



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**

**CAUSE 482 OF 2012**

**GRACE MWETHYA MULU.....CLAIMANT**

**VERSUS**

**UZURI FOODS LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant averred that she was employed by the respondent as a baker for six years and two months at a monthly salary of Kshs 8,789/= per month. She worked until 20<sup>th</sup> March, 2011 when she alleged the respondent terminated her services without any explanation or notice. The claimant further averred that upon termination the respondent never paid her terminal dues.
2. In response to the claim, the respondent averred that it lawfully terminated the claimant's services. The respondent further averred that it warned the claimant on poor performance both orally and in writing vide letters dated 24<sup>th</sup> September, and 12<sup>th</sup> November, 2010. The respondent further averred that the benefits to be paid to the claimant were computed but the claimant refused to collect her terminal dues as indicated in the termination letter.
3. In her oral evidence in Court, the claimant repeated the averments in her memorandum of claim and further stated that she was once accused and warned of poor production. She further stated on cross-examination that she was paid overtime. The claimant further stated that she was paid house allowance and further that her employer used to remit NSSF however, her statement was not up to date.
4. Respondent's witness Mr William Macharia informed the court that the claimant had issues concerning her performance and that there had been previous warning letters. He further stated that the claimant was furnished with reasons for the termination of her services. Mr Macharia further stated that the claimant's dues were computed and were still available for collection upon signing the computation form.
5. A claim for unfair termination of service or wrongful dismissal in essence questions the validity of the reason(s) for dismissal and or the fairness of the process as required under the Employment Act. The claimant in her pleadings and evidence does not refute or question the reason for her dismissal which was because of poor performance. She further does not question the process followed in terminating her services.
6. The burden of proof that unfair termination took place rests on the employee. The claimant did not seem to have discharged this burden. In her memorandum of claim, she makes claim for house allowance and overtime yet in her evidence in court she admitted that these were paid. The claimant's claim for service pay is further not sustainable since she conceded that she was a member of NSSF.
7. In conclusion, the court finds and holds that the claimant has failed to prove her claims against the respondents. The court will however direct that the claimant be paid her terminal dues as conceded by the respondent upon the claimant signing the computation form. The claim herein however, stands dismissed with no order as to costs.
8. It is so ordered.

**Dated at Nairobi this 21<sup>st</sup> day of September, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 21<sup>st</sup> day of September, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent.