



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

ELRC CAUSE NO. 1207 OF 2015

(Before Hon. Justice Hellen S. Wasilwa on 30th April, 2019)

MRS. PAMELA KATENJA MACHONI.....CLAIMANT

VERSUS

MR/MRS GAURAV BHALLA T/A

C/O CROWN PAINTS (K) LIMITED.....RESPONDENT

JUDGMENT

1. The suit before this Court is a Memorandum of Claim filed on 10th July 2015 by the Claimant, then acting in person, alleging her unlawful termination by the Respondent. The Claimant therefore seeks the following reliefs:-

i) The Respondent to pay the Claimant her full and final dues/ wages totalling Kshs. 276,569.15.

ii) The costs of the suit to be in the cause.

2. The Respondent never entered appearance despite service. Consequently, the Court on 21st February 2018 directed that the suit proceed for formal proof.

Claimant's case

3. The Claimant testified that she was employed by the Respondent on 27th January 2010 as a house help and that she worked for 4 years and 11 months. She testified that she was initially earning a salary of Kshs. 3,500 that was later increased to Kshs. 6,000. She testified that though her relationship with the Respondent was not very good, her work was good and that she does not know why the Respondent sacked her.

4. She testified that the Respondent had told her that he had received information that his mother was sick thus he had to travel to India. The Respondent therefore informed her not to report the following day and that she was paid Kshs. 3,000. She testified that she later realised that he had not travelled to India.

5. She testified that the Respondent used to pay her in cash and that she would then sign a book kept by the Respondent. Further, that Sunday was her off day.

6. It is the Claimant's case that the Respondent did not have any reason to terminate her.

Claimant's submissions

7. It is the Claimant's submissions that the process followed in dismissing her was flawed and therefore unprocedural. Further, that no lawful reason was given for termination and no warning or dismissal letter were given prior to her termination. The Claimant therefore relied on Sections 41 and 35(1) (c) of the Employment Act.

8. The Claimant submitted that the Respondents have failed to tender any evidence to prove on a balance of probability that the Claimant had acted in any way to warrant termination. The Claimant submitted that the manner, timing and reasons for termination were totally unfair and that the Respondent did not abide by the provisions of Section 45 of the Employment Act.

9. In respect of the reliefs sought the Claimant submitted that she deserves compensation for unprocedural and unfair termination under

Section 49 (1) of the Employment Act. The Claimant relied on decisions in **Irene Atieno versus Henry De' Souza & Annette De' Souza [2018]** and **Frederick Were versus MK Jeffrey's Hauliers [2013] eKLR.**

10. The Claimant submitted that she was also not paid her leave allowance. In conclusion the Claimant submitted that she has proved her case on a balance of probabilities.

11. I have examined the evidence of the Claimant. This evidence was not controverted by any evidence by the Respondent who were served and failed to attend Court or file any responses.

12. I find for the Claimant and award her as follows:-

1. 1 month salary in lieu of notice = 8,000/=

2. Leave not taken for 3 years = 8,000 x 3 = 24,000/=

3. 8 months' salary as compensation for unlawful termination = 8 x 8000 = 64,000/=

TOTAL = 96,000/=

4. The Respondent will also pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 30th day of April, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Olum holding brief Enonda for Claimant – Present

Respondent – Absent