



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 237 OF 2017

IRINE INJEU

CLAIMANT

v

PROLIFIC WORKS LIMITED

RESPONDENT

JUDGMENT

1. Irine Injeu (Claimant) was employed by Prolific Works Ltd (Respondent) as a steward in July 2014.
2. On or around 31 August 2016, the Respondent issued a letter to the Claimant informing her of the termination of her employment.
3. The Claimant was aggrieved and on 9 February 2017, she instituted legal proceedings against the Respondent alleging unfair termination of employment and breach of contract/statute.
4. Despite service of *Notice of Summons* (which were received by the Respondent's supervisor on 21 September 2017), the Respondent did not enter Appearance or file a *Response*.
5. Consequently, on 15 May 2018, the Court directed that the Cause proceeds to formal proof.
6. The Cause was heard on 19 September 2019. The Claimant gave sworn testimony. She filed her submissions on 7 October 2019.

Unfair termination of employment

7. Section 35(1)(c) of the Employment Act, 2007 requires an employer to issue a *written notice of termination of employment* at least 28 days in advance. There is no evidence or suggestion before the Court that the Respondent issued the requisite notice to the Claimant.
8. Further, sections 43 and 45 of the Act contemplates the employer not only proving the reasons for termination of employment, but that the reasons were valid and fair.
9. The Respondent did not take part in the proceedings and therefore failed to discharge the burden.
10. In the circumstances, the Court finds that the termination of the Claimant's employment was unfair.

Compensation

11. The Claimant served the Respondent for about 2 years, and in consideration of the length of service the Court is of the view that the equivalent of 4 months' salary as compensation would be fair (gross salary Kshs 12,110/- in April 2015 according to the bank statement)

Pay in lieu of notice

12. Since the Respondent did not issue a *written notice* as contemplated by law, the Court will award the Claimant the equivalent of 1 month salary in lieu of notice

Breach of contract/statute

Overtime

13. The Employment Act, 2007 leaves it to the parties to an employment contract to agree on the working hours (unless the sector involved is governed by any of the *Regulation of Wages Orders* made pursuant to the Labour Institutions Act).
14. The Claimant did not disclose whether there was agreement on the working hours or produce a copy of the contract she was issued with to enable the Court to establish whether there was agreement on working hours beyond which overtime would become payable.
15. The Claimant did also not disclose during testimony whether any particular *Regulation of Wages Order* applied in her case.
16. This head of the claim was not proved.

House Allowance

17. An employer is under a statutory obligation to provide housing to an employee and if not, to pay an allowance to cover housing
18. The Claimant acknowledged that she was issued with a contract but did not disclose the terms of the contract.
19. The Court is, therefore, unable to conclude on the basis of the material on record whether the salary she was receiving included or did not include house allowance.
20. This head of the claim was also not proved to the required standard.

Accrued annual leave

21. Annual leave of at least 21 days is as statutory entitlement to each employee.
22. The Claimant's testimony that she did not go on annual leave during the employment was not rebutted or interrogated, and the Court will allow this head of the claim in the sum of Kshs 9,748/- as sought.

Conclusion and Orders

23. The Court finds and declares that the termination of the Claimant's employment was unfair, and that there was a breach of contract in respect of leave and awards the Claimant

- (a) Compensation Kshs 48,440/-
 - (b) Pay in lieu of notice Kshs 12,110/-
 - (c) Accrued leave Kshs 9,748/-
- TOTAL **Kshs 70,298/-**

24. The Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 22nd day of October 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr Gomba instructed by Charles Gomba & Co. Advocates

Respondent did not participate

Court Assistant Lindsey