

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 786 OF 2012

RUTH MUENI KIOKO.....CLAIMANT

- VERSUS -

TIKOO AND COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 11th May, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 09.05.2012 through Gakoi Maina & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the termination was unlawful, untimely and an order that the claimant be paid his dues and benefits of Kshs.78, 639.00 aforesaid(being one month pay in lieu of notice Kshs.4, 600.00; loss of future earnings Kshs.4,600.00 x12 making Kshs.55, 200.00; service pay for 3 years Kshs.9, 200.00; Leave for 3 years Kshs. 9, 639.00).
- b. A declaration that a certificate of service be issued.
- c. Costs of the claim plus interest.

The respondent was served but failed to enter appearance, to file a response or to attend at the hearing. The claimant testified to support her case.

The claimant was employed by the respondent as a machine operator in December 2003. The claimant worked until 04.06.2006 when, without notice, she was verbally terminated by her boss being the respondent's director known as Herman. At the time of termination the claimant earned Kshs. 4, 600.00 per month. It was her testimony that throughout the service she had not been given annual leave or paid in lieu of annual leave. Taking the evidence into account, the court finds that the termination was unfair for want of due process and for want of a valid reason.

The claimant filed submissions through Akoto & Akoto Advocates. The court has considered the submissions and the memorandum of claim. The claimant is awarded as prayed for except the prayer for loss of future earnings which was not justified by way of evidence or submissions. It was submitted that the 12 months' compensation was based on section 49 of the Employment Act, 2007 but the court returns that the same did not apply because the Act was not in operation as at the time of termination and therefore as at accrual of the cause of action. Taking all circumstances of the case into account, the claimant is awarded costs of the suit fixed at Kshs. 40, 000.00.

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

- a. The declaration that the termination of the claimant's employment by the respondent was unfair.
- b. The respondent to pay the claimant Kshs.63, 439.00 by 01.06.2018 failing interest to be payable thereon at court rates from the date of the suit till full payment.
- c. The respondent to deliver to the claimant a certificate of service by 01.06.2018.

Signed, dated and delivered in court at Nairobi this Friday 11th May, 2018.

BYRAM ONGAYA

JUDGE