



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO 223 OF 2018

NAOMI JELAGAT OGERO.....CLAIMANT

VERSUS

SALINA ROTICH.....RESPONDENT

J U D G E M E N T

1. The Claimant alleged that she was employed by the respondent in March,2007 as a Cleaner. Her starting salary was Kshs. 4,680/= and at the time of termination her salary remained the same.
2. The nature of her work was to clean offices the respondent was awarded tender to clean. She used to report to work at 6.30 am and leave at around 7.00 p.m or 8.00 pm.
3. The work continued without any problem until 31st August,2017 when she was given a letter stating her work had been terminated. According to her, she was not given notice of termination nor was she paid in lieu of notice.
4. The Claimant further contended that the respondent was underpaying her, giving her wages which were not the maximum required and further that she worked overtime but was never paid for the same.
5. The respondent though served, never entered appearance nor filed a response to the claim. The Claimant's claim therefore remained uncontroverted.
6. The burden of proof that unfair termination has occurred rests on the Claimant (employee) while the burden of proof of reasons for termination rest on the employer. These two burdens are independent of each other and the fact that there is default on the part of one to attend court does not lessen the other's burden.
7. By a letter dated 31st August,2017 attached with the Claimant's memorandum of claim, the respondent informed the Claimant that due to changes which she (the respondent) had been advised to undertake at work place, the Claimant services ended effective immediately.
8. The respondent did not share with the Claimant the nature of the changes she was advised to make at work and how they affected the Claimant occasioning the termination of her service. If it was decline or loss of business leading to involuntary release of the Claimant, the respondent was required to disclose the same to the Claimant. Failure to do so amounts to unfair termination of service.
9. The Claimant on her part has claimed she was underpaid however she never produced anything to show how much the respondent was paying her to compare with minimum wage in order to ascertain if indeed there was underpayment.
10. On the issue of overtime and failure to go on leave, the Court noted that the Claimant worked for the respondent for ten years. In those ten years the Claimant never alleged she asked for leave and was refused and that she asked for overtime payment and she was never paid.
11. The Court has noted the curious trend where employees wait until their contracts of employment has ended to raise all manner of claims spanning most of the time several years without presenting any modicum of evidence that these claims were ever made during the existence of the contract and were refused or ignored by an employer. This court is here for the protection of the worker as well as the employer and where there is violation of the rights of either of the parties the Court ought to be moved at the earliest opportunity to address the violation.
12. In my experience as a Judge of the Court I have not come across a single claim where an employee has been terminated for asking for overtime dues or leave. The lumping of these claims after several years when the contract is terminated and without furnishing any evidence that the claims were ever raised can also be construed as an attempt by an employee terminated to maximize the chance of walking away with a huge yet undeserved compensation from the Court. This must be discouraged.

13. In conclusion the Court makes the following award in the circumstances.

KSHS.

- (a) One month's salary in lieu of notice 4,680
- (b) Complete year of service (9 years) 21,060
- (c) Six months' salary for unfair termination Of service. 28,080
- (d) Costs of the suit.

53,820

14. It is so ordered.

Dated at Eldoret this day of 2019

Abuodha Jorum Nelson

Judge

Delivered this 28th day of November 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge