



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 1616 OF 2014

MARTHA MWENDE MUSYOKA.....CLAIMANT

VERSUS

KRESTON KM & COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The claimant averred that she was employed by the respondent as an office assistant in July, 2010 at a monthly salary of Kshs.12,816 at the time of her dismissal on 19th June, 2014.
2. According to her, the termination was unfair, wrongful and without justifiable cause.
3. The respondent on the other hand averred that the claimant was disobedient, a constant nuisance to colleagues and a deserter at work. The respondent further averred that the claimant frequently came to work late feigning sickness for which she never produced any medical letter to substantiate her claims.
4. According to the respondent the claimant was terminated on account of desertion of duties and intentional disobedience. The respondent further pleaded that as a result of the claimant's desertion the respondent was unable to have audience with the claimant and opted to leave her termination letter at the office with instructions that she be given if she came to the office.
5. At the oral hearing the claimant additionally stated that on the material day in June, 2014 she was informed that her househelp had been knocked down by a vehicle as she was taking the claimant's child to school. According to her, she went to work to handover the keys in order to go back and find out what happened. She asked her colleague Lucy for permission but Lucy told her to ask Dr. Kimeu. According to her she was allowed to go back home and check on the househelp. On 19th June, 2014 she received a call from Lucy that Dr. Kimeu had given her a letter which she should go and pick. When she got the letter she found it was a termination letter.
6. The claimant denied frequently reporting to duty late. She admitted writing an apology letter when she was accused of not doing her work properly.
7. In cross –examination she denied not doing her work properly. She admitted she was registered with NSSF. According to her the accident involving her house help took place on 16th June, 2014. According to her by 18th June, 2014 she had not gone back to work because she was still attending to the househelp. She however did not call the office and further that she did not take any medical sheets to the respondent because she had already been terminated.
8. The claimant further stated that she used to clean the office, make tea and deliver letters. She was usually the last to leave the office. She further stated that for the period she worked she never went on leave. She denied filling and signing the leave forms exhibited by the respondent.
9. The respondent on its part called one witness, Mr. David Muchungu who stated that he worked for the respondent as a partner.
10. According to him the claimant joined the respondent in July 2010 as an office assistant. She started well but started falling off after two years. The claimant according to him started reporting late to work claiming she was unwell yet could not produce any medical records about her illness. He issued her with a warning letter but there was no change. A few days later the claimant absented herself locking the staff out for half day until the respondents partners came to open the offices. According to him the claimant was absent for two days. Mr. Muchungu further stated that the claimant since termination has never collected her dues and the claimant went on leave during the period he worked.

11. In cross-examination he stated that the claimant was to work from 6.30 a.m. and that he was not aware about the claimant's househelp getting involved in an accident.

12. Absence from place of work without authority or lawful cause is one of the grounds for which an employer can lawfully terminate the service of an employee.

13. The claimant herein was terminated on account of frequent lateness and absenting herself from work without permission.

14. It would seem that the claimant does not deny that she absented herself from work between 16th June, 2014 and 18th June. She claimed that she initially got permission from one Lucy to go and check on her househelp who she claimed had been knocked down by a vehicle. The claimant in her evidence in cross-examination admitted that by 17th June, 2014 she had not returned to work because she was still nursing her househelp. She however admitted that she did not call the office to inform the respondent about her continued absence.

15. In a claim for termination of service, the proof of reasons for termination of service rest on the employer. In this particular case the claimant's own admission complied with the respondent's evidence clearly vindicating the respondent. The court therefore finds that the respondent was justified in terminating claimant's services and finds the claim herein without merit and is hereby dismissed with costs.

16. It is so ordered.

Dated at Nairobi this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

Delivered this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge