



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 149 OF 2017

BETWEEN

RACHAEL KANINI MWATUCLAIMANT

VERSUS

ONE WAY CLEANING SERVICES LIMITEDRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Oyugi Kitoo & Company Advocates for the Claimant

Wanyaga & Njaramba Advocates for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim, on 21st February 2017. She avers she was employed by the Respondent Cleaning Services Company as a Cleaner, in May 2009. She was paid a monthly salary of Kshs. 8,000. Her contract was terminated by the Respondent around the month of August 2014. She was just told there was no more work by the Respondent. Termination was not fair. No valid reason was given justifying the decision. She prays the Court to declare termination was unfair, and grant Judgment against the Respondent for : *1 month salary in lieu of notice at Kshs. 8,000; compensation for unfair termination the equivalent of 12 months' salary at Kshs. 96,000- total Kshs. 104,000; certificate of service to issue; costs to the Claimant; and any other relief the Court may deem fit to grant.*

2. The Respondent filed its Statement of Response on 26th July 2017. It is denied that the Claimant's contract was terminated by the Respondent. She left employment without notice to the Respondent, and took up another job with Norgen Enterprises. This was after a contract between the Respondent and Kenya Ports Authority [KPA] for cleaning services lapsed. The Claim is baseless. The Respondent prays the Court to dismiss the Claim with costs.

3. The Claimant gave evidence and rested her case on 5th March 2018, as did the Respondent through its Zone Manager John Mutisya Kiio.

4. The Claimant restated in her testimony, what is contained in her Statement of Claim and Witness Statement on record. She was told by the Respondent there was no more work, in the month of August 2014. There was no notice. She was not heard. She was not shown a letter from the KPA, addressed to the Respondent, dated 25th June 2014, showing the contract for provision of caretaker services between the two entities had come to an end. Cross-examined, she told the Court she was employed on 10th September 2009. She did not recall the exact date of termination. Her bank statement indicated her first salary was paid on 4th January 2013. She worked inside the Port of Mombasa. Redirected, she told the Court she had not supplied all her bank statements to the Court. She did not recall the exact date when she was employed, but it was within the year 2009.

5. Kiio told the Court the contract with KPA for provision of caretaker services lapsed as shown in the letter dated 25th June 2014. Employees were to report to Respondent's Office for redeployment. There was a new company contracted by KPA to clean the Port, called Norgen Limited. The Claimant left the Respondent to work for Norgen. Kiio testified on cross-examination that he did not have evidence showing that the Claimant left the Respondent to work for Norgen. All Employees were aware that Respondent's contract with KPA had come to an end. The Claimant did not report to Respondent's Office for redeployment as instructed. The Respondent did not enquire why she failed to report. Kiio confirmed on redirection that the Claimant left to work for Norgen.

The Court Finds:-

6. The Claimant was employed by the Respondent as a Cleaner. She states in her Statement of Claim, that she was employed in the month of May 2009. On cross-examination, the date was stated to be 10th September 2009. She was not sure about the specific date. She was equally unsure about the date she alleges her contract was terminated. It was on or about the month of August 2014. She was told by the Respondent there was no more work, and her services terminated.

7. The Respondent produced a letter dated 25th June 2014 from the KPA, to the Respondent, showing the contract between the Respondent and KPA for provision of cleaning services had lapsed and would not be renewed. According to the Respondent a new company called Norgen Limited was contracted to clean the Port.

8. The Claimant was asked by the Respondent to report to Respondent's Office for reassignment, but opted to change her Employer. She went to work for Norgen, continuing to clean the Port. She declined the offer for reassignment, to continue serving under the Respondent.

9. The Court is persuaded the position taken by the Respondent is the correct version of events surrounding Claimant's exit from the Respondent. She was not able to say when termination occurred, if at the instance of the Respondent. She gave no details of the Officer who advised her there was no more work. The Respondent acted reasonably. Having failed to secure extension or renewal of the contract with KPA, it is believable that the Respondent offered its Employees cleaning jobs at alternative entities. There was no redundancy situation as the Respondent had alternative work on offer. There was no termination in any form by the Respondent. The Claimant was comfortable continuing to clean the Port, under Norgen Limited. She declined Respondent's Offer.

10. She has not shown that unfair termination of employment, or wrongful dismissal occurred, so as to require the Respondent to justify any possible ground of termination, as stipulated under Section 47 [5] of the Employment Act 2007.

11. The Claim has no merit. The Claimant however is entitled to a Certificate of Service, under Section 51 of the Employment Act 2007.

IT IS ORDERED:-

a) The Respondent shall release to the Claimant her Certificate of Service forthwith.

b) The rest of the Claim is dismissed with no order on the costs.

Dated and delivered at Mombasa this 26th day of October, 2018

James Rika

Judge