



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.533 OF 2017

BEATRICE OCHIENG.....CLAIMANT

VERSUS

PALACINA INTERIOS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 26th October, 2018)

JUDGMENT

The claimant filed the statement of claim on 17.03.2017 through Julius Juma & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of employment of the claimant is unfair, unlawful, and in contravention of the labour legislation and the claimant's contract of employment.
- b) Kshs.456, 000.00 being equivalent of the claimant's compensation for unlawful termination.
- c) Kshs.228, 000.00 being severance pay.
- d) General damages.
- e) Costs of the suit.

The respondent filed the response to the memorandum of claim on 26.04.2017 through Amadi & Amadi Advocates. The respondent prayed that the claimant's suit be dismissed with costs; and any other relief that the Honourable Court deems fit.

There is no dispute that at all material time the respondent had employed the claimant effective 01.07.2004 at Kshs. 8000.00 per month as a restaurant server. The claimant was later transferred to the respondent's Palacina Interior Shops as a Stores Associate by the letter dated 13 .09.2011. The claimant served the respondent for unbroken period of 12.5 years. Her last monthly salary was Kshs. 38, 000.00.

The claimant's employment was terminated by the letter dated 15.02.2017. The letter stated that per the letter of appointment dated 13.09.2011 and addendum to letter of appointment dated 01.01.2013 the claimant's employment was terminated effective 15.02.2017 by paying three months salary in lieu of notice. The claimant testified that she was orally informed that that her termination was due to the respondent's decision to close the shop the claimant had been deployed to serve at Junction Mall, Ngong Road. That oral explanation was not captured in the termination letter. The claimant further testified that soon after her termination the respondent opened another shop at Two Rivers Mall. Thus, the claimant testified that the redundancy was not genuine because the claimant could be deployed at the new shop.

Despite service of a hearing notice, the respondent failed to attend the hearing.

At paragraph 5 of the response to the claim the respondent states that the sole contract recognisable under the law and the Employment Act was executed in 2007 and at paragraph 4 thereof, it is stated that it was on the basis of that contract that the services of the claimant were terminated. The letter of termination did not mention the contract executed in 2007 and the Court returns that in view of the stated pleading by the respondent, the respondent's account on the reason for termination was not established as envisaged in section 43 of the Act. The Court further returns that the account by the claimant that termination was on account of redundancy when the shop at Junction Mall was closed must be trustworthy. The Court finds that the claimant was terminated from employment on account of redundancy.

The respondent failed to comply with section 40 of the Act requiring a month's notice to be served upon the claimant and the area labour officer. The claimant is entitled to lament that after 12.5 years of service it was unfair to terminate her employment suddenly and without due preparation or consideration for service in the shop that was shortly thereafter opened by the respondent. She desired to continue in

employment and she did not contribute to the unfair termination and she is awarded **Kshs.456, 000.00** for the unfair termination and being maximum 12 months' salaries under section 49 of the Act. The claimant served for 12 complete years without a break and is awarded **Kshs. 228, 000.00** in severance pay as provided in section 40 of the Act.

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

- a) The declaration that the termination of the claimant's contract of employment by the respondent was unfair, unlawful and in contravention of the labour legislation and the claimant's contract of service.
- b) The respondent to pay the claimant a sum of **Kshs.684, 000.00** by 31.12.2018 failing interest to be paid at court rates from the date of this judgment till full payment.
- c) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 26th October, 2018**.

BYRAM ONGAYA

JUDGE