



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2062 OF 2016

PHILICE KHASUNGU KHAYIMBA..... CLAIMANT

v

JIANGXI WATER AND HYDROPOWER

CONSTRUCTION KENYA LTD.....RESPONDENT

JUDGMENT

1. Philice Khasungu Khayimba (Claimant) commenced legal proceedings against Jiangxi Water & Hydropower Construction Kenya Ltd (Respondent) on 6 October 2016 and the issue in dispute was stated as *wrongful and unlawful termination of the Claimant by the Respondent and failure to pay her terminal benefits*.
2. The firm of Wambugu & Muriuki Advocates entered Appearance for the Respondent on 26 October 2016, but no Response was filed.
3. On 7 March 2017, Mbaru J directed that the Cause proceed to formal proof and on 9 April 2018, the Deputy Registrar fixed the Cause for hearing on 20 June 2018.
4. The Cause was heard on the scheduled date and the Claimant gave sworn testimony. She filed submissions on 13 July 2018.
5. The Court has considered the pleadings, uncontroverted testimony of the Claimant and the submissions.

Unfair termination of employment

6. The Claimant's evidence was that she was employed by the Respondent as a house keeper on 29 August 2013 and that she served until 31 August 2016 when she was called in the afternoon and informed that her services were no longer required. At the time of termination, the monthly wage was Kshs 12,000/-.
7. Pursuant to section 35(1)(c) of the Employment Act, 2007, the Respondent should have issued a notice of termination to the Claimant and since none was issued, the Court finds that the Claimant has shown that there was unfair termination of employment as envisaged under section 47(5) of the Employment Act, 2007.
8. Considering that the Claimant served for about 3 years, the Court assesses and awards compensation equivalent to 3 months gross wages.

Breach of contract

Overtime

9. According to the Claimant, she used to report to work at 7.30am and leave at 7.00pm instead of the agreed 8 hours. She stated that she was not paid overtime for the extra hours and sought Kshs 94,875/- on account of overtime for 3 years.
10. The Claimant's testimony remaining unchallenged, the Court will allow this head of claim.

Salary for August 2018

11. The Claimant testified that she was not paid wages for August 2016.
12. An employee is entitled as of right to earned wages and since the Claimant served until 31 August 2016, she is entitled to the wages (the

Claimant's evidence was that she was earning Kshs 12,000/- per month).

House allowance

13. The Claimant also stated that she was not paid house allowance and sought Kshs 64,800/- as house allowance for 3 years of service.

14. In consideration of sections 10(3) and (7) and 31 of the Employment Act, 2007 and the unchallenged testimony on record, the Court will find for the Claimant.

Leave

15. The Claimant further testified that she was seeking Kshs 41,400/- on account of accrued annual leave for 3 years.

16. The Respondent was served but for unknown reasons, it did not file a Response or employment records for the Claimant.

17. The Claimant's testimony therefore remained unchallenged and/or unrebutted.

18. In consideration of that position and the provisions of sections 9(2), 10(3),(7), 28, 31, 35(1)(c), 41, 43, 45 and 74 of the Employment Act, 2007, the Court finds for the Claimant.

Certificate of Service

19. A certificate of service is a statutory entitlement and the Respondent is ordered to issue one to the Claimant forthwith.

Conclusion and orders

20. The Court finds and holds that the termination of the Claimant's employment was unfair and awards her

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| (a) Salary for August 2016 | Kshs 12,000/- |
| (b) Pay in lieu of notice | Kshs 12,000/- |
| (c) Overtime | Kshs 94,875/- |
| (d) House allowance | Kshs 64,800/- |
| (e) Accrued leave | Kshs 41,400/- |
| (f) Compensation | Kshs 36,000/- |
| TOTAL | Kshs 261,075/- |

21. Claimant to have costs.

Delivered, dated and signed in Nairobi on this 23rd day of October 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Ndungu instructed by V.M. Ndungu & Co. Advocates

For Respondent Wambugu & Muriuki Advocates

Court Assistant Lindsey