



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 252 OF 2017

(Before Hon. Justice Mathews N. Nduma)

MOREEN MUHANI.....CLAIMANT

VERSUS

NAMUBEN MANJI BHINJI.....RESPONDENT

JUDGMENT

1. The Claimant filed the suit on 9th June 2017 praying for a declaration that termination of his employment by the respondent was unlawful and unfair and that she be granted compensation equivalent to 12 months' salary and he be paid terminal benefits including: -

- i. One months' salary in lieu of notice ksh. 10,107
- ii. Unpaid leave days for 2 years in the sum of Kshs. 20,214
- iii. Severance pay Kshs. 10,107
- iv. Unpaid public holidays worked Kshs. 13,476 and
- v. Under payment in terms of Legal Notice no. 117 of the May 2015 for 24 months in the sum of 206,953.

2. The Claimant (CW1) testified under oath and adopted a witness statement dated 12th April 2017 as his evidence in chief. CW1 stated that she was employed by the respondent as a house girl at Eldoret town at a monthly salary of Kshs. 3,000. That she worked from February 2015 until 30th December 2016 and was paid Kshs. 3,000 per month. That CW1 requested for salary increment on 30th December 2016 and the respondent got annoyed with her and when she reported to work on 31st December 2016, the respondent closed the door behind her and has not allowed her to go back to work to date.

3. That the claimant was not registered with NSSF and NHIF and the respondent made no contribution on her behalf. The claimant states that the termination of her employment was without notice and for no good reason and she be compensated for the unlawful termination and be awarded terminal benefits as prayed.

4. The respondent filed a statement of reply to the statement of claim on 8th September 2017.

5. The respondent did not attend the hearing of the suit on 19/2/2020 despite service of the hearing notice by Mr. Alfred Chepkwony Advocate for the Claimant on 17/7/2019 and an affidavit of service dated 14/2/2019 filed on 16/2/2020.

6. The testimony by the claimant is therefore uncontroverted and the Court finds that the claimant has proved her case on a balance of probabilities.

7. Accordingly, the termination of employment of the claimant by the respondent was for no valid reason and the respondent did not follow a fair procedure in terminating her employment.

8. The respondent violated sections 36,41,43 and 45 of the Employment Act 2007 and the Claimant is entitled to compensation in terms of section 49(1) (c) and (4) of the Employment Act 2007.

9. In the present suit the claimant did not contribute to the termination. The claimant was underpaid and was victimized for asserting her right

for salary increment.

10. The claimant was not given notice of termination, was not paid any terminal benefits and was not given certificate of service.

11. The claimant was not compensated for the job loss. The claimant suffered loss and damage.

12. The Court relies on the above facts and the case of *Elroy Madegwa and Global Trucks LTD ELRC at Kisumu Cause no. 358 of 2014 Per Maureen Onyango J.* which has similar facts as this one to award the claimant the equivalent of two months' salary calculated at the minimum monthly wage for a house help at the time in the sum of Kshs. (10,107 X2) Kshs. 20,214.

Terminal Benefits

13. The court also finds that the claimant has proved that the respondent owes her the terminal benefits set out under paragraph 8 of the memorandum of claim and awards the claimant accordingly as follows: -

a. Kshs. 10,107 in lieu of notice.

b. Kshs. 20,214 in lieu of leave days not taken

c. Kshs. 13,476 in respect of public holidays worked and not paid double salary rate and

d. Underpayment of wages for the period worked in the sum of Kshs. 206,953.

Total award Kshs. 270,964.

e. Interest at court rates from date of Judgment in respect of compensation and from date of filing suit in respect of the terminal benefits in items (a) to (d) above till payment in full.

f. Respondent to provide the claimant with certificate of service within 30 days from date of judgment

g. Costs to follow the event.

Judgment Dated, Signed and delivered at Nairobi this 30th day of July, 2020

Mathews N. Nduma

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 15th March 2020, this ruling 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. Chepkwony for the Claimant

M/s Gichero & Co. for the Respondent

Chrispo: Court Clerk.