



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR COURT

AT NAIROBI

CAUSE NO 1883 OF 2016

EBBYNET KEBEDI MAGECLAIMANT

VERSUS

ESTHER MUTHONI NDUGU.....RESPONDENT

J U D G E M E N T

1. The claimant pleaded that she was employed by the respondent as a housekeeper around August, 2011 and worked for a period of 4 years 8 months.
2. On 3rd April, 2016 the claimant was on off day and called the respondent to inform her that she would be coming the next day because she was far away and would arrive in Nairobi late. The respondent instead told her that her contract had been terminated and she should come and pick her clothes. The claimant averred that the termination was done without giving her a fair hearing.
3. The respondent on the other hand pleaded that the claimant was employed as a house help on part time basis from 8.00 a.m. to 5.00 p.m. from Monday to Friday. Her monthly salary was Kshs 8,000/=. In 2013 the claimant was employed as live-in house help and her salary increased to Kshs 13,000/=. The respondent further stated that she provided food and accommodation to the claimant at no extra cost.
4. The respondent further stated that she came up with work schedule for the claimant which was not time specific but the claimant was a poor time manager and did not appropriate hours in the day wisely. Further when her and the family were away between 7.00 a.m. and 3.00 p.m. the claimant had ample time to plan her activities.
5. According to the respondent the claimant had made it habitual not to keep time and sometimes never showed up at all without any explanation and that the claimant was warned severally about it. The respondent therefore stated that the claimant failed to heed several warnings to keep time which amounted to gross misconduct.
6. At the oral hearing the claimant adopted her witness statement filed on 13th September, 2016 as her evidence in Chief and further stated that she was introduced to the respondent by her sister and that she was hired on a verbal contract. According to her, she used to wake up at 5.00 a.m. and work until 9.00 p.m. She was not registered for NSSF and that she went on leave in December. Further, she used to get rest days.
7. It was her evidence that she had visitors and texted the respondent about it but she never replied. The respondent sent her Kshs 13,200/= which was her salary for March. She was not paid for days worked in April. She was however later paid Kshs 1330 for April. She denied ever being warned or taken through any disciplinary hearing before dismissal. She denied sleeping during working hours.
8. In cross-examination she stated that in 2011 she never used to reside with the respondent but moved in 2014. It was her evidence that between 6 am and 5 pm she was alone in the house and further that she got sick at some point and it was the respondent who paid her medical bills. The respondent also assisted her sister. She conceded that she was dismissed for being late to return to work.
9. The respondent on her part stated that she relied on her witness statement as her evidence in chief. In cross-examination she stated that the claimant was her house help for a while and that she got late for work severally. On the material day she called her and she was in a noisy matatu so they could not communicate. Before dismissing her she never sat her down but had done so severally before and she always wanted the claimant to notify her in good time when late.
10. It was common ground and was not denied by either party that the reason for which the claimant's service was terminated was because on the material date she was late to return to work. According to the claimant she had a good reason for not being able to return as was expected. However according to respondent being late to return to work had become habitual on the part of the claimant for which she had

been warned severally but there was no change.

11. The claimant’s reason for not being able to return to work was first that she was far and would reach Nairobi late on the other side she said she got visitors hence was unable to return on schedule. The respondent on the other had stated that she called her but they could not communicate because the claimant was in a noisy matatu.

12. The accusation over habitual lateness were not seriously denied by the claimant. Besides the apparent contradiction over the reason why she was unable to return to work as scheduled creates doubt over the real reason why she did not return to work on the material day.

13. Domestic service is a unique form of employment relationship and the court should be careful not to apply the strict rigours of employment relationship. The domestic help most times became part of the family they work for especially where as in this case they are housed and provided with food and other essential necessities. The issue of overtime also becomes very difficult to asses because whereas in most cases they are the ones to wake up first and maybe last to retire to bed, they normally do not work continuously.

14. More often once the families they serve leave for work and school in case of children, they would most likely be free after they are done with the domestic chores. It would therefore require more than mere assumption that because they wake up before the rest of the family and may be the last to retire to bed, they are working overtime.

15. The matter before me strikes me as such a relationship. The claimant in her evidence stated that she secured the job through her sister and that once she was unwell, it was the respondent who settled her medical bills further the respondent also assisted her sister. The respondent also stated that the claimant was her house help for long and that in addition to living with her, she used to provide her with money for personal shopping. These allegations were not denied by the claimants.

16. The law however requires that before a termination is done, the employee must be furnished with reason where termination is being considered and given a chance to respond. The respondent stated that on this particular occasion she never sat the claimant down over her lateness to work but had done so previously. To this extent the court will hold that the termination was unfair but order minimum compensation for reasons stated above.

17. The Claimant will therefore be awarded two months’ salary as compensation for unfair termination. The other heads of claim such as overtime and service pay will for reasons stated above be disallowed. The claimant is therefore awarded Kshs 26,000/= and costs of the suit.

18. It is so ordered.

Dated at Nairobi this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

Delivered this 6th day of May, 2020

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

info@ojiendaadvocates.com

antony@ndegwakiarielaw.com

info@ndegwakiarielaw.com