



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 40 OF 2018

(Before D. K. N. Marete)

JENNIFFER CHEPKEMOI.....CLAIMANT

VERSUS

TIRGAGA TEA FACTORY.....RESPONDENT

JUDGEMENT

This matter was originated by way of a Memorandum of claim dated 2nd May, 2018. It does not disclose an issue of dispute on its face.

The respondent in a Response to Memorandum dated 17th June, 2018 denies the claim and prays that it be dismissed with costs.

The claimant's case is that on or about October, 2006 she was employed by the respondent as a processor at a gross salary of Kshs. 17,000.00.

The claimant's further case is that she served the respondent with loyalty and diligence until November, 2013 when she was wrongfully and unlawfully dismissed without pay of terminal dues as follows;

- a. One month salary in lieu of termination notice Kshs.17,000/=
- b. Unpaid leave for the 7 years (7yrs*Kshs. 17,000/=) Kshs 119,000/=
- c. Gratuity/service pay (Kshs.17000*7yrs) Kshs. 119,000/=
- d. 12 months wages compensation as per section 15 of the Labour Institutions Act (12mths * 17,000)Kshs.204,000/=

TOTAL Kshs.459,000/=

It is her further case that the termination of her employment violated section 41 (1), 44 (4) and 45 (2)(a) and (4) (b) of the Employment Act, 2007 and was unlawful and unfair for the following grounds;

- a. The Respondent terminated the Claimant's employment without following the procedure laid down in the Employment Act;
- b. The Respondent terminated the Claimant's employment without proving that the reason for the termination was valid;
- c. The Respondent did not give the Claimant termination notice as provided in the Employment Act;
- d. The Respondent did not give the Claimant his lawful leave days contrary to the Employment Act;
- e. The Respondent did not give the Claimant his lawful rest days contrary to the Employment Act;
- f. The Respondent did not regulate the working hours, the Claimant worked day and night;

- g. The Respondent did not pay the Claimant our overtime and/or night shifts;
- h. The Respondent rejected, neglected and/or refused to pay the claimant's his gratuity for the month of July 2016;
- i. The Respondent failed or neglected to give the Claimant a Certificate of Service as required by the Employment Act.

She prays as follows;

- a. Reinstatement back to his position of employment in the company
- b. Kshs.459,000/=
- c. Interest at court rates
- d. Certificate of Service.
- e. Cost of this suit.

The respondent's case is a denial of the claim.

Her other case and submission is that the claimant was employed on a contractual basis in which the contract was renewable after three months. The renewal was upon application and also dependent on the crop season.

The respondent's other case is that the claimant was never terminated from employment but instead dismissed in compliance with section 41 (1) and 44(4) of the Employment Act, 2007.

The matter came to court on 18th of June, 2018 when the parties agreed on a disposal by way of written submissions.

The issues for determination therefore are;

1. Was there a case of termination of the claimant by the respondent?
2. Was the termination of the employment of the claimant was wrongful, unfair and unlawful?
3. Is the claimant entitled to the relief sought?
4. Who bears the costs of this claim?

The 1st issue for determination is whether there was a case of termination of the claimant by the respondent. The claimant in her written submissions dated 20th June, 2018 and in support of her case of unlawful termination of employment submits non compliance with section 41(1) of the Employment Act, 2007 in the termination of the employment of the claimant in that the claimant was not explained to the reasons why she was dismissed in the presence of another employee or a shop floor union representative of her choice.

Further, the respondent violated section 44 (4) of the Employment Act, 2007 in that the claimant was never afforded an opportunity to dispute the truthfulness of the accusation or accusations before her.

The claimant submits and seeks reliance of section 37 of the Employment Act, 2007 as follows;

...the claimant worked for the respondent continuously for a period of more than three months since September, 2006 until November, 2013 and thus not a seasonal employees as alleged by the Respondent as no evidence has been brought forth in support of the said allegation and her term of engagement is deemed to be the one where wages are paid monthly by virtue of Section 37 of the Employment Act.

The respondent in her written submissions dated 27th June, 2018 submits a case of casual employment ..

At the onset of the claim, the claimant annexed her payslip for the month of November of some unspecified year. She also produces another payslip who contents are illegible and unclear. Lastly, she encloses a National Social Security Fund statement of account for the period 1st January, 2007 to 30th November, 2013 which clearly indicates the respective contributions of the claimant to the fund.

Is this a safe case of entrenching section 37 of the Employment Act, 2007 and pronouncing a case of permanent employment? I do not think so. The claimant submits that she had worked for the respondent for a period of more than seven years since september, 2006 until november, 2013 when her services were terminated. Beyond stating this, she does not adduce any evidence in support of permanent employment or at all. I am therefore unable to find a case of permanent employment or even a case of unlawful termination, or at all. These are not supported by any evidence whatsoever.

The respondent at all times denies termination. This is not rebutted by the claimant.

The expression of the claimant's case is, with due respect, muddled up. It does not come out clear. Does she intend to present a case of having worked for more than three months between september, 2006 to november, 2013? This, she should say and clearly so. I do not find a case of termination of employment and find as such.

On a finding of a case of no termination of employment, the other salient issue for determination fall by the way side. They are not worthy of determination.

I am therefore inclined to dismiss the claim with orders that each party bears their own costs of the claim.

Delivered, dated and signed this 29th day of June 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Mugumya instructed by P. Sang & Company Advocates for the claimant.
2. No appearance for the respondent.