



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 169 OF 2016**

**MONICA W. KOGL.....CLAIMANT**

**VERSUS**

**TALENT RECRUIT LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 25<sup>th</sup> October, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 09.02.2016 through Philip-Henry Associates Advocates. The claimant prayed for judgment against the respondent for:

- a. Payment of:
  - i. A month's notice pay per contract Kshs.162, 500.00.
  - ii. Unpaid salary for November and December 2015 Kshs.162, 500.00 x 2 = Kshs.325, 000.00.
  - iii. House allowance 15% of Kshs. 162, 500.00 x10 months=Kshs.243, 750.00.
  - iv. Maximum compensation 12 months' salaries Kshs.1, 950, 000.00.
  - v. Total Kshs.2, 681, 250.00.
- b. Interest at central bank rates.
- c. Costs and interest.
- d. A certificate of service.

The claimant's case was that she was employed by the respondent by the letter of appointment dated 27.10.2014 as Head of Talent Acquisition and related services. It was effective 01.01.2015 and on permanent basis. The claimant accepted the contract by signing on 27.10.2014. Her further case is that the respondent withheld her pay for November and December 2015 contrary to the contract of service and section 17(1) of the Employment Act 2007. Accordingly she reluctantly gave a resignation letter dated 04.01.2016. She alleges unfair constructive termination.

The reply to the claim was filed on 12.04.2015 through Otieno-Ogola & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs. The respondent's case was as follows:

- a. It employed the claimant as pleaded for the claimant.
- b. The claimant was part of the management team of the respondent and she made a decision to delay payment for November and December 2015 because the respondent suffered challenges in work floor. She cannot turn around and allege constructive and unfair termination. She voluntarily resigned.

c. The respondent is willing to pay outstanding salary and issue a certificate of service.

d. She was not entitled to house allowance and the contract of service was clear on remuneration.

The parties by consent opted the suit be determined on the basis of the pleadings and documents filed for parties and the respective final submissions.

The Court has reviewed the material on record. The claimant resigned by letter effective 04.01.2016 on account of discussions about proposed changes in terms of service and non-remittance of her dues for a couple of months. She was to serve a one month notice per her contract of service and handover. In the circumstances the Court returns that the issue had been discussed and the claimant resigned voluntarily. There was no contractive unfair termination as alleged for the claimant.

The claimant is awarded the 2 months outstanding salaries **Kshs. 325, 000.00**. She is entitled to certificate of service. The demand notice is dated 23.01.2016. It gave 7 days' notice to filing suit. Suit was filed on 09.02.2016 after lapsing of the 7 days' notice. The respondent says the claimant served a month's notice by the resignation letter but she failed to report for work and the notice would lapse on or about 05.02.2016. Taking all such circumstances into account, each party to bear own costs of the suit.

In conclusion judgment is hereby entered for the parties for:

a. The declaration the claimant voluntarily resigned from the respondent's service effective 04.01.2016.

e. The respondent to pay the claimant **Kshs.325, 000.00** by 15.12.2019 failing interest to run thereon at Court rates from the date of filing the suit to the date of full payment.

f. The respondent to deliver the certificate of service within 7 days.

g. Each party to bear own costs of the suit.

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

**BYRAM ONGAYA**

**JUDGE**