



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 88 OF 2017

LOISE WAMBUI KAMWARO.....CLAIMANT

VERSUS

WILHAM KENYA LIMITED (JESSY FARM).....RESPONDENT

JUDGMENT

1. The Claimant herein filed suit on 28th March 2017 seeking redress for the wrongful and unlawful termination of her services and failure by the Respondent to pay full terminal benefits to her. She averred that she was employed by the Respondent until 12.3.2016 when she slipped on wet grass and sustained fractured right lateral malleoli. She averred that her work injury benefits were assessed at amount of Kshs. 85,437.60 which she now claims. She sought costs of the suit plus interest.

2. The Respondent filed a reply to memorandum on 17th July 2017 and in it only admitted the descriptive parts of the claim. It averred that it was a stranger to the averment that the Claimant was its employee working as a general worker. The Respondent denied the Claimant worked for it with diligence or that she was injured, obtained an assessment of her work injury benefits. The Respondent sought strict proof and denied receiving any demand in writing or notice of intention to sue. The Respondent thus sought the dismissal of this suit with costs.

3. The Claimant testified on 29th January 2018. She was examined in chief by her advocate Mr. Kariuki. She testified that she worked for the Respondent and was injured when she fell while at work. She stated she was taken to hospital and the matter reported to the Directorate of Occupational Safety and Health (DOSH) and her injury was certified and indicated the payment she was entitled to. She thus sought the grant of the award as per her claim.

4. In cross-examination by Mr. Leting for the Respondent, she testified that she had worked for 9 years and was a general worker. She said she was in the farming section and that on the material day she was engaged in seed covering when she was injured. She stated she was treated using the NHIF card and no money was paid. She testified that her salary was paid but no other amount was paid.

5. In re-examination by her lawyer she stated that no money was paid. That marked the end of the Claimant's oral testimony and her lawyer proceeded to close the case. Mr. Leting applied for an adjournment to enable him procure the attendance of his witness. The matter was therefore adjourned to 23rd April 2018 for that purpose.

6. At the hearing on 23rd April 2018, the Respondent's counsel was absent and there was no witness from the Respondent. The case for the Respondent was closed by the court in light of the absence. As of the time of penning the judgment there had been no application to set aside the order of the court or seeking the re-opening of the Respondent's case.

7. The claim is one on occupational safety under the Work Injury Benefits Act shortened to the acronym WIBA. WIBA makes provision as follows in regard to compensation for injury sustained at the work place.

10. Right to compensation

(1) An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.

(2) An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.

8. The Claimant produced the form commonly known as DOSH 1 (ML/DOSH/FORM 1) which notifies the Director of Occupational Safety and Health of the injury and gives the statutory particulars requisite for the Director to process the claim. The Respondent is obligated to give

this notice. The details on the form reveal that the Respondent filled the form and signed and stamped it on 12th March 2016. In the form, her salary was indicated as will be apparent shortly, this was critical. On the reverse side of the form under Part II the medical practitioner who attended the Claimant filled the form and gave the particulars of the injury as a sustained fracture right lateral malleolar. He assigned the percentage at 4%. The demand for payment form DOSH/WIBA 4 set the sum to be paid to the Claimant as Kshs. 85,347.60. This is the sum the Respondent was required by law to pay to the Claimant and the precise amount the Claimant sought in her claim. The Respondent did not assert that it paid the sum and merely made a blanket denial on its one paged defence. The Respondent was guilty of the failure to pay the compensation due, and also failed to defray the expenses incurred in respect of the accident. These are offences for which the Respondent would be liable to fines not to exceed Kshs. 500,000/- for the first offence and Kshs. 200,000/- for the second offence or to imprisonment to one year in respect of each offence or to both such fine and imprisonment. These are not minor infractions of the law. The Respondent is lucky the issues were not raised before the court. The sum total of the foregoing is that the Claimant has proved that the Respondent failed in its statutory obligation to make the requisite compensation in law. I therefore enter judgment for the Claimant against the Respondent for:-

i. Kshs. 85, 347.60

ii. Costs of the suit

iii. Interest at court rates on item (i) above from the date of filing suit till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 29th day of May 2018

Nzioki wa Makau

JUDGE