



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1816 OF 2015**

**NANCY ASEYO.....CLAIMANT**

**- VERSUS -**

**MANPOWER NETWORKS LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 10<sup>th</sup> April, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 12.10.2015 in person. Her case is that she was employed by the respondent on 10.06.2010 and deployed to work at the office of the respondent's customer known as Beiersdorf East Africa. The respondent stationed the claimant's supervisor accordingly. The claimant states that she worked until 23.03.2015 when her services were unfairly terminated at a time she earned Kshs. 14, 409.00 per month. It is her case that on 23.03.2015 the respondent's operations manager one Moses Ondugu informed her that she had been fired on account of underperformance. At termination she was asked to sign for leave from 23.03.2015 to 27.03.2015 and she never heard of the issue of underperformance again but her workmates informed her that Beiersdorf East Africa wanted her to be replaced. The alleged underperformance was not substantiated. She was a member of the National Social Security Fund and as at time of the dismissal the respondent had failed to remit some of the deducted dues. The claimant filed the present suit for a declaration that the dismissal was unfair and for the payment of the following terminal dues:

- a) One month pay in lieu of notice Kshs.18, 348.00.
- b) Annual leave Kshs.5, 351.50.
- c) NSSF deductions June and November, 2013 Kshs. 800.00.
- d) Compensation for unfair termination (18, 348 x 7 months) Kshs. 128, 436.00.
- e) Total Kshs.152, 935.50.

Further the claimant prayed for:

- a) An order directing the respondent to remit the deducted but unremitted contributions for the claimant in respect of NSSF to the said fund.
- b) An order directing the respondent to issue a certificate of service to the claimant in compliance with section 51, Employment Act, 2007.
- c) The costs of the suit plus interest thereon at court rates.
- d) Any other relief as the Court would deem just and expedient to grant.

The respondent filed the memorandum of response on 15.01.2015 through V.W. Maina & Company Advocates. The respondent denied the claimant's claims and prayed that the claimant's suit be struck out with costs.

The Court has considered the material on record and makes findings on the matters in dispute as follows:

1) The evidence is that the respondent employed the claimant as claimed for the claimant. The respondent's witness (RW) was the operations manager one James Tsuma. He testified that the respondent employed the claimant as a junior clerk and deployed her to serve at Beiersdorf East Africa. The Court returns that the parties were in a valid contract of service.

2) The claimant testified that on 23.03.2015 she was summoned at the office by the respondent's operations manager. He told her that he was giving her leave for 7 days ending at the end of March after which she would not report at work until further notice. She went on leave and later around 25.03.2015 the manager told her the contract of service had been terminated on account of poor performance. RW testified that the claimant was not terminated so as to employ other workers or on account of poor performance. RW testified that Beiersdorf East Africa had abrupt operational changes including introduction of new equipment and machines so that the services of the claimant were no longer needed. Thus it became impossible to retain the claimant in employment. RW testified that the respondent was willing to pay the claimant's terminal dues being one month in lieu of notice **Kshs. 18, 348.00**; annual leave **Kshs. 5, 331.00** and the Court awards her accordingly.

3) RW stated that the termination was not unfair and compensation as claimed would not be paid. The Court finds that whether the termination was on account of redundancy under section 40 of the Employment Act, 2007 or on account of poor performance under section 41 of the Act, the evidence is clear that the respondent failed to comply with the due procedure as prescribed in either of the sections. Accordingly, the Court returns that the termination of the claimant's employment was unfair. The claimant had served with loyalty and dedication with a clean record of service. She was not prepared for the termination as it was abrupt. The Court has considered the unbroken period of service and that she did not contribute to her termination in any manner. She is awarded 7 months' salaries in compensation for the unfair termination under section 49 of the Act and as prayed for making **Kshs. 128, 436.00**.

4) The claimant is entitled to the certificate of service and the NSSF deducted and not remitted be remitted.

5) As costs follow the event, and taking into account all the material on record, the claimant is awarded costs of the suit fixed at **Kshs.25, 000.00** only.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) The declaration that the termination of the contract of service between the parties was unfair.
- b) The respondent to deliver to the claimant the certificate of service by 15.05.2019.
- c) The respondent to remit all due NSSF contributions not yet remitted by 15.05.2019.
- d) The respondent to pay the claimant a sum of **Kshs.177, 115.00** by 15.05.2019 failing interest at Court rates to apply thereon from the date of this judgment till full payment.

**Signed, dated and delivered in court at Nairobi this Wednesday 10<sup>th</sup> April, 2019.**

**BYRAM ONGAYA**

**JUDGE**