

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAIROBI

CAUSE NO. 1021 OF 2018

ANGELICA MUTINDA.....CLAIMANT

VERSUS

ATHI RIVER MARBLE & GRANITE LIMITED.....RESPONDENT

JUDGMENT

INTRODUCTION

1. The claimant brought this suit on 20.6.2018 contending that her employment was terminated by the respondent on 1.3.2016 on account of redundancy and her terminal benefits withheld. She therefore prayed for Kshs.118,983.86 made up of Kshs.111,200 salary arrears plus Kshs.7,783.86 accrued leave.
2. The respondent never entered appearance after service with court process and as such the suit proceeded as undefended when the claimant prosecuted the suit on 27.7.2019.
3. The claimant testified that she was employed by the respondent from 2012 as a General worker and worked until 2016 when she was declared redundant after the company closed business. That her accrued benefits were never paid and she therefore prayed for judgement in terms of the sum sought in the suit.
4. The issue for determination is whether the claimant is entitled to the reliefs sought in her Memorandum of Claim being Kshs.118,983.86.
5. The claims set out in paragraph 6 of the Memorandum of Claim include salary arrears for 10 months at the rate of Kshs.11,120 per month plus leave of 21 days. The said claims are entitlements of every employee under section 17 and 28 of the Employment Act. The claimant testified that she was not paid the said entitlement after they accrued or after the termination of her employment.
6. Under section 74 of the said Act, the employer has the obligation of keeping employment records of his employee. The said records are crucial in disproving claims, like the ones in the instant case but non was produced as exhibit to disprove the claims by the claimant. Consequently the court is satisfied that the claimant has proved on a balance of probability that she is entitled to the reliefs sought herein and I accordingly enter judgment for her in the sum of Kshs.118,983.86. She will also have costs plus interest at court rate from the date of filing suit. However, the sum awarded is subject to statutory deductions.

Dated, Signed and Delivered in Open Court at Nairobi this 27th day of September, 2019

ONESMUS N. MAKAU

JUDGE