



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NO 117 OF 2015

VIOLETTE KEMUNTO MORANGA.....CLAIMANT

VS

HABO GROUP OF COMPANIES.....RESPONDENT

JUDGMENT

Introduction

1. By his Memorandum of Claim dated 11th March 2015 and filed in court on the same date, the Claimant seeks compensation for unlawful termination of employment and payment of terminal dues.
2. The Respondent filed a Reply on 29th September 2015 but did not call any witness. The Claimant testified on her own behalf.

The Claimant's Case

3. The Claimant states that she was employed in the Respondent's Operations and Purchasing Department from May 2008 until 28th July 2014 when her employment was terminated. At the time of leaving employment, she earned a monthly salary of Kshs. 45,000.
4. The Claimant claims that the termination of her employment was unlawful and unfair. She claims the following:

- a) One month's salary in lieu of notice.....Kshs. 45,000
- b) Salary for February 2014 to June 2014.....180,000
- c) In house savings.....58,000
- d) 5 years leave pay.....225,000
- e) House allowance @ 15% for 74 months.....499,500
- f) Unlawful penalty for recovery of bad debt.....149,000
- g) 12 months' salary in compensation.....540,000
- h) Certificate of service
- i) Costs

The Respondent's Case

5. In its Reply dated 28th September 2015 and filed in court on 29th September 2015, the Respondent denies having employed the Claimant from May 2008 until July 2014. The Respondent further denies having unlawfully and unfairly terminated the Claimant's employment.
6. The Respondent states that in the event it terminated the Claimant's employment, it did so legally as per internal memo circulated to all employees in the Claimant's Section since the Respondent faced a serious financial challenge due to a slump in the Tourism Sector that had a

negative impact in the Claimant's Section, a fact she was aware of.

7. The Respondent denies the Claimant's entire claim and puts her to strict proof.

Findings and Determination

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

- a) Whether the Claimant has made out a case of unlawful and unfair termination of employment;
- b) Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

9. In its Response to the claim, the Respondent states that the Claimant's employment was terminated on account of financial challenges occasioned by a slump in the Tourism Sector. The Claimant however filed a termination letter dated 28th July 2014, stating as follows:

"RE: TERMINATION

Reference is made to the above.

*It was established that you did not report on duty as from 4th June 2014 after completion of your maternity leave on 3rd June 2014. You are therefore found guilty of absconding your duties as an **Operations Stock Controller** and in the process interrupting the smooth running of the organization activities thus causing company huge expenses. As you are aware, cases of absconding duty and negligence cannot be tolerated by the company.*

As per section 44 of the Employment Act, the management is left with no option other than to terminate your services with effect from 4th June 2014. You will be paid all your dues for the days worked and any other outstanding payments after handing over all company related assets/items in your possession.

Yours faithfully,

(Signed)

HUMAN RESOURCE MANAGER"

10. The Claimant testified that on 2nd February 2014, she applied for maternity leave which was to end 3rd June 2014. She added that she was not paid salary for the period she was on maternity leave and when she went to inquire, she was issued with a termination letter alleging that she had absconded duty.

11. If indeed the Claimant failed to resume duty after expiry of her maternity leave, then the Respondent ought to have subjected her to disciplinary procedure as required by Section 41 of the Employment. As it is, the Respondent failed to establish any valid reason for the termination as contemplated under Section 43 of the Act. The termination was therefore substantively and procedurally unfair and the Claimant is entitled to compensation.

Remedies

12. In light of the foregoing findings, I award the Claimant eight (8) months' salary in compensation. In making this award, I have taken into account the Claimant's length of service coupled with the Respondent's conduct in handling the Claimant's case. I further award the Claimant one (1) month's salary in lieu of notice as well as salary for February 2014 to June 2014.

13. In the absence of leave records to the contrary, the claim for leave pay succeeds and is allowed.

14. The Claimant also claims house allowance. According to her payslips filed in court, the figure of basic salary is also the one for gross salary. However, looking at her position and the monthly salary paid, the Court arrived at the conclusion that there was an intention between the parties that the said salary was consolidated to include house allowance. The claim for house allowance is therefore disallowed.

15. The claims for in-house savings and recovery of bad debt were not proved and are dismissed.

16. Finally, I enter judgment in favour of the Claimant as follows:

a) 8 months' salary in compensation.....Kshs. 360,000

b) 1 month's salary in lieu of notice.....45,000

c) Salary for February to June 2014.....225,000

d) Leave pay for 6 years (45,000/30x21x6).....189,000

Total.....819,000

17. This amount will attract interest at court rates from the date of judgment until payment in full.

18. The Claimant is also entitled to a certificate of service plus costs of the case.

19. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 2ND DAY OF MAY 2019

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JUDGE

Appearance:

Mr. Nyange Sharia for the Claimant

No appearance for the Respondent