



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 398 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

LILIAN KHAVERE MUSIRO.....CLAIMANT

VERSUS

EASTERN PRODUCE LIMITED.....RESPONDENT

JUDGMENT

By memorandum of claim dated and filed on 11th November 2015, the claimant avers that the respondent unlawfully terminated her employment and failed to pay her terminal dues. She seeks the following remedies –

a) A declaration that the termination process carried out by the respondent is unlawful and that during her employment with the respondent, she was not remunerated as required by law.

b) Payment of the sums of money as claimed below:-

i. 2 months' pay in lieu notice

Basic salary x 2 months Kshs.18,048.30

ii. Severance pay

30 days x years worked x basic/30 days

30 days x 5 years x 9,024/30 days Kshs.45,120

iii. Compensation for unfair termination

Gross pay x 12 months

10,377 x 12 months Kshs.124,524

TOTAL CLAIM Kshs.187,692.30

c) Costs and interests

d) Any other relief the court may deem fit to grant.

The respondent filed a replying memorandum on 1st December 2015 denying the averments in the memorandum of claim.

At the hearing, the claimant testified on her behalf while the respondent called PHILIP TUWEI a Divisional Manager.

The claimant testified that she was employed by the respondent as a tea picker on 21st January 2010. She was paid salary according to the quantity of tea picked. She worked from 7 am to 6 pm on 6 days and rested on the 7th day. She worked for 6 years continuously without leave. She was not paid overtime.

The claimant testified that her employment was terminated on 20th June 2015. She relied on the letter of summary dismissal at appendix 3 of claimant's documents. The reason for summary dismissal was that she cheated on kilos by placing a stone in the basket when weighing the tea she picked. She testified that she was not given a hearing that the union was not notified and she was terminated without notice. She further testified that she was not issued with a certificate of service.

Under cross examination the claimant testified that she was on fixed term contracts without a break from 2010 to 2015, that at the time of termination her last contract was extended to July 2015 and she worked to the end of July when the contract expired and she was paid Kshs.4,639. She stated there were several employees whose contracts were not renewed at the end of July 2015 and she was one of them.

For the respondent PHILIP TUWEI testified that the claimant had been engaged by the respondent on short term fixed contracts from 2010 on durations of between one and six months depending on the season. Whenever there was need, the contract is extended. The claimant's last contract was for the period 1st to 28th February 2015 but was extended to 30th July 2015. He referred to the contract annexed to respondent's bundle at appendix 1. Philip testified that the claimant worked until the expiry of the contract. He denied that the claimant was terminated.

Philip testified that the claimant was paid for leave accrued in addition to salary. He referred to appendix 2 in the respondent's bundle, which is payment of Kshs.4,639 in lieu of leave.

Under cross-examination, Philip testified that he issued the letter of summary dismissal dated 20th June 2015 to the claimant after finding a stone weighting 12.7 kg in the tea she was weighing. He testified that the claimant was given a chance to explain before the letter was issued. He testified that after discussing with the union the claimant was allowed to work up to the expiry of the contract. He testified that the claimant was paid Kshs.44,639 at the expiry of her contract on account of annual leave at the rate of 2 days per month for 6 months. She was however not issued with a certificate of service.

Determination

I have carefully considered the pleadings, evidence and written submissions. The first issue for determination is whether the claimant was unfairly terminated or her contract lapsed. The second issue for determination is whether the claimant is entitled to the remedies sought.

Unfair Termination

The claimant testified that she was issued with a letter of summary dismissal dated 20th June 2015 but worked until 31st July 2015. RW1 Philip Tuwei explained that although he issued the letter of summary dismissal, the claimant was allowed to work up to the expiry of her contract on 31st July 2015.

I therefore find that the claimant was not summarily dismissed but worked until her fixed term contract lapsed on 31st July 2015.

Remedies

The claimant prayed for 2 months' salary in lieu of leave. Her contract provided for 2 weeks' notice. In any event, the contract lapsed and she is therefore not entitled to any notice.

The claimant further prayed for severance pay. She is not entitled to the same as she was not declared redundant.

The claimant further prayed for compensation for unfair termination. Having found that her contract lapsed, she is not entitled to any compensation as her employment was not terminated unfairly.

In the result the entire claim fails and is dismissed. Each party shall bear its costs.

DATED AND SIGNED AT NAIROBI ON THIS 8TH DAY OF OCTOBER 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 31ST DAY OF OCTOBER 2018

MATHEWS NDERI NDUMA

JUDGE