



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.121 OF 2015

GRACE WANJIRU MURIU.....CLAIMANT

- VERSUS -

KENYA BAPTIST THEOLOGICAL COLLEGE.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 16th November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 02.02.2015 through S.M. Chege & Company Advocates. The claimant prayed for:

- a) A declaration that the respondent had no valid grounds to declare the claimant redundant.
- b) A declaration that the respondent did not follow the correct procedure in declaring the claimant redundant as per the terms of service.
- c) 2 months salary in lieu of notice of intended redundancy Kshs. 72, 072.00.
- d) Severance pay at 15 days worked per year Kshs.153, 153.00.
- e) A declaration that the respondent failed to pay and the respondent to pay the claimant salary for November and December 2011 Kshs. 36, 036.00, house allowance July 2003 to June 2010 Kshs. 1, 613, 472.40, leave travel allowance 12, 021, baggage allowance Kshs. 20, 000.00 for the duration of service.
- f) A declaration that the respondent discriminated against the claimant on account of her gender and ethnicity by refusing to promote her, failing to increase her salary and declaring her redundant and as such should pay damages to the claimant.
- g) A declaration the respondent to pay the claimant unpaid grade adjustment benefits from June 2006 to January 2012 Kshs. 817, 360.00; unpaid grade adjustment benefits being leave travel allowance Kshs. 19, 520.00; unpaid retirement benefits scheme Kshs. 81, 736.00.
- h) A declaration the respondent unfairly terminated the services of the claimant.
- i) Damages for unfair termination Kshs. 432, 432.00.
- j) Bank charges returned unpaid Kshs. 1, 500.00.
- k) A certificate of service.
- l) Costs of the suit.
- m) Any other relief that the Honourable Court may deem fit to grant.

Despite service the respondent failed to enter appearance, to file defence and to attend at the hearing of the suit. The claimant testified to support her case.

The claimant testified to support her case. She was employed by the respondent on 01.07.2003 as an Assistant Lecturer on permanent and

pensionable terms of service. the claimant's husband Charles Mbugua was also the respondent's employee and it was agreed that the claimant's medical cover and staff housing were to be provided through him. The Court finds that there was nothing discriminatory or unfair that the claimant was provided the benefits through the husband as the same amounted to financial prudence on the part of the respondent and the claimant fully enjoyed the benefits so that her claim in that regard must fail.

It is the claimant's case that at all material time she was the only female Assistant Lecturer and the only member of staff of Kikuyu origin. The claimant's further case is that in June 2006 the respondent increased salaries of its faculty members and despite raising a grievance the claimant's salary was not increased. The claimant's case is that failure to increase her salary amounted to discrimination on account of gender and ethnicity as it was unlawful and unfair.

The claimant's case is that her husband left the respondent's employment in 2010 and she applied that the medical cover and staff housing initially under her husband be transferred in her name but the respondent declined to do so. Instead she was harassed, frustrated and threatened causing her mental anguish. Further the respondent send auctioneers to levy distress for rent yet there had been no tenant – landlord relationship. The claimant further states that she vacated the house on understanding that the respondent would pay her outstanding dues for which the respondent issued in her favour a cheque which bounced and the claimant prays for relevant bank charges.

On 06.01.2012 the respondent wrote to the claimant and her colleagues giving a one month notice of intended redundancy. On 31.01.2012 the redundancy was confirmed and the claimant and her colleagues became terminated effective 03.02.2012. The claimant's case is that soon thereafter all her colleagues were recalled except her, alone. Thus the redundancy was not genuine. Only Kshs. 80, 000.00 has been paid to her in terminal dues.

The Court has considered the material on record and makes findings as follows:

- a) The Court finds that there is no reason to doubt that after the redundancy, the claimant's colleagues were all recalled. The Court finds that on a balance of probability the claimant has established that the reason for termination on account of redundancy was not genuine as envisaged under section 43 of the Employment Act, 2007. Further there is no evidence that the respondent complied by serving the area labour officer the relevant notice under section 40 of the Act. The Court returns that the termination by way of redundancy was unfair. The Court has considered the claimant's clean service, that she desired to continue in employment and she did not contribute to her unfair termination. The Court has considered the aggravating factors of denial of due housing and delay in providing medical cover after the claimant's husband left the respondent's employment. The Court returns that the claimant is entitled to maximum compensation under section 49 of the Act and is awarded **Kshs.432, 432.00** as prayed for at Kshs. 36, 036.00 as the last due monthly pay.
- b) The termination of the employment was effective 03.02.2012 and the suit was filed on 02.02.2015. The Court finds that the prayers in (e) and (g) above were of a continuing injury and the cause of action had accrued upon their cessation and to be filed 12 months after such cessation under section 90 of the Act. Accordingly the Court returns that the same will fail on account of being statute barred.
- c) The claimant is awarded **Kshs.36, 036.00** one month pay in lieu of notice per termination letter and under section 40 of the Act.
- d) The claimant is awarded **Kshs. 153, 153.00** being severance pay as prayed for and under section 40 of the Act.
- e) The claimant is awarded **Kshs. 1, 500.00** being bank charges for the cheque that bounced.
- f) The claimant is entitled to a certificate of service per section 51 of the Act.
- g) The claimant has established that she was discriminated on account of her sex and she was denied due monthly salaries despite it being established that she was being paid as at termination Kshs.24, 000.00 instead of Kshs. 36, 036.00 per month. She was also denied housing upon her husband leaving the respondent's service. The Court finds that the same amounted to unfair labour practice in contravention of Article 41 of the Constitution. It also violated Article 27(3) of the Constitution where it is provided that women and men have equal right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. The claimant has thereby established that she was discriminated against on account of sex and marital status in contravention of Article 27 (5) of the Constitution and section 5 (3) (a) of the Employment Act, 2007. The Court has considered the gross violations and that despite the claimant's reported grievance and repeated clear advice by the respondent's officer that the respondent corrects the claimant's salary by fixing it at the proper level, the respondent failed to act. In such circumstances the respondent will pay the claimant a sum of **Kshs. 3, 000, 000.00** on account of the gross discrimination and violation of the freedom from discrimination as provided for in the cited constitutional and statutory provisions. While making that award the Court has considered the computation of unpaid dues arising from the discrimination as set out in the submissions filed for the claimant and which would go well beyond the awarded sum (if interest element is taken into account) but not awarded on account of being statute barred. The Court therefore considers that the award as made will meet the ends of justice in view of the gross violation of the claimant's rights.

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

- a) The declaration that the termination of the claimant's employment by the respondent on account of redundancy was unfair.
- b) The respondent to pay the claimant a sum of Kshs. 3, 623, 121.00 by 31.01.2019 failing interest to be payable at Court rates from the date of the judgment till full payment.
- c) The respondent to pay the claimant's costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 16th November, 2018.

BYRAM ONGAYA

JUDGE