



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1372 OF 2016

MARY WANJIKU NGETHE CLAIMANT

- VERSUS -

SAN VALENCIA LIMITED RESPONDENT

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

JUDGMENT

The claimant filed the statement of claim on 14.07.2016 through Mathuva Mwalimu & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) Payment of terminal dues in the sum of Kshs.709, 367.00 made up of service pay Kshs.28, 269; 9 months' salary in lieu of termination notice Kshs. 220, 500.00; unpaid overtime allowance Kshs.441, 000.00; unpaid leave allowance Kshs. 12, 249.00; and unpaid days worked Kshs.7, 349.00.
- b) General damages for breach of the contract of employment.
- c) Any other relief the Honourable Court may deem fit to grant.
- d) Costs of the claim.

The statement of defence was filed on 16.05.2018 through Gikunda Miriti & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The reply to the response was filed on 28.05.2018.

The evidence is that there is no dispute that parties were in a contract of service. The claimant was initially employed by the respondent in January 2014 and served until February 2016. She served on one year fixed term contracts that were renewable. As at the time of termination she was serving her 3rd contract and based at Mariakani in Kilifi County. The claimant testified that she had no claim for leave pay or unpaid salary.

The respondent's witness testified that the reason for termination of the claimant's employment was that work had gone down because there were diminished visitors to the camp the claimant was deployed to serve.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court has considered the pleadings, the evidence and the submissions. The Court makes findings on the issues in dispute as follows:

- 1) The claimant's evidence was that she worked 8 hours per day and the Court returns that the prayer for overtime was not justified.
- 2) The claimant testified that she had no claims for unpaid salaries or leave and the prayers in that regard will fail.
- 3) There was no evidence on unpaid leave allowance and the prayer will fail.
- 4) The claimant prays for 9 months' salary in lieu of termination notice but no contractual or statutory justification for the prayer was established. The Court returns that the prayer will fail.

5) As per the contract of service, the respondent served the one month notice of termination as per the letter of termination dated 10.03.2016. The paid notice period was from 10.03.2016 to the last working day being 09.04.2016. Thus the Court returns that the claimant is not entitled to pay in lieu of the termination notice.

In conclusion judgment is hereby entered for the respondent against the claimant for dismissal of the suit with costs.

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

BYRAM ONGAYA

JUDGE