



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2309 OF 2016

CHRISTABEL ACHIENG ABUTO.....CLAIMANT

VERSUS

CHANGE A LIFE LEARNING CENTRE.....RESPONDENT

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

JUDGMENT

The claimant filed the memorandum of claim on 15.11.2016 through Ochieng, Kokul & Velo Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that continued withholding, failing, refusal and neglecting to pay the claimant his rightful benefits and other terminal dues unlawful and untenable.
- b) The respondent breached the Employment Act, 2007 and other labour laws.
- c) The respondent to pay the claimant his salaries earned but not paid, house allowance, and leave days earned but not given or paid for.
- d) As a result the Court to order the respondent to pay the claimant terminal benefits and unpaid dues including:
 - i. 3 months' notice in lieu of termination notice Kshs. 15, 000 x3 =Kshs. 45, 000.00.
 - ii. 6 months house allowance Kshs. 10% x15, 000 x 6 =Kshs.9, 000.00.
 - iii. Leave allowance $13/26 \times 15, 000 =$ Kshs. 7, 500.00
 - iv. NSSF Kshs. 11, 250.00.
 - v. Service for 6 months Kshs.50, 000.00.
 - vi. Total claim Kshs. 122, 750.00.

The respondent filed on 20.12.2016 the response to claim through Murage Juma & Company Advocates. The respondent prayed that the claim be dismissed with costs.

To answer the **1st issue** for determination the Court returns that the parties were in a contract of service. By the contract dated 29.01.2016 the respondent employed the claimant on a one year contract effective 29.01.2019 at a monthly salary of USD 150. The working hours were from 7am to 3pm. The claimant worked in the library.

To answer the **2nd issue** for determination the Court returns that the claimant's employment was terminated by the letter dated 23.07.2016 upon the following grounds:

- a) Misconduct at work including the write-ups on 02.03.2016 and 14.06.2016.

- b) Disobeying lawful directive from the administrator by refusing to surrender the library keys after suspension.
- c) Engaging in verbal confrontation with one of the administrators.
- d) A member of the claimant's family making threatening calls to one of the administrators over the issues.
- e) Disregard of protocol by directly contacting the CEO.
- f) Failure to report back to work on Saturday 23.07.2016 at the end of the one week suspension.

The letter promised to honour her salary for July 2016 and she was to surrender the entire respondent's property.

The claimant testified that on 16.07.2016 she reported at work but she was unwell. Collins Wade, an administrator, reproached her for looking dull and suspended her from duty for a week. The respondent's letter dated 16.07.2016n shows that the claimant was suspended for chatting the whole time and being defensive and defiant in that regard. She was expected to resume duty on 23.07.2016 but by her own evidence she resumed on 25.07.2016. She resumed duty on 25.07.2016 and she was given the termination letter dated 23.07.2016. The Court finds that she substantially contributed to her termination when she resumed duty belatedly beyond the date assigned in the termination letter.

The **3rd issue** for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a) The prayer for 3 months' pay in lieu of notice and house allowance lack contractual and statutory basis and will fail.
- b) The prayer for leave will fail as leave had not accrued as per section 28 of the Employment Act, 2007.
- c) If NSSF was not remitted then the same can be pursued in accordance with relevant statutory provisions. The claimant gave no justification for the prayer for NSSF and the same will fail.
- d) The prayer for service pay of Kshs.50, 000.00 was not justified and will fail.

In conclusion, judgment is hereby entered for the respondent against the claimant for dismissal of the suit with costs.

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

BYRAM ONGAYA

JUDGE