

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 387 OF 2017

MUNYIVA JOSEPH.....CLAIMANT

VERSUS

CHINA ROAD AND BRIDGE CORPORATION (K)...RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent seeking to recover for unlawful dismissal. She asserts that she was engaged by the Respondent as a cleaner from 1st February 2015 till 13th November 2016. She earned Kshs. 16,939/- per month but had no letter of employment though she had a gate pass. She avers that on 1st October 2016 she was working as usual and that on the material day she was bitten by a dog belonging to the Respondent. She went for treatment but was initially not treated as the doctor referred her to the officer at Emali to inspect the dog before she could be treated. She received treatment and was given an anti-rabies shot. She paid her medical expenses as the Respondent declined to pay and on 13th November 2016 she received a text message indicating her services had been terminated. She sought one month salary in lieu of notice – Kshs. 16,939.90, gratuity for 1 completed year of service – Kshs. 8,469.95, unpaid leave dues of Kshs. 13,682/-, compensation for the unlawful dismissal – Kshs. 203,279/-, costs of the suit plus interest at court rates.

2. The Respondent entered appearance and later a notice of change of advocates but did not file a defence and the matter therefore proceeded as an undefended cause. She stated that she was presently working as a salonist at Emali. She testified that the dismissal was without any reasons being advanced.

3. The Claimant filed submissions in which she submitted that she was dismissed without adherence to the provisions of the law. She cited the provisions of Section 43 as well as Section 45 of the Employment Act and submitted that the dismissal was neither fair nor justified. She cited the cases of **Daniel Kiplagat Kipkebut v SMEP Deposit Taking Micro Finance Ltd [2016] eKLR** and **Mary Mutanu Mwendwa v Ayuda Ninos De Africa-Kenya (Anidan K) [2013] eKLR** for the proposition that the process of termination was unlawful. The Claimant submitted that in the case of **Absalom Ajusa Magomere v Kenya Nut Company Limited [2014] eKLR** the court awarded 12 months salary compensation for unlawful dismissal and urged this court to similarly award the Claimant.

4. I have considered the pleadings, testimony and evidence adduced as well as the submissions filed herein to come to this decision. The dismissal of the Claimant was after a dog-bite which led to the Claimant paying her medical bills. She was earning Kshs. 14,945/- and overtime of between Kshs. 2,760/- to Kshs. 2,780/- a month. In her case, she asserts that she was not given any notice nor was she given reasons for the dismissal. She was unlawfully dismissed having worked for slightly over 1 year. For that reason, under Section 49 of the Employment Act, she would not be entitled to the full 12 months compensation as the circumstances do not warrant such a high award. She proved a part of her case on a balance of probability and thus would only be entitled to Kshs. 17,705/- as notice, Kshs. 53,115/- as compensation for 3 months. She will also have costs of the suit and interest at court rates from the date of judgment till payment in full.

5. In the final analysis I enter judgment for the Claimant against the Respondent for:-

- i. Kshs. 17,705/- as notice;
- ii. Kshs. 53,115/- as compensation for 3 months;
- iii. Costs of the suit; and
- iv. Interest on the sums in i) and ii) above at court rates from the date of judgment till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 13th day of March 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar