



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1098 OF 2016

LILIAN WACHORO KARIUKI.....CLAIMANT

- VERSUS -

SUMMIT HEALTH LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 20th July, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 08.06.2016 through Binyenya Thurania & Company Advocates. The claimant prayed for:

- a) One month salary in lieu of notice Kshs. 60,000.00.
- b) Salary for month of January 2016 Kshs. 60,000.00.
- c) Salary for month of February 2016 Kshs.60, 0000.00.
- d) Salary for the 3 days worked in March 2016 Kshs.6, 923.00.
- e) Pay in lieu of untaken leave 1 year 5 months Kshs. 68, 654.00.
- f) Severance pay 30, 000.00.
- g) Damages for wrongful dismissal and unfair termination of employment as per section 49 and 50 of the Employment Act Kshs. 720, 000.00.
- h) Punitive damages.
- i) Certificate of service.
- j) Costs of the suit.

The memorandum of defence was filed on 09.07.2018 through Elkington & Associates. The respondent prayed that the claimant's suit be dismissed with costs.

It not disputed between the parties that the claimant was employed by the respondent in September 2014 in the Capacity of a clinical officer and at the pay of Kshs.60, 000.00 per month. The claimant's case is that on 04.03.2016 the respondent abruptly and without a reason terminated the contract of service. The claimant claims that the termination was unfair. On the other hand the respondent's case is that its business got into hard times and there was a mutual agreement that the claimant and the respondent would part ways and the employment of the claimant was therefore terminated. The respondent states that the agreement was reached with the claimant through the firm of Albert Kamunde & Company Advocates and a settlement was reached for a sum of Kshs. 216, 923.00. The respondent agreed to pay that money to avoid court process. The suit being filed in bad faith, the same should be dismissed with costs.

First, the evidence is that the parties' Advocates exchanged correspondence on the matter but did not conclude in an agreement. The correspondence shows that the respondent declined to reach an out of court settlement by failing to reply to the claimant's final offer of Kshs. 216, 923.00.

Second, it is clear that the parties separated on account of the respondent's difficulties not attributable to the claimant. The Court returns that

the circumstances of the separation amounted to redundancy and section 40 of the Employment Act, 2007 applied. Taking the evidence into account, it is clear that the respondent failed to serve the one month notice to the claimant and the area labour officer as per section 40 of the Act. The claimant was entitled to lament that the termination was abrupt and without a reason – the issue of the respondent’s difficulty having been disclosed in Court. The Court returns that the termination was unfair for want of a valid reason as at the time of termination as per section 43 of the Act and for want of due process as per section 40 of the Act. It was unfair in procedure and substance. The court has considered the about 1.5 years of clean service, that the claimant desired to continue in employment, she did not contribute to her predicament, and the termination was abrupt and therefore unfair. Under section 49 of the Act the claimant is awarded **Kshs 480,000.00** being compensation for unfair termination at Kshs.60, 000.00 per month and for 8 months. The Court has considered the evidence and finds that the claimant is entitled to all other remedies as prayed for under section 40 as dues upon redundancy and further entitled to a certificate of service per section 51 of the Act. Thus the further award is for **Kshs.285, 577.00**.

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

- a) The respondent to pay the claimant **Kshs.765, 577.00** by 01.09.2018 failing interest to run at court rates from the date of filing of the suit 08.06.2016 till the date of full payment.
- b) The respondent to deliver the certificate of service by 01.08.2018 drawn per section 51 of the Act.
- c) The respondent to pay the claimant’s costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 20th July, 2018.

BYRAM ONGAYA

JUDGE