



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1986 OF 2013

HELLEN ADHIAMBO NDEGE.....CLAIMANT

-VERSUS-

ACES PALACE LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 19th December, 2019)

JUDGMENT

The claimant filed the statement of claim on 11.12.2013 through Gakoi Maina & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) One month's salary in lieu of notice Kshs.15, 000.00.
- b) Compensation for loss of earnings Kshs.180, 000.00.
- c) Salary deficit for April 2013 Kshs.7, 500.00.
- d) Total claim Kshs.202, 500.00.
- e) Costs of the claim plus interest.

The respondent filed the memorandum of defence on 08.08.2014 through Oduor Henry John & Company Advocates.

There is no dispute that the respondent employed the claimant in August 2010 as a trainee. She was promoted to a dealer on permanent and pensionable terms. Her last pay was Kshs.15, 000.00 per month.

On 16.04.2013 the claimant was summoned and given a suspension letter. She went for suspension for 2 weeks. The reason for suspension was the allegation that on 13th and 14th April 2013 the claimant signed the attendance sheet on behalf of her colleague who was absent from her duties. The letter stated the incident had been clearly captured on the CCTV and such signing was against the respondent's policies. The suspension was for 13 days from 16.04.2013.

On 30.04.2013 the claimant was given a dismissal letter plus Kshs. 12,686.00 for her terminal dues. Prior to termination the claimant was not given a notice or pay in lieu of notice. She also testified that the reason for suspension and termination was not true. On the 2 days in issue the workmate was absent and there was no way she could have signed on her behalf in view of the CCTV and the security personnel present. Further for April 2013 she had not been paid and she prayed for full pay because she had not been given a valid reason for termination. On 29.04.2013 she was not at work and the disciplinary hearing allegedly conducted on that date never took place. The claimant testified that she was to report back from suspension on 29.04.2013 but no one called her to resume duty.

The respondent's witness (RW) was Michael Mungai Muchiri. His evidence was that he knew the claimant and the claimant had been employed by the respondent in August 2010. RW testified that he interacted with the claimant and she was a good employee as manifested in her promotion to Grade "A" Dealer. He admitted that the claimant was suspended on 16.04.2013 and prior to the termination she was not given a show-cause letter. There was disciplinary hearing between the claimant and one Mathews details of which RW did not know as there was no minutes of the meeting. Her final dues included April 2013 pay. RW testified that the claimant might have been at the disciplinary hearing.

The Court has considered the material on record and makes findings as follows.

First there is no dispute that the respondent employed the claimant as a trainee then as a dealer. The Court finds that parties were in a contract of service.

Second, there is no dispute that the claimant was suspended on account of alleged signing on behalf of a colleague who was absent as was alleged. RW testified that no show-cause notice was served and he could not confirm the details of the meeting between the claimant and one Mathews. The Court finds that the termination was devoid of the notice and hearing prescribed in section 41 of the Employment Act, 2007. Further RW offered no evidence to confirm that the allegations were true and the Court finds that the respondent has failed to show that as at termination there existed a genuine reason as envisaged in section 43 and 47(5) of the Act. The Court finds that the termination was unfair both in procedure and substance.

Third, the claimant testified that her last day at work was on 30.04.2013 and he was paid Kshs.12, 686 and the Court returns that salary for April 2013 was duly paid. However the claimant is entitled to one month salary in lieu of the termination notice per section 35 of the Act and she is awarded **Kshs.15, 000.00**. The Court has found that the termination was unfair. The claimant did not contribute to her termination and she desired to continue in employment. RW confirmed that she was a good employee who earned promotions. The Court has considered her clean record. In view of such factors under section 49 of the Act, she is awarded 8 months' gross salaries in compensation making **Kshs.120, 000.00**.

Fourth, as the claimant has substantially succeeded, she is awarded costs of the suit.

In conclusion judgment is entered for the claimant against the respondent for:

- a) The declaration the termination was unfair in procedure and substance.
- b) The respondent to pay the claimant **Kshs.135, 000.00** by 01.02.2020 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- c) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nairobi this Thursday, 19th December, 2019.

BYRAM ONGAYA

JUDGE