



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.2257 OF 2015

FLORENCE OLOO.....CLAIMANT

- VERSUS -

G4S SECURITY (K) LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 30th November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 17.12.2015 through P.Sang & Company Advocates. The claimant prayed for judgment against the respondent for payment of terminal dues including:

- a. Gratuity or service pay for 7 years Kshs.59, 031.00
- b. Public holidays worked and not paid Kshs. 36, 074.00.
- c. Leave for 9 months Kshs. 12, 649.00.
- d. Total claim Kshs.107, 755.00.
- e. Certificate of service.
- f. Costs of the suit.

The statement of response was filed on 08.03.2015 through Hamilton Harrison & Mathews Advocates.

It is not in dispute that the respondent employed the claimant as a guard effective 30.09.2008 and her last gross monthly pay was Kshs. 14, 054.00.

The claimant voluntarily resigned on 17.06.2015 on account of ill health.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a. The claimant prays for gratuity or service pay for 7 years Kshs.59, 031.00. The respondent's case is that the claimant's service was governed by the Regulation of Wages (Protective Security Services) Order, 1998. Regulation 10(2) provided "**Any employee who is summarily dismissed for lawful cause or who terminates his service for any reason other than certified ill-health or retirement age shall not be entitled to a gratuity.**" It was submitted that having opted to resign the claimant was not entitled to gratuity. The claimant relies on Regulation 10(1) thereof which states, "**After five years of service with an employer, the employee shall be entitled to eighteen days pay for every completed year of service by way of gratuity based on the employee's wage at the time of termination of service.**" The main issue for determination is whether the resignation was on account of certified ill-health or not. The claimant testified that she resigned on 17.05.2015 due to ill-health involving loss of her voice. She testified that the respondent knew and she had been on sick leave. Her manager Gregory Nzuti advised her to resign and she would resume duty after she recovered. She testified that she was latter locked out and she could not access the manager. As at the time of hearing the suit she had not fully recovered. Her ailment had started in 2009 and her employer was aware. The claimant pleaded that at resignation she wrote the resignation letter and the reason was ill-health. The respondent's witness (RW) confirmed receipt of the resignation letter but failed to file or exhibit the copy. The Court returns that on a balance of probability the claimant has established that she resigned on account of ill-health and the respondent knew the fact of her illness. She is awarded **Kshs.59, 031.00** as prayed for.

b. The claimant prayed for public holidays worked and not paid Kshs. 36, 074.00. The respondent's evidence is that the overtime was paid on monthly basis as indicated in the pay slips and the Court returns that the claimant is not entitled as prayed for.

c. The claimant prays for leave for 9 months Kshs. 12, 649.00. The respondent has exhibited evidence that the claimant had taken leave and the claimant has not testified and offered evidence on the computation of the leave days as prayed for. The Court returns that the prayer will fail as not justified.

d. The Court finds that the claimant is entitled to a certificate of service as prayed for and as per section 51 of the Act.

In conclusion judgment is hereby entered for the claimant against the respondent for:

a. The respondent to pay the claimant a sum of **Kshs.59, 031.00** by 31.12.2018 failing interest to be payable thereon from the last day at work 17.06.2015 until full payment.

b. The respondent to deliver to the claimant a certificate of service by 31.12.2018.

c. The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 30th November, 2018.

BYRAM ONGAYA

JUDGE