



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 563 OF 2017

JULIA SHIRONGO ALUKHARA.....CLAIMANT

v

SARAH MUGAMBI.....RESPONDENT

JUDGMENT

1. The Claimant instituted legal proceedings against the Respondent on 22 March 2017 alleging *unfair termination of employment* and breach of contract.
2. The Respondent caused to be filed a Memorandum of Appearance through the firm of C.B. Mwangela & Co. Advocates on 27 April 2017 but on 28 September 2017, the Court allowed the said firm to withdraw from acting for the Respondent.
3. On 20 December 2018, the Court scheduled the Cause for hearing on 11 March 2019 and directed the Claimant to serve a hearing notice.
4. According to an affidavit of service sworn by Jackson Ngugi and filed in Court on 8 March 2019, the Respondent was served with the hearing notice at Krishna Gardens Kileleshwa (house number given) and accepted but declined to sign in acknowledgment.
5. The Court was satisfied with the service and therefore it allowed the Claimant to testify on the scheduled hearing date.

Unfair termination of employment

6. The Claimant testified that she was employed by the Respondent as a domestic help around March 2015 and that on 3 September 2016, the Respondent dismissed her without notice or reasons.
7. The Claimant stated that the Respondent paid her September 2016 wages and informed her that her services were no longer required.
8. In terms of section 35(1)(c) of the Employment Act, 2007, the Claimant was entitled to a 1 month *notice of termination of employment* as she was paid by the month.
9. The Respondent did not give the notice.
10. Further, pursuant to section 41 of the Act, the Respondent was under an obligation to inform the Claimant of the allegations which led to the dismissal, and also to hear any representations made by the Claimant.
11. The un rebutted testimony before Court is that no reasons were given.
12. The Court in effect finds and holds that the Claimant was dismissed from employment and that the dismissal was unfair.

Compensation

13. Since the Claimant served for about 1 year, the Court is of the view that the equivalent of 1 month gross wages as compensation would be appropriate (monthly salary was Kshs 8,000/- throughout the employment).

Pay in lieu of notice

14. Because the dismissal was without notice, the Court finds that the Claimant is entitled to the equivalent of 1 month pay in lieu of notice.

Breach of contract

15. Every employee is entitled to at least 21 days of annual leave with full pay. The Claimant testified that she did not go on annual leave during the period of employment.

16. The Claimant sought Kshs 5,600/- on account of leave and without any contrary evidence in respect of leave, the Court will allow the head of claim.

Service pay

17. Section 35(5) & (6) of the Employment Act, 2007 provide for service pay and because the Claimant testified that she was not registered with the National Social Security Fund, the Court will allow the head of claim for service pay in the sum of 4,000/- as pleaded.

Certificate of Service

18. A certificate of service is a statutory right and the Respondent should issue one to the Claimant within 15 days.

Conclusion and Orders

19. The Court finds and declares that the Claimant was dismissed unfairly and awards her

(a) Compensation	Kshs 8,000/-
(b) Pay in lieu of notice	Kshs 8,000/-
(c) Leave	Kshs 5,600/-
(d) Service pay	Kshs 4,000/-
TOTAL	Kshs 25,600/-

20. Respondent to issue certificate of service to the Claimant within 15 days.

21. No order as to costs.

Delivered, dated and signed in Nairobi on this 15th day of March 2019.

Radido Stephen

Judge

Appearances

Claimant in person

Respondent did not participate

Court Assistant Lindsey