



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1657 OF 2014

MARY N. MUCHAI.....CLAIMANT

VERSUS

CHEMSERVE CLEANING SERVICES LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that she was employed by the respondent in a cleaner for eleven years at monthly salary of Kshs.11,350 by the time of termination of her employment.
2. According to the claimant on 2nd May, 2014 she was assigned work at Equatorial Bank where she worked for 3 days and expressed to her supervisor the challenges she was having with the assignment owing to her health problems.
3. On 6th May, 2014 she was reassigned to Karen but when she reported to work on 7th May, 2014, the administrative manager, one Faith Wanjiku verbally informed her that she had been dismissed from employment.
4. According to the claimant, her dismissal was unfair as no reason was given.
5. The matter proceeded ex parte after the court became satisfied that the respondent was duly served but failed to file a response to the claim and attend court for the hearing.
6. In her oral evidence the claimant further stated that she was employed in 2003. On 7th May, 2014 she worked up to around 1 p.m. when she was called to the office and told them about her health condition. According to her, she was asked to go home and rest. She was hence told she was dismissed. She was never given any termination notice. Further the respondent did not pay her terminal dues upon termination.
7. In claims for unfair termination the burden of proof of reasons for termination is on the employer and failure to discharge the burden would lead to the conclusion that the termination was unfair. The respondent neither filed a defence nor attended court to defend the claim. The burden cast upon the respondent by law therefore remained undischarged leading to the finding that the termination was unfair.
8. The court therefore awards the claimant as follows:-

Kshs.

- | | |
|--|---------------|
| a) One month salary in lieu of notice | 11,350 |
| b) Unpaid leave | 11,350 |
| c) Six days worked in May, 2014 | 2,300 |
| d) Eight months' salary as compensation for unfair dismissal | <u>90,800</u> |

115,800

- e) Costs of the suit.

f) Items (a), (b), (c) and (d) shall be subject to taxes and statutory deductions.

9. 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