



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

CAUSE NO. 6 OF 2018

EMILY ACHIENG' OKOJO.....CLAIMANT

VERSUS

MANAGING DIRECTOR RILEY SERVICES LTD.....1ST RESPONDENT

DIRECTOR RILEY SERVICES LTD KISUMU BRANCH.....2ND RESPONDENT

RILEY SERVICES LTD.....3RD RESPONDENT

J U D G M E N T

The Claimant seeks a declaration that she was dismissed unlawfully and she be compensated and/or paid terminal benefits.

The suit was filed on 4th February 2016 and was responded to on 30th March 2016. The Respondent denies all particulars of claim and reliefs sought.

The Claimant testified under oath that she was employed in June 2013 and was given letter of appointment for one year period. That the contract was renewed on 26th June 2014. The Claimant was paid Ksh 10,549 per month her NSSF and NHIF dues. That the Claimant was at the time slated to guard Homabay Law Courts and Busia Co-operative Bank.

On 12th November, 2015 while at work at 3 p.m. in the evening, the area supervisor informed the Claimant that she should leave the work station immediately and was replaced by a Lady. Mr. Seremoi informed the Claimant to report to Kisumu Head Quarters the following day. CW1 reported to Kisumu head office at 9.00 a.m.

The Human Resource Manager asked her to remove her uniform and go home. The Claimant was not charged with any offence.

CW1 said she had a good record and no warning at all. She said the termination was unlawful and unfair. That contract was terminated prematurely for no good cause. She claims payment for the unserved term of the contract and payment in lieu of notice.

The Claimant was not given a Letter of Termination, costs and interest.

RW1 Charles Amollo Deputy Operations Manager testified for the Respondent. He adopted a written statement dated 25.3.2019 as his evidence in chief.

RW1 stated that they had information that the Claimant and others stationed at co-operative Bank Busia served customers after work. That this led to fraud in the Bank in respect of those particular customers accounts.

RW1 stated that the Claimant defended herself at Kisumu before the directors. That she was told to go home on leave and await the outcome but instead she removed her uniform and went away. On 13.11.2015 the respondent received a letter of demand.

RW1 denies that the employment of the Claimant was terminated RW1 told the court that the bank had complained to the Directors and not to him directly. RW1 was only informed by the Director what had happened but the Director was not called to testify. RW1 was not there when the Claimant was summoned to Kisumu. RW1 states that he did not know what took place at Kisumu. That he was only briefed orally later by the director.

The Claimant received no letter charging her for misconduct. RW1 had no minutes of alleged meeting with Directors. RW1 had no Letter asking the Claimant to go on leave. RW1 had no report of investigations. RW1 said no investigations were done in this matter. RW1 stated that the Claimant was not paid for days worked in November 2015. RW1 stated that the Claimant was on one year contract that was due to end in June 2016. RW1 insisted that the Claimant absconded duty.

Determination

The issues for determination are:-

- (a) Whether the Claimant was dismissed from employment or she absconded duty.
- (b) Whether the Claimant is entitled to the reliefs sought.

The Claimant was stationed at the co-operative Bank at Busia and was asked to Leave the station on 12.11.2015 at 3 p.m in the evening and told to report to Head Office in Kisumu, the following day. The Claimant reported to Kisumu head office on 13.11.2015 at 9.00 a.m. in the morning and was asked by the Human Resource Manager to remove her uniform and go home. RW1 was not present at Kisumu and told the court that he was not aware what transpired that morning. The evidence by the Claimant is unchallenged.

The court is satisfied that the Claimant was asked to remove her uniform and go home. That she was not given notice to show cause or subjected to any disciplinary hearing. The Claimant was unceremoniously sent home without notice and without payment of November salary.

RW1 stated that he was only briefed by a director who was not available to testify and he had no firsthand information on circumstances that led to the separation of the Claimant from the employment of the Respondent. RW1 however insisted that the Claimant absconded duty.

The court is satisfied that that the Claimant was summarily dismissed on 13.11.2015 without notice to show cause or being subjected to a disciplinary hearing. The dismissal was not for a valid reason and it was not effected in terms of a fair procedure.

The court declares the summary dismissal unlawful and unfair and in violation of sections 36, 41, 43, and 45 of the Employment Act 2007.

The Claimant was on a one year contract that was due to expire in June 2016. The Claimant had served the Respondent for about one year. The Claimant had about seven (7) months left to the expiry of her contract.

The Claimant seeks to be paid in lieu of notice. The court finds that the Claimant is entitled to one month salary in lieu of notice.

The court further finds that the Claimant is entitled to compensation in terms of Section 49 (I) (c) and (4) of the Act.

In this regard, the Claimant seeks to be paid for the remaining term of the contract. The Claimant had served for about one year. She was young and with long career prospects in the security company. There is no evidence that the Claimant had done any wrong and/or contributed to the summary dismissal. The Claimant was not paid any terminal benefits. The summary dismissal was sudden and the Claimant suffered loss and damage without any notice to absorb the shock of losing her employment. The Claimant did not seek reinstatement as she was on a fixed term contract whose term has now expired.

Taking into account the circumstances of the case, the court awards the Claimant the equivalent of four (4) months salary in compensation for the unlawful and unfair summary dismissal.

Judgment is entered in favour of the Claimant against the Respondent as follows:

- (a) Kshs 10,549 in lieu of one month notice.
 - (b) Kshs 42,196 being four months salary compensation
 - (c) Kshs 4,571 being arrears salary for the month of November, 2015
- Total award Kshs 57,316.
- (d) Interest at court rates from date of judgment till payment in full.
 - (e) Costs of the suit.

DATED, SIGNED and DELIVERED at BUNGOMA this 26Th day of SEPTEMBER, 2019.

HON. M. N. NDUMA, JUDGE

EMPLOYMENT AND LABOUR RELATIONS COURT

BUNGOMA

Appearance:

M/s Ashoya for Claimant

Mr. Abina for Respondent

Joy: Court Assistant