



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE NO 55 OF 2017
[FORMERLY MOMBASA ELRC CAUSE NO 307 OF 2016]

FLORENCE MBEYU AROME.....CLAIMANT

VS

ARM CEMENT (formerly known as ATHI RIVER MINING LIMITED)...RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Florence Mbeyu Arome against ARM Cement formerly known as Athi River Mining Limited. The claim is contained in a Memorandum of Claim dated 12th April 2016 and filed in court on 15th April 2016. The Respondent filed a Memorandum of Reply on 7th December 2016.
2. When the matter came up for hearing, the Claimant testified on her own behalf and the Respondent called is Human Resource Assistant, Nelly Nzingo Mulewa.

The Claimant’s Case

3. The Claimant states that she was employed by the Respondent as a stone picker earning a daily rate of Kshs. 290, from July 1995 until 22nd March 2013, when her employment was terminated.
4. The Claimant avers that the termination of her employment was without justifiable cause and without any notice. She adds that she was not paid her terminal dues. She now claims the following:

- a. One month’s salary in lieu of notice.....Kshs. 7,540
- b. Unpaid leave for 11 years.....66,990
- c. Public holidays for 11 years.....63,480
- d. Unfair termination @ 12 months’ salary.....90,480
- e. Costs plus interest

The Respondent’s Case

5. In its Memorandum of Reply dated 7th December 2016 and filed in court on even date, the Respondent states that the Claimant was engaged on casual basis under an oral agreement. The Respondent further states that the Claimant’s casual employment was lawfully terminated on 22nd March 2013.
6. It is the Respondent’s case that the Claimant was a casual employee earning a daily wage and was therefore not entitled to a month’s notice as claimed. The termination of her employment was therefore fair as per the law and the obtaining employment agreement. Upon termination, the Claimant was paid all her terminal dues, including leave days earned. The Respondent denies the Claimant’s entire claim.

Findings and Determination

7. There are two (2) issues for determination in this case:

- a. Whether the termination of the Claimant's employment was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

The Termination

8. The Claimant's employment was terminated by letter dated 22nd March 2013 stating as follows:

“Dear Florence,

RE: TERMINATION

Reference is made to the above subject. Accordingly this letter serves to advise that your services are hereby terminated from the company with effect 22.03.2013.

Management appreciates your devoted service and the unreserved support you have offered to this Company over the years. During your entire tenure you offered your capabilities and knowledge willingly thereby contributing significantly to the continuous growth that the Company has realized so far. We shall always be grateful to you for this contribution.

On behalf of the entire staff and management of ARM we wish you well in your future endeavors.

Yours faithfully,

For: Athi River Mining Ltd.

(Signed for)

CHRISTINE ASUBILA

SR HR OFFICER”

9. This letter does not disclose any reason for termination of the Claimant's employment. The Respondent's Human Resource Assistant, Nelly Nzingo Mulewa however told the Court that the Claimant was a casual employee whose employment was terminated due to unavailability of work.

10. In my view, nothing in the Claimant's termination letter suggests that she was a casual employee as defined in law. In fact, the letter appreciates the Claimant's devoted service over the years. The Respondent's defence that the Claimant was casual employee is therefore rejected.

11. Having said so, the Court finds that there was no valid reason for the termination of the Claimant's employment as required under Section 43 of the Employment Act, 2007. Additionally, the Claimant was not subjected to the mandatory procedural fairness requirements set out in Section 41 of the Act.

Remedies

12. In light of the foregoing findings, I award the Claimant twelve (12) months' salary in compensation. In arriving at this award, I have taken into consideration, the Claimant's long service with the Respondent coupled with the Respondent's conduct in the termination transaction. I also award the Claimant one (1) month's salary in lieu of notice.

13. The Respondent did not produce any leave records to counter the claim for leave pay which therefore succeeds and is allowed.

14. The claim for public holidays was not proved and is dismissed.

15. In the end, I enter judgment in favour of the Claimant in the following terms:

- a. 12 months' salary in compensation.....Kshs. 90,480
- b. 1 month's salary in lieu of notice.....7,540
- c. Leave pay for 11 years (290x21x11).....66,990

Total.....165,010

16. This amount will attract interest at court rates from the date of judgment until payment in full.

17. The Claimant will have the costs of the case.

18. Orders accordingly.

DATED SIGNED AND DELIVERED AT MALINDI THIS 5TH DAY OF JUNE 2018

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JUDGE

Appearance:

Miss Marubu for the Claimant

Mr. Kalimbo for the Respondent