



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 125 OF 2016

(Before Hon. Justice Mathews N. Nduma)

HARRIET FRIDAH SAKWA.....CLAIMANT

VERSUS

SAMEER AGRICULTURAL & LIVESTOCK (KENYA) LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 22nd April 2016, the claimant seeking maximum compensation for unlawful and unfair termination of employment and payment of terminal benefits to wit:

- (i) One month salary in lieu of notice
- (ii) Unpaid house allowance
- (iii) Unpaid overtime dues.

2. The suit was defended vide a memorandum of response on 14th July 2016.

3. The claimant testified as CW1 that she was employed by the respondent as a data clerk on 1st October 2011 for a fixed term contract of 15 months earning Kshs. 15,000 per month. Contract was extended for a further 15 months and salary increased to Kshs. 20,000. The 3rd contract was renewed on 15th March 2015 for a further 15 months period at Kshs. 23,000 per month. The contract was to end on 1st August 2016.

4. That one senior staff by name Jogindra, started harassing the claimant unnecessarily and it got worse when new boss came. The claimant was falsely accused of coming to work late and absenteeism. The claimant was given a show cause letter which she responded to and then her employment was terminated without a hearing on 16th September 2015.

5. Claimant testified that she was not paid any terminal benefits. The claimant states that the termination was not for a valid reason and was not done following a fair procedure. The claimant did not receive a certificate of service and was now working for a company called Inside Management in Eldoret. She prays to be awarded as prayed in the memorandum of claim. The claimant abandoned item number 4, which is payment for the remainder of the contract that was terminated.

6. The hearing date of 6th February 2019 was taken by consent of the parties on 17th July 2018. The respondent's advocate failed to attend court without any explanation. The suit proceeded exparte and is therefore not defended.

7. The claimant however bears the onus of proving the case on a balance of probabilities.

Determination

8. The claimant was in a show cause letter accused of absenteeism on dates not stated in the letter. The claimant was also accused of not being punctual on duty on unstated dates. The claimant was further accused of having a wrong attitude towards work without elaboration. Finally the claimant was accused of unspecified insubordination.

9. The unspecified offences make it impossible for an employee to answer satisfactorily. Non the less the claimant responded to the show cause letter and had in an earlier email dated 15th September 2015 explained to Mr. Jogindra that on 31st she had filled a leave form just like any other staff and it was filed by Mr. Ashan, a senior staff. That on Saturday the 12th she had finished her work and took a lunch break at 2.15 p.m only to be told that the office was closed for the day whilst she was on her way back at 3.02 p.m. The claimant stated that she had the text to that effect from Mr. Ashan in her phone. The claimant further explained that the wrong GRN entry was done by one Mr. Anold by mistake and he had apologized for it. The claimant was not given opportunity to appear before a disciplinary committee to further elaborate her explanation. The respondent served her with a letter of termination on 10th October 2015. The respondent simply said that the explanation by the claimant was not acceptable and her employment was terminated.

10. The claimant explained that Mr. Jogindra had the wrong attitude towards her and deliberately harassed her with an intention to get her to leave her employment. The attitude by Mr. Jogindra Rawat is evident in the emails he wrote to the claimant in broken English on 17th September 2015.

11. The claimant produced an email written to Mr. Dixit, their superior to intervene because Mr. Jogindra was harassing her. The claimant testified that Mr. Dixit did not intervene. Mr. Jogindra was sending emails to the claimant daily always complaining.

12. Upon a careful consideration of the uncontroverted evidence, the court is satisfied that Mr. Jogindra Rawat was harassing the claimant without reasonable cause and that the respondent had no valid reason to terminate the employment of the claimant. The procedure followed to terminate the claimant's employment was not fair. She was accused of vague, non-specific offences in the notice to show cause. That the explanation she gave was reasonable in the circumstances of the case.

13. The respondent violated *Sections 36, 41, 43, 45 and 46 of the Employment Act 2007*. The termination of the employment of the claimant was therefore unlawful and unfair. The claimant is entitled to compensation under *Section 49(1) (c) and (4) of the Act*.

14. The claimant was harassed out of her employment. The claimant was serving a third contract without any issues until Mr. Jogindra Rawat and Mr. Dixit came to Kisumu office and made her life intolerable. The two terminated the employment of the claimant for no good reason at all. The claimant did not contribute to the termination. The claimant was not paid in lieu of notice. The claimant had 10 months left to complete her 3rd contract. The claimant did not get certificate of service upon termination. The claimant was not paid any compensation for the loss of her job. The claimant suffered loss and damage. The court deems this an appropriate case to award the claimant the equivalent of four (4) months salary in compensation for the unlawful and unfair termination in the sum of Kshs. 92,000. The claimant is entitled to one month salary in lieu of notice in the sum of Kshs. 23,000 and is awarded accordingly.

15. The claimant did not claim house allowance while she worked. The contract of employment provided for a gross salary and not net salary. The claimant is not entitled to additional housing allowance. Gross salary incorporates both the basic pay and house allowance.

16. The claimant did not claim overtime and same was not provided for in the contract of employment. The claimant did not prove that she had worked overtime that had not been paid for. The court disallows this claim also.

17. In the final analysis judgment is entered in favour of the claimant as against the respondent as follows:

(i) One month salary in lieu of notice – Kshs. 23,000.

(ii) Equivalent of four (4) months salary in compensation – Kshs. 92,000

Total award – Kshs. 115,000.

(iii) Certificate of service to be issued within 30 days of this judgment.

(iv) Interest at court rates from date of judgment till payment in full.

(v) Costs of the suit.

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

Mathews N. Nduma

Judge

Appearances

Mr. Kirwa for Claimant

Mr. Khalwale for Respondent

Chrispo – Court Clerk