



**REPUBLIC OF KENYA**

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

**CAUSE NO. 2047 OF 2014**

**ELIZABETH MUMBUA WAMBUA.....CLAIMANT**

**- VERSUS -**

**RAKI INVESTMENT LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 20<sup>th</sup> April, 2018)

**JUDGMENT**

The claimant filed the memorandum of claim on 17.11.2014 through Ongicho – Ongicho & Company Advocates. The claimant prayed for judgment against the respondent for payment of a sum of Kshs. 1, 269, 600.00 being:

- a) Salary arrears from March 2013 to October 2013 at Kshs.23, 000.00 per month making Kshs. 184, 000.00.
- b) Reasonable notice of 3 months Kshs.69, 000.00.
- c) Maximum compensation of 12 months for loss of employment Kshs. 276, 000.00.
- d) Annual leave for 26 years Kshs. 418, 600.00.
- e) Service pay for 28 years Kshs.322, 000.00.
- f) Interest and costs of the suit.

Despite service, the respondent failed to enter appearance or to file a response to the memorandum of claim. The court certified the suit to proceed for hearing as undefended suit.

The claimant testified to support her case.

The court has considered the memorandum of claim and the evidence on record. The respondent employed the claimant as a secretary then as a saleslady, from October 1986 to 04.10.2013. The only issue for determination is whether the claimant is entitled to remedies as prayed for. The court makes findings as follows:

- a) The claimant has testified that she was not paid salary from March 2013 to 04.10.2013. The termination was without notice as prescribed in section 35 (1) (c) of the Employment Act, 2007. The Court returns that the claimant is entitled to the unpaid salaries Kshs.164, 066.70 plus one month pay of Kshs.23, 000.00 in lieu of termination notice making **Kshs.187, 066.70** on the two headings.
- b) The claimant was a member of the NSSF and the Court returns that she is not entitled to service pay as prayed for in view of section 35 (6) (d) of the Act.
- c) The claimant testified that on 04.10.2013 the respondent's managing director informed her that her employment had been terminated because the respondent's business premises were going to be rented out as the business could not be continued. The Court returns that the termination was verbal and on account of redundancy. The respondent failed to prepare the claimant for the redundancy by way of notice under section 40 of the Act. The claimant had served for 28 years but she was terminated without due process. The Court returns that the termination was unfair. The Court has considered the claimant's clean and long service and that the claimant did not contribute to the termination. The Court has considered the aggravating factor that the claimant had not been paid the monthly salaries for over 7 months prior to the termination. Thus, under section 49 of the Act, the Court returns that an

award of 12 months' pay as prayed for on account of unfair termination will meet the ends of justice. The claimant is awarded **Kshs.276, 000.00** as prayed for.

d) The claimant testified that throughout her service of 28 years she was not given the due annual leave except for 2 years. She prayed for Kshs.418, 600.00 in lieu of annual leave. The termination was on 04.10.2013 and the suit was filed on 17.11.2014. The Court holds that the unpaid annual leave amounted to a continuing injury under section 90 of the Act and therefore the suit ought to have been filed within 12 months from cessation of the injury. Further, the claimant did not disclose which of the 28 years of service she had not been given the annual leave. Thus, the Court returns that the prayer will fail as time barred.

e) The claimant having substantially succeeded in her claims and prayers, the Court returns that she will be paid the costs of the suit.

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

1) The respondent to pay the claimant a sum of **Kshs.463, 066.70** by 01.06.2018 failing interest at court rates be payable thereon from the date of the suit 17.11.2014 till the date of full payment.

2) The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 20<sup>th</sup> April, 2018**.

**BYRAM ONGAYA**

**JUDGE**