



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1578 OF 2014

MONICA WANJIKU KAHUGU.....CLAIMANT

v

BONIFACE KAMAU

LOISE NDUTA KAMAU

t/a HIGHLAND FOODS.....RESPONDENT

JUDGMENT

1. The Claimant instituted legal proceedings against the Respondents on 10 September 2014 alleging breach of contract in that the Respondents had declined/failed to pay her terminal benefits/entitlements accruing from the employment contract upon her resignation.
2. In its Statement of Response filed on 6 October 2014, the Respondents contended that the Claimant left employment without notice, and was therefore not entitled the dues sought. The period of employment was also contested.
3. An attempt by the Respondents to have the Cause struck out for being frivolous and an abuse of the Court process through an application dated 3 February 2015 was never prosecuted.
4. The Cause was heard on 26 February 2018.
5. The Claimant filed her submissions on 9 March 2018 while the Respondents filed their submissions on 20 March 2018.
6. The Court has considered the pleadings, evidence and submissions and identified the Issues for determination as, *when the employment commenced, whether the Claimant resigned or deserted work and appropriate remedies including entitlements accruing from the employment relationship.*

Commencement of employment

7. The Respondents did not deny or rebut the Claimant's testimony that she was not issued with a written contract.
8. As to the commencement, the Claimant testified that she was employed in August 2010.
9. The Respondents, although pleading that the Claimant was employed on 20 October 2010 did not lead any evidence to support the contention.

10. In consideration of the provisions of sections 9(2) and 10(2)(d) and (7) of the Employment Act, 2007, the Court finds that the contractual relationship started in August 2010.

Resignation or desertion

11. The Claimant, in her testimony stated that she was employed as a waitress and that around 1 November 2013 she gave verbal notice of resignation.

12. The resignation was to take effect by end of December 2013.

13. The Claimant stated that she did not therefore report to work after the Christmas holidays.

14. The testimony was not controverted or rebutted and the Court finds that the Claimant gave appropriate notice of resignation and therefore she did not desert or abscond from work.

Leave pay

15. The Claimant's testimony that she did not go on annual leave during the tenure of the employment was not controverted by production of employment records.

16. Having not been granted the leave, and in terms of section 10(3) of the Employment Act, 2007, the Court can conclude that the Claimant is entitled to the sum of Kshs 24,206/50 in lieu of the untaken leave.

Leave allowance

17. The Claimant did not lay any legal, contractual or evidential basis for the payment of *leave allowance*.

18. Leave allowance is not one of the entitlements provided for in the Employment Act, 2007.

House allowance

19. Under this head, the Claimant sought Kshs 53,946/- for the 40 months she worked for the Respondents. The figure appears to have been arrived at using 15% of the basic pay of Kshs 9,000/- the Claimant was earning.

20. However, the Claimant admitted during cross examination that the wage varied during the course of the contract.

21. Using the wage at time of separation to compute the house allowance for the 40 months or so of employment was therefore inappropriate, and the Court finds this head of claim not proved.

Service pay

22. The Claimant's testimony as to whether she was contributing to the National Social Security Fund was muddled. At some point she stated deductions were being made and not remitted and another stating she was not deducted.

23. The Court finds this head of claim not proved.

Overtime (normal and public holidays)

24. Although testifying that she worked 12 hours per day instead of 8 hours, the Claimant did not draw the attention of the Court to which particular *Regulation of Wages Order* applied to the sector the Respondents operated in or the prescribed working hours beyond which overtime would be payable.

25. The Claimant did not equally disclose the public holidays she worked, and the number of such

holidays during the period she was an employee of the Respondents for which she was entitled to be paid overtime.

National Social Security Fund deductions

26. If at all the Claimant was deducted contributions towards the National Social Security Fund and the same were not remitted, she should exhaust the mechanisms under the NSSF Act to ensure the Fund collects the same from the Respondent.

27. It is noteworthy the Claimant did not produce any evidence of registration with the National Social Security Fund.

National Hospital Insurance Fund

28. Similarly, under the National Hospital Insurance Fund Act, there are provisions for dealing with employers who deduct and don't remit monthly contributions.

29. The Claimant should exhaust those mechanisms in the first instance if she was a registered member of the Fund.

Certificate of Service

30. A certificate of service is a statutory right of an employee and the Respondents should issue one to the Claimant within 14 days.

Conclusion and Orders

31. The Court finds and holds that the Claimant validly resigned and was entitled to and is awarded

(i) Leave (commuted) Kshs 24,206/50

32. All other reliefs declined.

33. Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 20th day of April 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kirimi instructed by Kinyanjui, Kirimi & Co. Advocates

For Respondent Mr. Manyara instructed by Oyugi & Co. Advocates

Court Assistant Lindsey