



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1105 OF 2013

MILLICENT LIANI.....CLAIMANT

VERSUS

CATAPULT BRAND CONSULTING LIMITED.....RESPONDENT

JUDGMENT

1. The claimant brought this suit claiming Kshs.75,000 being unpaid salary for days worked for the respondent between 18.2.2013 and 2.4.2013. The respondent admitted having employed the claimant during the said period under a 4 months fixed term contract for a salary of Kshs.50,000 per month but she resigned or deserted her employment without prior notice of one month. He therefore counterclaimed against her Kshs.50,000 being one month salary in lieu of notice.

2. The main issues for determination herein is who between the two parties herein was to blame for the premature termination of the contract. The suit was heard on 22.5.2017 and 17.5.2018 when the claimant testified as Cw1 while the respondent called her Managing Director as Rw1. Thereafter both parties filed written submissions which I have carefully considered herein.

Claimant's Case

3. Cw1 testified that she was employed by the respondent from 18.2.2013 as a Research Executive. The contract was for 4 months without any termination notice clause and her salary was Kshs.50,000 per month. She worked until 2.4.2013 when she left because the employer had failed to pay her salary for February and March 2013 despite delivering on the project. She however confirmed that she secured another job on 3.4.2013. She therefore prayed for Kshs.75,000 being her salary for the 45 days worked in the said months.

Defence Case

4. Mr. Paul Nganga Ngugi is the respondent's Managing Director. He admitted that Cw1 worked for the company in 2013 under a 4 months fixed term contract but she left without any reasons or prior notice after working for just one month. Efforts to reach her over the phone were futile but after some time she emerged with a demand for payment for work done. She was however not paid because she left without handing over the research work she was doing.

5. Rw1 admitted that there was salary delay for all the employees for less than a week due to the General elections of March 2013. He contended that in view of the fact that the claimant left without notice she is only entitled to Kshs.25,000 out of the claim for Kshs.70,000 while the Kshs.50,000 should be paid to the respondent as one month salary in lieu of notice. He however admitted that the contract letter never provided for notice before termination.

Analysis and Determination

6. There is no dispute that the parties herein entered into 4 months fixed term contract starting 18.2.2013 but it ended prematurely on 2.4.2013 after the claimant left citing failure by the respondent to pay her salary as the reason. The respondent has admitted that she never paid the claimant her salary for February and March 2013 due to financial constrain caused by the 2013 General elections in Kenya. The issues for determination are:

(a) Who was liable for the premature termination of the contract.

(b) What orders should the court make in the circumstances.

Who was liable for the termination

7. Cw1 admitted that she left her employment because the respondent failed to pay her salary for 2 months. She contended that her salary was payable on the last day of the month but the respondent defaulted twice. Rw1 admitted the failure to pay the salary citing cash flow problems due to the General elections of March 2013. She further contended that she failed to pay the claimant after the resignation because she never handed over the research work she was doing.

8. After careful consideration of the evidence and submissions presented to me, I am of the opinion that the reason why the claimant left the employment was due to failure by the employer to pay her salary for February and March 2013. The said failure was a material breach of the contract of service which entitled the claimant to repudiate the contract. Having worked for close to two months without any single shilling to her pocket was worrying enough to justify the repudiation of the contract. It is now trite law that where the employer commits a repudiatory breach of the contract of service and the employee leaves the contract, the employer is held liable for constructive termination. That was the position in this case and I therefore hold that the respondent was to blame for the constructive termination of the contract of service herein.

Reliefs

9. The respondent has admitted that she never paid the claimant her due salary amounting to Kshs.75,000 for the 45 days worked in February and 2nd April 2013. I therefore enter judgment for her in the sum of Kshs.75,000 plus costs and interest from the date of filing suit less statutory deduction. The counter claim is however dismissed for the reason that it is the respondent who was to blame for the termination of the contract by failing to pay claimant her due salary.

Dated, Signed and Delivered in Open Court at Nairobi this 28th day of September 2018

ONESMUS N. MAKAU

JUDGE