



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 481 OF 2017
BEATRICE WAMBUI NJENGA.....CLAIMANT
VERSUS
EXPORT PROCESSING ZONE AUTHORITY.....RESPONDENT
RULING

1. On 28th March, 2017 this court gave directions that of the only issue the claimant sought the court to decide was payment of salary for the period she was on interdiction, then the parties should file submissions in that regard to enable the court decide on the matter.
2. The claimant herein was interdicted on 23rd June, 2016 for a period of three months. The interdiction was therefore to terminate on or about 24th September, 2016 by which time the respondent ought to have completed the investigations into the allegations against the claimant and took a decision on whether to lift the interdiction or take the claimant through a disciplinary hearing.
3. From the evidence on record it is not clear whether the interdiction was extended or lifted. The respondent however, paid the claimants salary for November upto December, 2017 but withheld the salary for the three month period the claimant was on interdiction. The reason for withholding the salary was that the claimant did not on some days report to work to sign the attendance register as required of her in the interdiction letter. According to the claimant, the days she did not report, she had reasonable cause not to do so and informed the respondent. The extracts from the attendance register indeed showed the claimant had stated that on the days concerned that she would be away. There does not seem to be any evidence from the respondent's side refusing the claimants intention to be away on the date indicated.
4. The claimant has not been terminated by the respondent since no disciplinary hearing has taken place. Further, the interdiction period expired without any decision being made concerning the claimant. The respondent paid the claimant's salary for November and December 2016 but withheld the salary for the period of the interdiction for the simple reason that she did not report to work to sign the attendance register on some days as directed by the respondent. The claimant notified the respondent of her intended absence on the days concerned. The respondent did not exhibit any evidence of refusal or complaint of her intended absence on the days concerned. It is therefore unreasonable to withhold the claimant's salary for the period she was on interdiction.
5. The court therefore orders that the full salary be released to her forthwith since the interdiction period has since expired with no decision being made on the claimant's fate.

6. The respondent has the liberty to embark on and complete the disciplinary process against the claimant since there is no court order barring the process.

7. It is so ordered.

Dated at Nairobi this 13th day of April, 2018

Abuodha J. N.

Judge

Delivered this 13th day of April, 2018

Onesmus Makau

Judge

In the presence of:-

..... for the Claimant

..... for the Respondent