



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1455 OF 2015

ELIZABETH NUNGARI WAMBUI.....CLAIMANT

- VERSUS -

FIDELITY SECURITY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 6th July, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 20.08.2015 through Mulanya & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of the claimant's employment was unfair.
- b) An order directing the respondent to pay the claimants the calculated sums as particularise in paragraph 6 plus interest including one month salary in lieu of notice Kshs.17, 186.00; leave allowance Kshs.12, 030.00; compensation for unfair termination Kshs. 206, 232.00; and making a sum of Kshs. 235, 232.00.
- c) Certificate of service per section 51 of the Employment Act, 2007.
- d) An order directing the respondent to remit the deducted but unremitted contributions of NSSF to the said fund.
- e) Costs of the suit plus interest.
- f) Any other relief as the Court would deem just and expedient to grant.

The response to the claim was filed on 20.01.2016 through Ameyo Guto, Etole & Company Advocates. The respondent prayed that the claimant's statement of claim lacked merit and substance and should be dismissed with costs. The claimant filed the reply to response on 12.02.2016.

The claimant was employed by the respondent as a security guard in November 2008 at Kshs.17, 186.00 per month. The claimant's case is that on 02.02.2014 her services were terminated without cause or plausible reason. The claimant's evidence was that on that date she was told to leave duty because the respondent preferred to engage a man in her place. She was told to go home to be recalled but she has never been recalled.

It was her case that the respondent's actions were discriminatory and unfair.

Despite service the respondent did not attend the hearing and did not offer any evidence.

The Court finds that the respondent has offered no evidence to rebut the reason for termination as offered by the claimant in her testimony. The Court returns that the termination was unfair for want of a valid reason as envisaged in sections 43 and 47 (5) of the Employment Act, 2007.

The claimant testified that she was not paid for last month served and she is awarded **Kshs. 8, 593** for half month served up to 16.01.2015 and a further **Kshs.17, 186.00** pay in lieu of the termination notice per section 35 of the Act.

The claimant had served for more than five years, she did not contribute to her termination and the reason for termination was the unlawful discrimination on account of sex. The reason for termination did not relate to the claimant's conduct or the respondent's operational

requirements and system as per section 45 of the Act. In view of those factors the claimant is awarded **Kshs. 206, 232.00** for unfair termination under section 49 of the Act and as prayed for. The claimant is awarded **Kshs.12, 030.00** pay in lieu of the due but untaken annual leave and as per section 28 of the Act.

There were no submissions and evidence on the prayer on deducted but unremitted NSSF and the same is deemed abandoned. The claimant is entitled to the certificate of service as prayed for.

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

- a) The declaration that the termination of the claimant's employment was unfair.
- b) The respondent to pay the claimant a sum of **Kshs.244, 041.00** by 01.09.2018 failing interest to be payable thereon from the date of the judgment till full payment.
- c) The respondent to deliver to the claimant a certificate of service per section 51 of the Employment Act, 2007 by 01.08.2018.
- d) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 6th July, 2018.**

BYRAM ONGAYA

JUDGE