



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
Cause No. 1700 Of 2014

(Before Hon. Lady Justice Maureen Onyango)

MONICA KANINI MUTUA CLAIMANT

VERSUS

AL-ARAFAT SHOPPING CENTRE 1ST RESPONDENT

M/D MIRE GUHAD 2ND RESPONDENT

JUDGMENT

By a memorandum of claim dated 3rd March 2014 and filed on 30th September 2014, the claimant avers that she was unfairly terminated by the respondents. She prays for the following remedies –

1. Under payment Kshs.(7, 586 - 4, 500) x 13 years Kshs.40,118
2. Payment in lieu of notice Kshs.7,586
3. Public Holidays 2 x 364.95 daily rate x 13 years x 10 Kshs.94,887
4. Rest days 4 days p.m. x 13 years x 364.95 Kshs.18,977.40
5. Accrued leave 21 days x 13 years x 364.95 Kshs.99,631.35
6. Service pay -15 days x 13 years x 364.95 Kshs.71,165.25
7. Salary for October 2013 Kshs.7,586
8. 12 Months Compensation for loss of employment

12 months x 7,586 Kshs.91,032.00

Total Kshs.430,983.00

9. An order compelling the Respondents to reinstate the Claimant to his employment; or
10. An order compelling the Respondent to pay the Claimant her terminal dues as tabulated in paragraph 21 above.
11. Costs of this suit.

The respondents did not file appearance or response to the claim. The respondents further failed to attend court for the hearing of the case although there is an affidavit of service indicating that the respondents were served with hearing notice.

On the hearing date, the claimant testified that she was employed by the 1st respondent on 5th February 2000, as a Cleaner. She worked until 2013. Her starting salary was Shs.2,500 per month, which increased gradually to Kshs.4,500. That there was a time she fell sick and did not report for work from Monday to Wednesday. She reported to work on Thursday while still unwell. Her Supervisor asked her to carry a bucket of water and sprinkle to reduce dust but she was unable to do due to her sickness. After that the Manager called her from where she was resting and told her to take her bag and leave. She was not given notice.

The claimant testified that for the entire period she worked she did not go on leave. She worked from 5.30 am to 4 pm daily without any off day. Whenever she had to be away, she got someone to do her work on her behalf. She was underpaid. She was not paid for days worked. She was not issued with a certificate of service.

The claimant prayed for remedies as set out in her memorandum of claim.

In the submissions filed on behalf of the claimant, she reiterated the facts as set out in her claim and her testimony. She relied on the case of **JANET KWAMBOKA AND JUDITH OGENDO -V- FLOMANA BEST SOLUTION SERVICES (KISUMU ELRC NO. 302 OF 2013)**

Determination

I have considered the claim, the testimony of the claimant and her written submissions.

In an undefended claim, it is trite that the claimant establishes all the facts of the claim. The claimant must establish the existence of an employment relationship with the respondent as a preliminary issue before establishing the alleged unfair termination of the employment.

In the present case the only documents submitted by the claimant are demand letters from Kenya Scientific, Research International, Technical and Institutions Workers Union (KSRIITA IWU) and from counsel for the claimant. She also submitted a document with the logo of CITY COUNCIL OF NAIROBI under the title "*TO WHOM IT MAY CONCERN.*" The said documents do not establish any employment relationship between the claimant and the 1st respondent, which is fundamental in a claim of unfair termination of employment.

As stated in the case of JANET KWAMBOKA AND ANOTHER cited by the claimant where the 2nd respondent's case was dismissed for want of proof of existence of an employment relationship, the same fate must befall the claimant herein for the same reasons.

I accordingly dismiss the claim for want of proof of existence of an employment relationship between the claimant and respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF OCTOBER 2018

MAUREEN ONYANGO

JUDGE