



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI

CAUSE NUMBER 989 OF 2018

MONICAIMALI MULIANGO.....CLAIMANT

VERSUS

CATHERINE MASAKA.....RESPONDENT

RULING

1. By a motion dated 18th June, 2018 the claimant/applicant sought orders among others that a warrant of attest be issued against the respondent to bring her before the court to show cause why she should not furnish security for her appearance. Further pending the hearing and determination of the application the respondent be ordered to deposit in court the sum of Kshs 323,138/51 being sufficient security deposit to answer the claim against her in the matter.
2. The application was brought on the basis that the respondent verbally terminated the claimant's services on 5th January, 2018 with immediate effect and offered her Kshs 14,000/=. That the said termination did not talk of payment of any notice or other terminal benefits due to the claimant. The claimant/applicant was apprehensive that the respondent who is a Zimbabwean expatriate shall run away from the jurisdiction of the court without paying the claimant's entitlement.
3. According to the claimant, she was employed by the respondent as a house help carrying out domestic chores. She worked between January 2016 and 5th January, 2018. According to her the respondent terminated her services because the respondent had found a replacement. She was not given a reason why she was replaced.
4. The respondent opposed the application and filed a replying affidavit in which she stated on the main that the applicant never rendered her services honestly and diligently as alleged and that on 5th January, 2018 the applicant reported to work long after her due date of resuming work which was on 2nd January, 2018. According to her the claimant never gave any reason. The applicant was paid one month salary in lieu of notice despite being liable to summary dismissal.
5. The respondent further stated that she worked in Kenya as the Deputy Country Director/Operations under a contract of employment with UNDP for the next one year and that she lived with her family in Kenya hence not a flight risk.
6. Under Order 39 rule 1 a defendant may be called upon to furnish security for appearance upon the court being satisfied by affidavit or otherwise that the defendant is about to abscond or leave the local limits of the jurisdiction of the court or the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit.
7. Before the order can be granted, the court must be satisfied that there is a prima facie case with probability of success and whether the applicant stands to suffer irreparable harm if the relief is not granted. The claimant herein avers that the respondent terminated her services for the reason that her replacement had been found. According to her the respondent had not given any reason why her services were no longer needed. According to the respondent the claimant absented herself from duty for more than one week without lawful cause.
8. Absence from duty without lawful cause is a valid ground for summary dismissal. However a summary dismissal is a dismissal with no notice or less notice than provided for under the contract or Employment Act. Other terminal benefits accrued remain payable. The claimant has not by way of reply to memorandum of response denied that she absented herself from work without permission for one week.
9. Regarding terminal benefits and the amount of compensation sought, the bulk of it is claim for maximum compensation of twelve months salary for unfair termination of service.
10. The court rarely awards maximum compensation. It is usually done in those cases where the separation was so unfair and tainted with

bad faith or malice that no reasonable employer would have terminated the services of an employee for those reasons and that manner. This is no such case. At least the pleadings do not show.

11. The respondent has however not denied that she is in the country as an employee and that she was serving on contract with UNDP for one year. She has not given any indication that the contract may be renewed. In the circumstances the claimant has reasonable cause to fear that she might be outside the jurisdiction of the court when the matter is determined and if in favour of the claimant execution would be difficult.

12. In the circumstances, the court hereby orders that the respondent deposits the sum of Kshs 323,138.51 in court as security for judgement that this court may ultimately enter in favour of the claimant.

13. It is so ordered.

Dated at Nairobi this 17th day of May 2019

Abuodha J. N.

Judge

Delivered this 17th day of May 2019

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.