



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

ELRC CAUSE NO. 53 OF 2018

VERONICA OMINA MUSIKALI.....CLAIMANT

VERSUS

DIRECTOR YAJOKA RESTAURANT GARDEN.....RESPONDENT

J U D G M E N T

The suit proceeded ex parte in default of appearance of the respondent at the date of hearing despite service.

The Claimant testified as CW1 and told the court that she was employed by the respondent on 1.4.2014 as Ethiopian food cook at a monthly salary of Kshs 11,000 per month. That he had no letter of employment and worked up to 5.5.2018 when he voluntarily left work because his salary was very small. That he could not afford life in Nairobi.

He gave Letter of resignation and left. The Claimant states that he was not paid for four (4) years service pay. Was not paid for overtime worked since he worked from 11.30 a.m in the morning until 4.30 p.m in the evening which is about 15 hours per day. That he was given an off day on Tuesdays fortnightly. That she had therefore two (2) off days a month and worked during public holidays and was not paid overtime. The Claimant stated that she did not go on leave for 4 years and whenever she asked to go home her salary was deducted. That she should have been paid Kshs 13,900.80 and so she claims for underpayments. She was not housed and was not paid house allowance. That she was entitled to four (4) off days a month but was given only 2. That she was helped by the union to compute and file the Claim. She claims Kshs 732,455.22 set out under paragraph 15 (1) in the statement of claim and as prayed with interest and costs.

The Respondent was served on 23.12.2018 and the Respondent filed a statement of Response and counter claim on 14.1.2018

The Respondent through Bake Hassan & Co. Advocates filed an application dated 9.1.2018 seeking leave of the court for the suit to be moved to Nairobi.

The application brought on a certificate of urgency was set for hearing by the judge on 21.2.2019.

The Claimant opposed the application by a replying affidavit filed on 28.1.2018

On 21.2.2019 when the matter was for interpartes hearing, the Respondent/Applicant did not attend court. The Applicant prayed that the application to transfer the matter to Nairobi be dismissed since she was unemployed and lived nearer this court. In the alternative she said matter could be transferred to Kisumu.

The application to transfer the matter to Nairobi was dismissed by the court for non attendance to prosecute the same. The matter was then set for hearing at Bungoma ELR court on 25.3.2019.

On 25.3.2019 the Respondent did not attend court. The Claimant had served the Respondent personally with the hearing notice on 25.2.2019 at 2.30 p.m. at Nairobi and an affidavit of service was filed on 26.2.2019.

The matter proceeded ex parte in the absence of the respondent.

The Claimant through her testimony before court proved on a balance of probabilities the claims set out under paragraph 15 of the Statement of Claim and the court awards the Claimant accordingly.

Accordingly, judgment is entered in favour of the Claimant as against the Respondent in respect to all the claims set out under paragraph 15 (1-7) in the sum of Kshs 564,906. The claim for compensation for unlawful dismissal is dismissed since the Claimant resigned voluntarily.

The counter claim by the Respondent was not prosecuted and is dismissed.

Judgment is entered in favour of the Claimant as against the Respondent for

(a) Kshs 564,906

(b) Interest at court rates from date of filing suit till payment in full.

(c) Costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 30th day of MAY, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearances:

Claimant in person

Bake Hassan & Co. Advocates

Chrispo: Court Assistant.