



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 1403 OF 2013
PAULINE OMBAYO.....CLAIMANT
VERSUS
UPPERHILL RADIOLOGY CENTRE.....RESPONDENT

JUDGEMENT

1. The claimant pleaded that she was employed by the respondent from 6th September, 2010 of 12th June 2013 as cleaner. According to her, she was on 12th June, 2013 dismissed by the respondent without notice or payment of salary in lieu thereof. The claimant further averred that during the period she worked for the respondent, she never went on annual leave nor paid in lieu.
2. The respondent on its part admitted that the claimant was its employee but averred that she was dismissed with notice. According to the respondent, the claimant had been given several verbal warnings and two written ones but she refused to heed the respondent's rules and regulations. The respondent averred that the claimant was habitual late comer and often left work unattended.
3. The respondent further pleaded that the claimant was upon termination paid all her dues. According to the respondent, the claimant prior to the termination was granted numerous opportunities to be heard but declined to provide explanations.
4. At the oral hearing only the claimant attended and gave evidence. She stated that her salary at the time of termination was Kshs 20,000/= per month. It was her evidence that her boss told her that she never wanted to see the claimant again and that her boss hired his relative in her place as soon as she got terminated. She admitted receiving only verbal warning and not written ones.
5. In claims arising out of unfair termination of employment, the burden is usually cast upon the employer to prove reasons for the termination. Failure to do so would lead to a finding that the termination was unfair. The respondent herein was duly served and filed a defence. It alleged that the termination of the claimant's service was merited after several verbal and two written warnings. That may have been so, but the respondent did not provide any evidence to show that the claimant was subjected to any disciplinary hearing before her services were terminated. This is a legal requirement and failure to show this took place would lead to a finding that the termination was unfair in terms of procedure followed even if the employer had valid reasons to termination.
6. As observed earlier the respondent never attended court during the hearing. The burden cast upon them by law therefore remained undischarged. The court in the circumstances will award the claimant as follows:

Kshs

- | | |
|--|----------------|
| a. One month's salary I lieu of notice | 20,000 |
| b. Salary for 12 days worked in June, 2013 | 8,000 |
| c. Eight months' salary as compensation for
unfair termination of service | <u>160,000</u> |

188,000

d. Costs

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

8. It is 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.