



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

**AT NAIROBI**

**CAUSE NUMBER 780 OF 2012**

**RUTH NZILANI KYALO.....CLAIMANT**

**VERSUS**

**TIKOO AND COMPANY LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that she was employed by the respondent on 29<sup>th</sup> February, 2000 as a tailor. Her salary at the point of termination was Kshs 6,095/=. On 3<sup>rd</sup> June, 2006 the respondent ordered the claimant to vacate the premises as her services were no longer needed. No reasons whatsoever were given.
2. The claimant further alleged that since the termination was done on account of redundancy it was devoid of procedures of the Employment Act. In her evidence in chief the claimant stated that they were sent away without notice or any reason and further that she was never paid for the month worked.
3. In cross-examination she stated that she was paid half her NSSF contributions. She further stated that she never went on leave.
4. The respondent's witness Mr Ronald Musungu stated that in 2006 there were several theft cases which the respondent reported to the police and the labour office. The claimant deserted work during this period.
5. As was held by Lady Justice Maureen Onyango in Cause No 785 of 2012 Eunice Sti Vs Tikoo & Company, the claimant is not entitled to damages for unfair termination of service as this award was introduced by the Employment Act 2007. The cause of action herein accrued in 2006 before the enactment of the current act.
6. Whereas the claimant alleges that her service was terminated on account of redundancy, the respondent alleges that the claimant deserted work. In a termination of employment on account of desertion the employer is required to show that reasonable efforts were made to contact the employee and that he or she was called upon to show cause why his or her services should not be terminated on account of desertion.
7. Concerning compensation for wrongful termination, the applicable law was the repealed Employment Act. Under that Act the measure of damages payable for wrongful termination for service was the money equivalent of the required notice period in the event that the employment is terminated normally. In this particular case the claimant is entitled to one month's salary in lieu of notice.
8. The respondent did not deny that the claimant was entitled to leave for the period worked. They did not produce any evidence that the claimant took leave.
9. The court therefore awards the claimant as follows:
  - a. One month's salary in lieu of notice    6,095
  - b. Leave for 6 years    36,570

**42,665**
10. The claimant shall further have costs of the suit.
11. It is so ordered.

**Dated at Nairobi this 31<sup>st</sup> day of May, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 31<sup>st</sup> day of May, 2019**

**Maureen Onyango**

**Principal Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.