



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 807 OF 2016**

**ZUBEDA FARID ABDALLA.....1<sup>ST</sup> CLAIMANT**

**RAHMA SWALEH.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**RADIO SALAAM LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimants, Zubeda Farid Abdalla and Rahma Swaleh were both employees of Radio Salaam Limited. They brought this claim following termination of their employment on 11<sup>th</sup> April 2016.
2. The Claimants' claim is documented by a Memorandum of Claim dated 30<sup>th</sup> August 2016 and filed in court on 13<sup>th</sup> October 2016.
3. The Respondent filed a Response on 20<sup>th</sup> December 2016 but did not attend the hearing. I therefore heard the Claimants *ex parte*. This judgment however also takes into account the Respondent's Response on record.

**The Claimants' Case**

4. The 1<sup>st</sup> Claimant, Zubeda Farid Abdalla states that she was employed by the Respondent as a Radio Presenter from 25<sup>th</sup> January 2010 until 11<sup>th</sup> April 2016.
5. The 2<sup>nd</sup> Claimant, Rahma Swaleh states that she was employed by the Respondent also as a Radio Presenter from 11<sup>th</sup> September 2006 until 11<sup>th</sup> April 2016.
6. At the time of termination, Abdalla earned a monthly salary of Kshs. 35,000 while Swaleh earned a monthly salary of Kshs. 34,000.
7. Both Claimants claim that the termination of their employment was unlawful and unfair. They further claim that they were not paid house allowance and salary for the months of February and March 2016 plus 11 days' salary for the month of April 2016.
8. The Claimant' claims are as follows:

**1<sup>st</sup> Claimant: Zubeda Farid Abdalla**

- a) 3 months' pay in lieu of notice.....Kshs. 105,000
- b) Salary for February and March 2016.....,70,000
- c) Salary for 11 days in April 2016.....12,830
- d) House allowance @ 15% of basic salary for 72 months.....378,000
- e) Severance pay @ ½ month's pay.....105,000

f) Compensation for unlawful termination.....420,000

**2<sup>nd</sup> Claimant: Rahma Swaleh**

a) 3 months' pay in lieu of notice.....Kshs. 102,000

b) Salary for February and March 2016.....68,000

c) Salary for 11 days in April 2016.....12,470

d) House allowance @ 15% of basic salary for 120 months.....612,000

e) Severance pay @ ½ month's pay.....105,000

f) Compensation for unlawful termination.....420,000

9. The Claimants also ask for Certificates of Service plus costs of the case.

**The Respondent's Case**

10. In its Response dated 19<sup>th</sup> December 2016 and filed in court on 20<sup>th</sup> December 2016, the Respondent admits having employed the 1<sup>st</sup> and 2<sup>nd</sup> Claimants on 25<sup>th</sup> January 2010 and 18<sup>th</sup> September 2006 respectively.

11. The Respondent however denies terminating the Claimants' employment unlawfully or unfairly. In this regard, the Respondent states that the Claimants were lawfully declared redundant by reason of necessity to downsize operations. The Respondent adds that the redundancy was communicated to the Claimants.

12. The Respondent admits the claims for salary arrears for the months of February and March 2016.

13. In response to the claims for house allowance, the Respondent states that the Claimants earned comprehensive monthly salaries inclusive of house allowance.

14. Regarding the claims for notice pay, the Respondent states that the Claimants were given the requisite notice as per the provisions of Section 40 of the Employment Act.

**Findings and Determination**

15. There are two (2) issues for determination in this case:

a) Whether the termination of the Claimants' employment was lawful and fair;

b) Whether the Claimants are entitled to the remedies sought.

**The Termination**

16. It is not in contest that the Claimants left the Respondent's employment on account of redundancy.

17. Section 2 of the Employment Act, 2007 defines redundancy as:

***“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”***

18. While redundancy is recognised as a legitimate mode of separation, there are stringent conditions to be met as contained in Section 40 of the Employment Act.

19. These conditions are categorised under three heads namely; redundancy and termination notices, objective selection criteria and prior payment of statutory dues.

20. In its decision in ***Cleophas Omuga v Habo Group of Companies [2019] eKLR*** this Court reiterated that the conditions under Section 40 are mandatory and any termination that circumvents any of them is *ipso facto* unfair within the meaning of Section 45 of the Act.

21. The Claimants told the Court that they were notified of the termination of their employment by phone and text messages. The Respondent did not appear in court to cross examine the Claimants on their testimony nor did it provide its version of the circumstances surrounding the termination, including the selection criteria.

22. Moreover, the Claimants were not paid their terminal dues. In fact, the Respondent admits that it has not paid the Claimants' salaries for the months of February and March 2016.

23. It would appear therefore that in executing this redundancy, the Respondent broke every rule in the book, making the resultant termination substantively and procedurally unfair. The Claimants are therefore entitled to compensation.

### **Remedies**

24. Consequently, I award the 1<sup>st</sup> Claimant eight (8) months' salary and the 2<sup>nd</sup> Claimant twelve (12) months' salary in compensation. These awards are informed by the Claimants' respective periods of service as well as the Respondent's conduct in the termination transaction, including withholding of the Claimants' earned salaries.

25. I further award each of the Claimants three (3) months' salary in lieu of notice as provided in their contracts of employment.

26. The claims for salary arrears are admitted and are payable.

27. Having been declared redundant, the Claimants are entitled to severance pay.

28. The Claimants also claim house allowance. However, according to their contracts of employment, they were to be paid comprehensive salaries, which would ordinarily include house allowance. The claim for house allowance is therefore disallowed.

29. Finally, I enter judgment in favour of the Claimants as follows:

#### **1<sup>st</sup> Claimant: Zubeda Farid Abdalla**

a) 8 months' salary in compensation.....	Kshs. 280,000
b) 3 months' salary in lieu of notice.....	105,000
c) Salary for February and March 2016.....	70,000
d) Salary for 11 days in April 2016.....	12,833
e) Severance pay for 6 complete years.....	<u>105,000</u>
<b>Total.....</b>	<b>572,833</b>

#### **2<sup>nd</sup> Claimant: Rahma Swaleh**

a) 12 months' salary in compensation.....	Kshs. 408,000
b) 3 months' salary in lieu of notice.....	102,000
c) Salary for February and March 2016.....	68,000
d) Salary for 11 days in April 2016.....	12,467
e) Severance pay for 9 complete years.....	<u>153,000</u>
<b>Total.....</b>	<b>743,467</b>

30. These amounts will attract interest at court rates from the date of judgment until payment in full.

31. The Claimants are also entitled to Certificates of Service plus costs of the case.

32. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 16<sup>TH</sup> DAY OF DECEMBER 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Nyange for the Claimants

No

appearance

for

the

Respondent