



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 901 OF 2014

FLORENCE MWENDE.....CLAIMANT

VERSUS

CITY PANEL BEATERS & PAINTERS LIMITED.....RESPONDENT

JUDGEMENT

1. The claimant averred that she was employed by the respondent in 2008 February as a receptionist and performed her duties diligently and never had any disciplinary cases.
2. She further stated that sometime in April, 2012 she applied for maternity leave which was granted for three months however she was not paid any salary during the leave period. On 27th July 2013 the claimant once again applied for her second maternity leave which was approved however when she resumed duty from maternity leave on 11th November, 2013 she was verbally informed by the accountant who was also the acting human resource manager that her employment had been terminated. She was not given any notice prior to the termination or reasons for the termination.
3. The respondent denied the claimants allegations and stated that the claimant was paid her dues upon termination and further that the claimant after spending her three months maternity leave deserted duty and as a consequence cannot allege to have been wrongfully dismissed from service. The claimant reiterated most of the averments in her statement of claim and further stated that she was only paid for leave and one month’s salary when she proceeded on maternity leave.
4. Under section 43 of the Employment Act the burden of proof of reasons for terminating employment rests with the employer. The respondent avers that the claimant absconded duty upon expiry of her maternity leave hence the respondent had no option but terminate her services. The respondent however did not exhibit together with their memorandum of response any letter or demand sent to the claimant to show cause why her services should not be terminated for absconding duty.
5. In a claim for termination on account of absconding work, the employer must show that reasonable effort was made to contact the employee and informed to showcause why his employment should not be terminated for absconding duties. The respondent neither showed this by any document filed with the memorandum of response or called evidence at the trial.
6. Where an employer fails to discharge the burden of proof cast upon it by section 43, the termination shall be deemed unfair.
7. The court therefore reaches the conclusion that the termination of claimants services was unfair and awards her as follows:

Kshs

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|---|----------------|
| a) One month’s salary in lieu of notice | 18,240 |
| b) Ten months salary as compensation for unfair termination | <u>182,400</u> |

200,640

c) Costs of the suit

8. Items (a) and (b) shall be subject to taxes and statutory deductions

9. It is so ordered.

Dated at Nairobi this 30th day of November, 2018

Abuodha Jorum Nelson

Judge

Delivered this 30th day of November, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.