



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 854 OF 2015

JANE MUTHONI MUYA.....CLAIMANT

VERSUS

JOHN & T. KEMPRO COMPANY LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This is an employment dispute between Jane Muthoni Muya and John & T. Kemprom Company Limited. The Claimant’s claim is documented by a Memorandum of Claim dated 23rd April 2015 and filed in court on 20th May 2015. The Respondent’s defence is contained in a Reply dated 28th July 2015 and filed in court on 30th July 2015.

2. When the matter came up for hearing, the Claimant testified on his own behalf and the Respondent called its Farm Manager, Daniel Ngile Wambua and two Directors, Catherine Mwendu Kyalo and Anne Munyiva Ngugi. Both parties further filed written submissions.

The Claimant’s Case

3. The Claimant pleads that she was employed by the Respondent as a general worker from 1974 until September 2013 when she was summarily dismissed. She states that she earned a basic monthly salary of Kshs. 6,058. Her claim against the Respondent is as follows:

- a) Severance pay for 39 years.....Kshs. 136,305
- b) 1 month’s salary in lieu of notice.....6,058
- c) 12 months’ salary in compensation.....72,696
- d) Accrued leave.....3,495
- e) Damages for unlawful termination
- f) Costs plus interest

The Respondent’s Case

4. In its Reply dated 28th July 2015 and filed in court on 30th July 2015, the Respondent denies the Claimant’s claim and states that she resigned orally on her own volition without any force or pressure.

5. The Respondent further states that the dispute was subjected to mediation at the Labour Office in Thika. The Respondent offered to pay the Claimant Kshs. 8,790 net of deductions but the Claimant declined. The Respondent subsequently deposited the money at the Labour Office.

Findings and Determination

6. There are two (2) issues for determination in this case:

- a) Whether the Claimant has made out a case of wrongful dismissal;

b) Whether the Claimant is entitled to the remedies sought.

Wrongful Dismissal?

7. Section 47(5) of the Employment Act provides as follows:

(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

8. An employee alleging unfair termination or wrongful dismissal therefore bears the primary burden of proving their claim in this regard (see *Jawadu Hamad Omar v East Africa Sea Food Limited [2017] eKLR*).

9. The Claimant in the instant case claims to have been wrongfully dismissed. She told the Court that sometime in September 2013, she was called by Anne Mutindi whom she described as the Respondent's Managing Director and told not to report to work. The Respondent's 3rd witness, Anne Munyiva Ngugi who was deemed to be the one referred to as Anne Mutindi denied ever terminating the Claimant's employment. In fact, she told the Court that at the time the Claimant left employment, she was out of the country.

10. In its response, the Respondent denies terminating the Claimant's employment and states that she left employment on her own volition. The respondent's Farm Manager, Daniel Ngile Wambua testified that the Claimant decided to leave employment, stating that she was tired of working for the Respondent. Wambua added that he tried to prevail upon the Claimant to follow the proper procedure of leaving employment to no avail.

11. The Claimant did not call any independent evidence to corroborate her word. On the other hand, the Respondent called three (3) witnesses who were consistent in their respective testimonies. On a balance of probability therefore, the Court finds and holds that the Claimant failed to discharge her evidential burden.

12. As a result, the claims for compensation, damages and notice pay are without basis and are dismissed. Similarly, no basis was laid for the claim for severance pay which also fails and is dismissed.

13. Regarding the claim for accrued leave, all the Claimant did was to throw a figure at the court without any tabulation details. Consequently, this claim must also fail.

14. In the end, the Claimant's entire claim fails and is dismissed.

15. Each party will bear their own costs.

16. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF MAY 2019

LINNET NDOLO

JUDGE

DELIVERED AT NAIROBI THIS 31ST DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE

Appearance:

Mrs. Njiru for the Claimant

Mr. Munoko for the Respondent