



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1083 OF 2016

AKOTH NANCY AUKO.....CLAIMANT

VERSUS

EPCO BUILDERS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 25th October, 2019)

JUDGMENT

The claimant filed the memorandum of claim on 06.06.2016 in person. She prayed for judgment against the respondent for:

- a) One month pay in lieu of notice Kshs.12, 000.00.
- b) Annual leave for 2 years Kshs.16, 800.00.
- c) Compensation for unfair termination Kshs.144, 000.00.
- d) Total Kshs. 172, 000.00.
- e) Interest.
- f) Certificate of service.
- g) Any other relief as the Court may deem just.

There is no dispute that the respondent employed the claimant as a key lady from June 2012 to 08.10.2014. The claimant alleges that she was wrongfully and unlawfully terminated.

The memorandum of defence was filed on 19.12.2016 through Okwach & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The claimant denies that it unfairly terminated the claimant's employment as there was no termination at all.

The claimant testified that she initially served in the curing unit of the respondent's construction enterprise at NHC phase 4 project which ended in April 2013. Her supervisor Ranji Bhai told her about work at a new site at Game Park. She worked at the new site under Ranji Bhai for 9 months. The work ended in September 2013 and she moved to NHC Phase 5. In July and August the clients started to occupy their houses in Phase 5 and she was given keys to distribute to the house owners. She was one of the 3 store keepers.

On 08.10.2014 she did clearance for head office involving delivery notes and store cards. Ranji Bhai arrived when the claimant was at the gate because there was no other work to be done that day at the site. He told her she was getting paid for no work but she explained she had done clearance notes. Bhai asked to return the key and she requested to pack her belongings at the store. She telephoned the site engineer and head security who advised her not to leave the site but she had already left the site. Her monthly pay was Kshs.9, 600.00 per month. She was not called by the human resource manager one Owino to go to head office for reassignment of duty. She claimed 2 years' leave pay and she worked 6 or 7 days per week.

The respondent's witness (RW) was Benard Owino the Human Resource Manager. He admitted that the claimant was employed for 2 years and her last deployment was as a store keeper. His evidence was that he thought that on 08.10.2014 the project the claimant worked at was completed and per procedure the claimant was to report back to head office, central stores, for handover and redeployment. The claimant was

instructed to go to central stores but she declined. Thereafter 2 years later a demand letter was served. The claimant was therefore never terminated. RW testified that the claimant was entitled to leave pay and service pay.

The Court has considered the evidence and returns that there is no reason to doubt the respondent's evidence. The claimant knew the project was ending and she prepared clearance report for head office but she did not explain why she failed to go to central stores. Her testimony is the site engineer and head security advised her not to leave the site but she had already left. On a balance of probability she failed to report for redeployment. In particular it is curious that the demand by Kituo Cha Sheria came on 15.03.2016 long after the alleged date of termination on 08.10.2014 and the claimant has not explained the delay in making the demand. Accordingly there was no termination and notice pay is not due. As admitted for the respondent the claimant is awarded leave pay **Kshs. 16, 800.00** and service pay of **Kshs. 9, 600.00** for the 2 years served making a sum of **Kshs. 26, 400.00**. She is entitled to a certificate of service per section 51 of the Employment Act, 2007.

As she has partially succeeded she is awarded partial costs fixed at **Kshs. 15, 000.00** only.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a) Payment of **Kshs.41, 400.00** by 01.12.2019 failing interest be payable at Court rates from the date of this judgment till full payment.
- b) The respondent to deliver to the claimant a certificate of service by 15.11.2019.

Signed, dated and delivered in court at Nairobi this Friday, 25th October, 2019.

BYRAM ONGAYA

JUDGE