



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 3 OF 2019**

*(Before Hon. Lady Justice Maureen Onyango)*

**STELLA WAMBUI MUHORO.....CLAIMANT**

**VERSUS**

**KENYA MEAT COMMISSION.....RESPONDENT**

**JUDGMENT**

The claim herein was instituted vide the claimant's memorandum of claim dated 3<sup>rd</sup> January, 2019 and filed on 4<sup>th</sup> January, 2019. It is the claimant's averment in the memorandum of claim that she was employed by the respondent on or about 2009 on probation and was confirmed on 26<sup>th</sup> April, 2010.

The Claimant avers that she was allocated a housing unit by virtue of her employment with the Respondent upon her application to be issued with a housing unit. She further avers that she was charged rent according to the Standard and Code of Housing as well as the tenancy agreement signed between herself and the Respondent.

It is the Claimant's averment that the Respondent without notice or justifiable cause increased her rent from Kshs.45,000 to Kshs.100,000, which move the Claimant maintained was discriminatory, aimed at pushing her to vacate the house and/or make unlawful deductions from her salary as part of the rent without her consent.

The Claimant further avers that she received a letter dated 10<sup>th</sup> February, 2014 from the Respondent giving her three (3) months' notice to vacate the premises to pave way for renovations. That her position was declared redundant on 12<sup>th</sup> October, 2016 and she was asked to vacate the premises.

The Claimant maintains that she paid excess rent but her requests for refund of the excess rent went unanswered. That instead the Respondent on 5<sup>th</sup> October, 2017 sent her a demand letter for the accumulated rent. The Claimant avers that she did respond to the Respondent's letter vide her letter dated 20<sup>th</sup> December 2016.

She contended that the Respondent proceeded to engage auctioneers to visit the Claimant's house who threatened to attach her property to recover the unjustified and maliciously increased rent.

In the Claim the Claimant seeks the following reliefs:

- a) A declaration that the actions of the Respondent Company was unlawful and unfair.
- b) General damages for unfair labour practices
- c) An injunction restricting the Respondent from evicting the Claimant.
- d) Orders that the Respondent to pay the Claimant the amounts overpaid
- e) Orders that the Respondent to pay the Claimant her terminal dues
- f) Costs of this suit

g) Interest for b, d, e and f above from the date they fell due.

h) Any Other award the Court may deem fit to grant

By an Application dated 3<sup>rd</sup> January, 2019 filed under Certificate of Urgency on 4<sup>th</sup> January, 2019 the Claimant seeks the following orders that:

a) Spent

b) This Court do issue an Order restraining the Respondent, its agents or anyone acting through it or under its authority from victimizing, threatening, evicting, selling, transferring or in any way interfering with the Applicant's peaceful enjoyment of the house known as staff house number 32, Kunde road located in Lavington Area, Nairobi County pending the hearing and determination of this Application.

c) This Court do issue an Order directing the Respondent to pay the Applicant her withheld terminal dues forthwith pending the hearing and determination of this Application.

d) This Court do issue an order restraining the Respondent, its agent or anyone acting through it or under its authority from victimizing, threatening, evicting, selling, transferring or in any way interfering with the Applicant's peaceful enjoyment of the house known as staff house number 32, Kunde road located in Lavington Area, Nairobi County pending the hearing and determination of this Application. This Court do issue an Order directing the Respondent to pay the Applicant her withheld terminal dues forthwith pending the hearing and determination of the Claim filed herewith.

e) This Court do issue an order directing the Respondent the Respondent to pay the Applicant her withheld terminal dues forthwith pending the hearing and determination of the Claim filed herewith.

f) The Court do grant any other orders it deems fit in the circumstances.

g) Costs of this Application be in the Cause.

The Respondent on the 27<sup>th</sup> February, 2019 filed its Memorandum of Response and a Replying Affidavit deponed by ANNE GATHONI KAMAU, its Company Secretary. She deposes that the Claimant was declared redundant by its board of commissioners following her application for Voluntary Early Retirement.

That the Claimant was made aware of the payment of rent even before she took possession of the said unit and therefore the assertion that the said rent was unilaterally increased was not true.

The respondent further maintained that during the course of her continued stay, the Claimant was issued with several notices to vacate the premises that she defied despite falling into arrears in rent. That as at 1<sup>st</sup> January, 2019 the Claimant had accumulated Kshs.2,800,000 as outstanding rent. That to mitigate the loss it is in the best interest of both parties for the Claimant to vacate the suit premises as the said rent continues to accrue at the rate of Kshs.100,000 for each month of continued possession.

The Respondent further avers that the Claimant was paid all her terminal dues at the time of her separation and therefore has no Claim as against it.

It is therefore the Respondent's contention that the Claimant's suit and Application dated 3<sup>rd</sup> January, 2019 are void of merit. It urged this Court to dismiss the same with costs to the Respondent.

When the matter came up for hearing of the application on 27<sup>th</sup> February 2019, the court consolidated the claim and application and gave directions for compliance and disposal of the suit by way of written submissions. However, none of the parties filed submissions.

### **Analysis and Determination**

I have considered the Claim, the application dated 3<sup>rd</sup> January, 2019 and the responses filed by the Respondent. The right to housing of an employee under Section 31 of Employment Act, 2007 is only available as long as the employment relationship between the parties subsists. The right cannot therefore continue after termination of the employment contract unless the employer permits the former employee to continue using the house. That position was settled by the court of Appeal in the case of **Erick V. J Makhokha & 4 others v Lawrence Sagini & 2 others (1994) eKLR** when it held that:

*“The contract of employment having gone, the fringe benefits of subsidized housing went with it”*

The Claimant having been declared redundant, her right to continue occupying the suit premise ceased upon receipt of notice from the respondent to vacate and handover the premises on or before 18<sup>th</sup> November, 2016 which she failed to comply with.

To date the Claimant still maintains possession of the suit premises by dint of the Court Order issued on 4<sup>th</sup> January, 2019 restraining the Respondent by itself, its employees, agents or any persons acting on its behalf from evicting her or interfering with her peaceful occupation

and quiet enjoyment of the suit premises.

There is no evidence tendered by the Claimant to prove existence of a tenancy agreement between her and the Respondent after her employment cases or to prove payment of rent during the entire period. She claims that the excess amounts paid by her in rent is sufficient to cater for her stay at the suit premises without stating how much the excess rent she alleges to have paid amounts to.

The claimants' right of housing having ceased with the termination of her employment, she cannot demand to continue being housed by the respondent. I thus find that the claimant is duty bound to pay the rent demanded by the respondent from the date of separation.

**Whether the Claimant is entitled to the reliefs sought**

Having found that the Claimant is no longer entitled to remain in the suit premises, she must now move and give vacant possession of the premises to the respondent.

**The Claimant is therefore directed to forthwith vacate the suit premises forthwith and to pay all outstanding rent to the date of vacating the premises.**

**The suit is accordingly dismissed with costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 12<sup>TH</sup> DAY OF JUNE 2020**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020, that judgments and rulings shall be delivered through video conferencing or via email. 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 1B 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.

**MAUREEN ONYANGO**

**JUDGE**