



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.2291 OF 2014

PHANICE AYOMA SERU.....CLAIMANT

- VERSUS -

CHEMSERVE CLEANING SERVICE LTD.....RESPONDENT

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

JUDGMENT

The claimant filed the memorandum of claim on 23.12.2014 through S.K. Opiyo & Company Advocates. The claimant prays for a declaration that the termination of her employment was wrongful and unfair and for:

- a) Full compensation of 12 months' salaries under section 49(1) (c) of the Employment Act, 2007 Kshs. 13, 317.00 x 12 making Kshs. 159, 804.00.
- b) Leave travelling allowance for 9 years 2000 x9 Kshs. 18, 000.00.
- c) Severance pay for 9 years 15 x9 x444 Kshs. 59, 940.00.
- d) Salary underpayment for 9 years Kshs.288, 805.00.
- e) Weekdays overtime 27 hours per week 27 x 1.5 x 12 x 9 x 50.00 Kshs. 874, 800.00.
- f) Total claim Kshs. 1, 401, 349.00.
- g) Any other award or benefit the Honourable Court deems fit to grant in the circumstances of the case.
- h) The respondent to pay cost of the suit.

Despite service the respondent did not enter appearance, file defence or attend at the hearing. The claimant opted that the suit be determined on the basis of the pleadings, documents and final submissions. The Court has considered the material on record and finds as follows:

- a) The material on record shows that the respondent employed the claimant upon annual contract as an operator from 01.01.2003 to 11.06.2013. The Court finds that parties were in a contract of service over that period.
- b) The claimant has stated at paragraph 2.1 of the memorandum of claim that she was illegally and unlawfully terminated from employment on account of redundancy on 11.06.2013 and the Court finds that to be the date of the cause of action.
- c) The Court finds that the claims and prayers for leave travelling allowance; salary underpayments and weekdays overtime for the 9 years of service were in the nature of continuing injury whose cause of action accrued upon their cessation on 11.06.2013. Twelve months for the cause of action as per section 90 of the Employment Act, 2007, lapsed on or about 10.06.2014 and the suit was filed belatedly on 23.12.2014. The claims and prayers in that regard will fail as time barred.
- d) The claimant's employment was terminated by the letter dated 06.05.2013 on account of the termination of the contract for service between the respondent and RKL Casino and Mayfair Casino effective 01.06.2013. The letter served as a one month notice to terminate the contract of service. The Court returns that as alleged for the claimant the termination was on account of redundancy. While serving the claimant a one month notice per section 40 of the Employment Act, 2007, there is no evidence that the area labour officer was notified about the extent and reasons for the termination. Clause 6 of the contract of service provided that it was agreed

and understood that should the work for which the contract is intended cease to exist or be terminated prematurely the company should only be responsible to pay the wages for the days worked plus the required notice or pay in lieu of notice. The Court considers that the terms of section 40 of the Act would apply and the claimant is entitled to severance pay for 9 years of unbroken service **Kshs. 45, 000.00** at Kshs. 5,000.00 for each completed year of service and last monthly pay being Kshs. 10, 000.00. Further, the Court has considered the clause on termination of the contract and consider that in the circumstances there was an understanding that the contract would suddenly end and for the procedural unfairness in failing to inform the area labour officer the Court returns that the clause is sufficient mitigating factor and the respondent will not pay any compensatory award under section 49 of the Act. The claimant is awarded **Kshs.10, 000.00** being pay in lieu of notice under section 40 of the Act and the one month notice given being the preparatory notice under the section.

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

- a) Payment of **Kshs. 55,000.00** by 15.12.2018 failing interest at Court rates to be payable thereon from the date of the judgment till full payment.
- b) 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