



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 2395 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 30th July , 2020)

HOTENSIA NDUTA.....CLAIMANT

VERSUS

CREATIVE CONSOLIDATEDN SYSTEMS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant, Hotensia Nduta filed this claim vide a Memorandum of Claim dated 21st November 2016 against the Respondent, Creative Consolidated Systems Limited for wrongful, unfair and unlawful termination and non-payment of employment dues. She avers that she was employed by the Respondent on or about 16th May 2015 at a salary of Kshs. 9,800/= per month. That on or about 21st July 2016, the Respondent terminated her employment without notice or payment in lieu of notice.

2. She contends that the Respondent’s actions breached the actual and implied employment contract she had signed with it and that the Respondent did not also have any just cause to terminate her employment. That the Respondent was aware of the terms of her employment contract and its obligation thereunder and that the manner in which her contract was terminated constitutes an intentional interference with the economic relations between them.

3. She pleads that she is entitled to recover outstanding pay together with interest and further, that she has sustained aggravated damages consisting of mental distress, inconvenience and psychological injury as a result of having her employment terminated without any notice. That the Respondent’s conduct constitutes an appropriate case for an award of punitive damages and that she relies on the Constitution and the Employment Act.

4. She avers that she made efforts to resolve the matter at party’s level but the attempt did not bear fruits since the Respondent did not give her a chance. She enumerates the dues to be paid to her by the Respondent as follows:-

a. One month’s salary in lieu of notice

at the rate of Kshs. 9,800 Kshs. 9,800.00

b. Unpaid leave Kshs. 9,800.00

c. Unpaid overtime - Kshs. 9,800/30 x 1.5

= 490 x 43 days Kshs. 21,070.00

d. Service for 1 year (Kshs.9,800/30 days= Kshs.326.66x15 days=Kshs.4,900 Kshs 4,900.00

e. Unpaid salary for July Kshs. 9,800.00

TOTAL Kshs. 55,370.00

5. The Claimant prays for:-

- a. A declaration that she was wrongfully and unfairly dismissed from her employment.
- b. Unpaid dues totalling Kshs. 45,570/=.
- c. Notice period of one month – Kshs. 9,800/=.
- d. 12 months' salary as compensation for wrongful and unfair termination – Kshs. 9,800.00 x 12 = Kshs. 117,600/=.
- e. Punitive and aggravated damages for breach of the Claimant's constitutional rights.
- f. Costs and incidental to this suit.

6. In her Witness Statement, the Claimant states that the Respondent terminated her employment vide a letter dated 11th July 2016 and that the termination was done despite her protest of the Respondent's disregard to her right to be heard.

7. The matter proceeded undefended and the Claimant as CW1 asked the court to rely on her filed statement and list of documents dated 21/11/2016.

8. I have examined the evidence of the Claimant herein which stand uncontroverted the matter having proceeded exparte.

9. The Claimant established she was employed by the Respondent and was terminated without being accorded a hearing.

10. I find the claim has merit and I allow it and find for the Claimant as follows:-

- 1. 1 month salary in lieu of notice = 9,800/=.
- 2. Unpaid leave for 1 year = 9,800/=.
- 3. Service pay equivalent to 15 days for the year served = $\frac{1}{2} \times 9,800 = 4,900/=$.
- 4. Unpaid salary for 1 month = 9,800/=.
- 5. 6 months' salary as compensation for the unlawful and unfair termination = 58,800/=.

TOTAL = 93,100/=

6. 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 30th day of July, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Waiganjo for Claimant – Present

Respondent – Absent