



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 987 OF 2013

BETWEEN

LEAH ASIKO NDANGU.....CLAIMANT

VERSUS

PALI SAMMY SINGH.....RESPONDENT

Rika J

Court Assistant: Lawrence Osotsi

Omboga & Company Advocates for the Claimant

Ramesh Sharma, Advocates for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim on 3rd July 2013. She avers that she was employed by the Respondent on 3rd February 2012, earning a monthly salary at the start, of Kshs. 2,500. This was later revised to Kshs. 6,000 monthly. She gave the Respondent a notice of retirement dated 2nd October 2012, to take effect at the end of that year, 31st December 2012. She claims she was not paid terminal benefits and that the Respondent terminated her contract unfairly. Her monthly salary was underpaid. She prays for:-

- a) Underpayment of salary at Kshs. 3,866 monthly for 11 years at Kshs. 510,000.
- b) Service pay at Kshs. 68,145.
- c) Compensation for unfair termination at Kshs. 11,401.
- d) 4 days' salary for work done in February 2013, at Kshs. 1,652.
- e) Costs.
- f) Any other relief.

2. The Respondent filed his Statement of Response on 30th July 2013. He states his name is Harpal Singh Sehmi, while the Claimant calls him Pali Sammy Singh. His position is that the Claimant worked for him as a Casual Employee. She was paid other sums of money other than the salary, including money to pay her Children's school fees and medical expenses. It is not disputed that she retired. She did not work the full day. She worked for only 5 ½ hours in a day. The rates she adopts in computation of underpayment of salary did not apply at the time she worked. She was in casual employment and not entitled to house allowance. She was paid for the 4 days she worked in February 2013.

3. The Claim was fixed for hearing during the Court's Service Week at Nairobi, on 2nd April 2019. Parties were not ready and sought adjournment which the Court did not grant, considering the Claim was filed 6 years ago, in 2013. Parties opted to have the Claim disposed of under Rule 21 of the Employment and Labour Relations Court [Procedure] Rules, 2016.

The Court Finds:-

4. The Claimant worked for the Respondent as a House Help, for 11 years between February 2002 and December 2012.
5. She wrote a notice of retirement to the Respondent dated 5th October 2012. It was to take effect 31st December 2012.
6. Retirement was voluntary. It is difficult see why the Claimant should turn around and allege her contract was terminated by the Respondent. It cannot be that the Respondent terminated Claimant's contract, little less, done so unfairly. The Claimant initiated termination and is not entitled to compensation for unfair termination.
7. In her notice of retirement, the Claimant did not make any demands on the Respondent. She writes:-

‘ I have no other hidden agenda except to wish you and your family as a whole a prosperous life and a happy stay. I also really appreciate for kindness and love you have showed me for this long period..’
8. There was no demand of any nature made.
9. The prayers for underpayment of salary, and service pay appear to have been made in afterthought.
10. They are not properly grounded in fact and law. The prayer for underpayment is simply pleaded under the Labour Institutions Act. The specific Wage Order, applicable to a specific year, is not indicated in the Pleadings and Submissions of the Claimant. Service pay is pleaded for a period of 11 years, while the law creating service pay regime came into effect on 2nd June 2008. The present minimum wage for Domestic Workers in cities is about Kshs. 8,580 and in municipalities Kshs. 7,916. Why would the Claimant seek a rate of Kshs. 9,866 in the year 2012? If the Claimant received Kshs. 6,000 in 2012, the Court does not think she was underpaid. It was her responsibility to prove to the Court what she merited in specific years, under the relevant Wage Orders.
11. Her prayer for house allowance is similarly made in afterthought.
12. Overall the Court has formed the view that the Claimant retired voluntarily, and assured the Respondent she did not have any demands on him, at the time of retirement. She seems to have been incited by a Trade Union to create a dispute, after she had left the Respondent peacefully.
13. *The Claim has no merit and is rejected with no order on the costs.*

Dated and signed at Mombasa this 3rd day of June 2019.

James Rika

Judge

Dated, delivered and signed at Nairobi this 14th day of June 2019.

Byram Ongaya

Judge