon, she was informed by the Respondent's Human Resource Team Leader, Ms. Connie Kaburu, to leave work and report back when the Sales and Marketing Team Leader returned.
4. She avers that following a meeting held on 11/10/2016, between the Respondent's Human Resource Team Leader and herself, she was verbally informed that her services had been terminated as at 30/9/2016.
5. She alleges that no reason was given for the termination of her employment and she was not accorded a fair hearing and due process under Section 45 of the Employment Act. She further avers that the Respondent withheld half of her salary for the month of September 2016.
6. The Claimant seeks the following prayers:-
  - a) Kshs. 1,514,848.82/- as particularised in paragraph 22 of his claim.
  - b) Costs of this Claim.
  - c) Interest on (a) and (b) above.
  - d) Any other relief that this Honourable Court may deem fit to grant.
7. The Respondent neither entered appearance nor filed a response to the claim. Consequently, the matter proceeded for formal proof with no direction as to submissions.

**Claimant's case**

8. The Claimant testified as CW1 and adopted her Witness Statement filed on 11/5/2017 as her evidence-in-chief.
9. She stated that during her employment with the Respondent, she executed her duties competently and even ended up being assigned additional duties as customer care.

10. She stated that in addition to expressing her interest in furthering her studies in the United Kingdom, she had a desire to work for the company upon her graduation. She stated on 13/10/2016, her request for an off day for the purpose of attending a visa interview at the UK visa application centre, was granted.

11. She stated that on 30/8/2016, she was summoned by the UK visa application centre to collect her passport documents. She stated that the Respondent, through Ms. Violet Kanywa its Sales Team Leader granted her permission to collect the said documents but was informed that her application had been denied.

12. She stated that she resumed work on 3/10/2016 but at around midday, she was informed by the Respondent's Human Resource Team Leader, Ms. Connie Kaburu, to leave work and was to report when the Sales and Marketing Team Leader was to report.

13. She stated that following the meeting held on 11/10/2016 she was informed that her services had been terminated with effect from 30/9/2016. It is her case that she was not issued with any notice or warning by the Respondent prior to the termination of her contract.

14. She testified that the Respondent withheld half of her salary for the month of September 2016 amounting to Kshs. 46,667. She avers that upon enquiring about her salary she was informed that the Respondent was withholding her salary as 14 days' notice yet she had not resigned.

15. She stated that she made numerous follow ups regarding payment of her withheld salary which were all in vain. She stated that on 18/11/2016, the respondent offered to pay her withheld salary on humanitarian grounds but she rejected this offer because as it was unfair.

16. She stated that she was discriminated upon and victimised as a result of desire to advance her education as Ms. Violet Kyanywa asked "You fool, where did you think you were going". She urged the Court to enter judgment in her favour as against the Respondent.

17. I have examined the evidence of the Claimant herein. I note that this Claim proceeded exparte the Respondent though served having failed to enter appearance or file any defence.

18. From the documents submitted by the Claimant, she served Respondent from 1/10/2015 to 30/9/2016 which is a period of one year. It is not clear how the contract was terminated and for what reasons.

19. However, going by the Claimant's evidence, the Respondents did not assign any reason for the termination and neither was she accorded any disciplinary hearing. I find that the Claimant has established her case against the Respondent as prayed. I find her termination by the Respondent was unfair and unjustified.

20. I therefore find for her and award her as follows:-

*1. 1 months' salary in lieu of notice = Kshs.100,000/=*

*2. Unpaid salary for September 2016 Kshs.46,667/=*

*3. 10 months' salary as compensation for unlawful and unfair termination = 10 x 100,000 = 1,000,000/=*

**TOTAL = 1,146,667/=**

*Less statutory deductions*

***4. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgment.***

**Dated and delivered in Chambers via zoom this 21<sup>st</sup> day of May, 2020.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Nyareru for Claimant – Present

No appearance for Respondent