



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NUMBER 244 OF 2017

[Consolidated with Cause Nos. 245 and 246 both of 2017]

BETWEEN

1. EUNICE NTHENYA MUTUA
2. DAMARIS MUTHONI MAINA [No. 245]
3. ANNA KATHINA M. MARIGU [No. 246].....CLAIMANTS

VERSUS

KAPRIC APPARELLS [EPZ] LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Odindiko & Company Advocates for the Claimants

Ms. Beatrice Apolo, Advocate instructed by the Federation of Kenya Employers for the Respondent

JUDGMENT

1. The 3 Claimants herein filed their respective Statements of Claim, on 4th April 2017. Mutua was employed by the Respondent in the year 2001, as a Mass Production Machinist, on a monthly salary of Kshs. 13,258.

2. Maina was employed in 2001, as a Checker, earning Kshs. 13,552 monthly.

3. Marigu was employed as a Cleaner on 1st August 2001, and later became a Checker in the stitching department, earning Kshs. 13,258 monthly.

4. The 1st Claimant states her contract was terminated by the Respondent in February 2015, after she sustained injuries to her legs and was unable to operate the machine. She was advised by the Respondent to write a letter of resignation which she did. She claims from the Respondent:-

a) Annual leave of 21 days for 14 years at Kshs. 149,649.

b) Unpaid years of service at Kshs. 106,890.

c) Unpaid gratuity at Kshs. 78,000.

Subtotal...Kshs. 334,539.

Less Paid ...Kshs. 79,000.

Total Claim... Kshs. 255,539

- d) Costs.
- e) Declaration that termination was unfair and unjust.
- f) Any other relief.

5. The 2nd Claimant avers that she developed health complications. Her contract was terminated on account of this on 16th June 2015. She prays for:-

- a) 1 month salary in lieu of notice at Kshs. 13,525.
- b) Balance of the contract period of 6 months at Kshs 87,300.
- c) Unpaid days worked in June at Kshs. 8,525.
- d) Gratuity at Kshs. 46,800.
- e) Service pay at Kshs 203,040.

Less Paid...Kshs. 39,803.

Total Claim...Kshs. 178,632.

6. The 3rd Claimant similarly was retired on medical grounds by the Respondent, effective 28th November 2014. She prays for: -

- a) Unpaid leave of 21 days annually over a period of 14 years at Kshs. 149,649.
- b) Service at Kshs. 106,890.
- c) Gratuity at Kshs. 78,000.

Less Paid...Kshs. 79,000.

Total Claim...Kshs. 255,539

- d) Costs.
- e) Interest.
- f) Declaration that termination was unfair.
- g) Any other suitable relief.

7. The Respondent filed a Statement of Response common to all the Claims, on 7th August 2017. It is conceded that the Claimants were employed by the Respondent on dates and in positions pleaded in the Consolidated Claims. They resigned on medical grounds. They presented medical reports to the Respondent, with written applications for retirement. The Respondent accepted their applications and paid benefits to the Claimants. The benefits included salary for days worked, accrued leave, gratuity and overtime if any. They went on leave, or sold their leave days to the Respondent. Only the 1st Claimant had 6 days of pending leave on retirement, which was paid. They all received gratuity. The Respondent prays that the Claims are dismissed with costs.

8. Parties agreed on 11th June 2019 that the Consolidated Claims are considered and determined on the strength of the record. They confirmed filing of Closing Submissions on 18th July 2019.

The Court Finds:-

9. There is no dispute that the Claimants were employed by the Respondent in various positions, on various dates and monthly salaries, as pleaded by the Claimants. It is also not in dispute, that they all left employment for medical reasons, and were paid terminal dues, acknowledged in the respective Statements of Claim.

10. They applied in writing to go on retirement, and provided the Respondent with medical reports to justify their applications. They acted voluntarily. The Applications were all considered by Respondent's Management and approved. Approval was communicated to the Shop Stewards, and terminal benefits paid to the Claimants. There is no reason at all for the Court to return a finding of wrongdoing on the part of the Respondent. The Claimants have not shown that their contracts were unfairly terminated by the Respondent as required under Section

47[5] of the Employment Act, to warrant imposing the burden of justifying termination on the Respondent. Termination in all cases was at the instigation of the Claimants. The prayers sought have no foundation.

11. *The Consolidated Claims are declined with no order on the costs.*

Dated and delivered at Mombasa this 20th day of September 2019.

James Rika

Judge