



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CASE NO. 274 OF 2016

(Before Hon. Justice Mathews N. Nduma)

DAMARIS MAGOMA MAKORI.....CLAIMANT

VERSUS

KISII COUNTY GOVERNMENT.....RESPONDENT

J U D G M E N T

1. The claimant filed suit on 19th September 2016 seeking:

- (a) A declaration that the verbal suspension and/or laying off of the claimant from her employment sometimes in November 2013 was improper, unprocedural, illegal and/or wrongful.
- (b) Further declaration that the claimant is an employee of the Respondent.
- (c) That the Claimant be paid all withheld salaries from November 2013 to the date of her reinstatement at the rate of Kshs. 67,000 per month.

2. The claim is opposed vide a response to the memorandum of claim filed on 27th October 2016.

3. The respondent denies that the claimant was ever absorbed by the Kisii County Government since the claimant had ceased being on the payroll of Municipal Council of Kisii for a period of two years as at the time the devolved system of governance was started in the year 2013.

4. The claimant did not adduce any evidence before court to prove that she was a valid employee of Kisii County Government and that her employment had been unlawfully verbally terminated in November 2013. The claimant has the onus of proving her case on a balance of probabilities in terms of *Section 107 and 108 of Evidence Act Cap 80 Laws of Kenya*.

5. No material facts averred in the memorandum of claim and witness statements have been admitted by the respondent. The averments in these documents do not constitute evidence and cannot be admitted to prove the case by the claimant.

6. The claimant elected not to testify before court at her own peril. The advocate for the claimant Mr. Sagwe and Mr. Onsembe for the respondent on 15th October 2018 recorded a consent that the suit will proceed by way of written submissions and that oral evidence had been dispensed with.

7. It is the court's considered finding that the claimant has not proved the particulars of claim on a balance of probabilities and the suit against the respondent is dismissed in its entirety. Since no hearing took place, parties are to bear their own costs of the suit.

Judgment Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Sagwe for Claimant

Mr. Onsembe for Respondent

Chrispo – Court Clerk