



**REPUBLIC OF KENYA**

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

**Cause No. 1004 Of 2018**

**LUCY MWIKALI MUTINDA.....CLAIMANT**

**- VERSUS -**

**THOMPSON KNOX LIMITED.....1ST RESPONDENT**

**STANCLAUS AGACHO OBINO.....2ND RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 18th October, 2019)

**JUDGMENT**

The claimant filed the memorandum of claim on 20.06.2018 through Kosgey & Masese Advocates. The claimant prayed for judgment against the respondent for:

- a. An unequivocal admission of liability arising from the unfair, illegal and unlawful termination of the claimant's employment.
- b. An order directing the 1st respondent to pay the claimant the following sums, April gross salary Kshs. 45, 000.00; and a month's pay in lieu of termination notice.
- c. One year salary Kshs. 540, 000.00 for illegal, unlawful and illegal termination.
- d. Any other relief the honourable Court may deem fit to grant.
- e. Costs of the suit.

Despite service the claimant did not enter appearance, file a response or attend the hearing. The suit proceeded as undefended suit.

The claimant testified that he was employed by the 1st respondent as an accountant effective July 2017. She worked up to 02.05.2018 at a gross monthly salary of Kshs. 45, 000.00. Her role was accountant and receptionist. The claimant testified further that the 2nd respondent who was the 1st respondent's chief executive officer gave the claimant some invoices and asked her to backdate and sign them. Further testimony was that the 2nd respondent asked the claimant to alter entries on accounting software – QuickBooks to mislead investors. The claimant further testified that the 2nd respondent asked her to account money spent on drinks and food as business development expenditure. The claimant's case was that such were irregular instructions that were not lawful.

Thus, the claimant testified that she refused to implement the illegal instructions and on 29.03.2018 she wrote an email to the 1st respondent's directors reporting the irregular instructions by the 2nd respondent. As a result, the claimant testified that the 2nd respondent started harassing her by alleging that the claimant was responsible for belated filing of NSSF and NHIF returns as well as IT errors. Further her salary was reduced arbitrarily from Kshs. 45, 000.00 by 70% effective end of May 2018.

On 02.05.2018 the 2nd respondent came with a guard and summoned the claimant. The directors were present. The claimant was given the letter of termination and the guard pushed her out. She was told never to go back at the premises. The termination was by the letter dated 02.05.2018 on account of due consideration of the claimant's performance and it was with immediate effect.

To answer the **1st issue** for determination the Court returns that the termination was unfair because the procedure of a notice and a hearing as per section 41 of the Employment Act, 2007 was not followed for a termination on account of the claimant's performance. Similarly, the Court finds that the reason for termination was therefore not genuine as envisaged in section 43 of the Act. The termination was unfair in procedure and merits.

The **2nd issue** is whether the claimant is entitled to the remedies as prayed for. The Court has found the termination was unfair. The claimant

desired to continue in employment. The aggravating factor against the respondent was that the claimant was dismissed when she declined to implement the illegal or irregular instructions by the 2nd respondent and further, the termination was blended with threats of unfair reduction of salary. Despite the relatively short period served, the Court returns that the claimant is awarded 6 months compensation for unfair termination at Kshs. 45, 000.00 per month making **Kshs.270, 000.00**. She is awarded **Kshs. 45, 000.00** April 2018 salary and a further **Kshs. 45, 000.00** pay in lieu of the contractual one month termination notice.

In conclusion judgment is hereby entered for the claimant against the 1st respondent for:

1. The declaration that the termination of the claimant's employment by the respondents was unfair.
2. The 1st respondent to pay the claimant a sum of **Kshs. 360, 000.00** by 01.12.2019 failing interest to be payable thereon at Court rates till full payment.
3. The 1st respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 18th October, 2019**.

**BYRAM ONGAYA**

**JUDGE**