



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT KISUMU**  
**CAUSE NUMBER 217 OF 2013**

[Formerly Nairobi Industrial Court Cause Number 425 of 2012]

**BETWEEN**

**WINNIE KAVOCHI.....CLAIMANT**

**VERSUS**

**ANAND TRADING COMPANY LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Chepkwony & Company Advocates for the Claimant*

*Otieno Ogola & Company Advocates for the Respondent*

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**JUDGMENT**

1. The Claimant filed her Statement of Claim on 15<sup>th</sup> March 2012. She states she was employed by the Respondent Company in March 2011 as a Sales Representative. She earned Kshs. 5,000 monthly. Her contract was terminated by the Respondent on 19<sup>th</sup> November 2011, without giving her the opportunity to defend herself for any wrongdoing. She seeks Judgment against the Respondent on the following terms:-

- a) 1 month salary in lieu of notice at Kshs. 9,450.
- b) Underpayment of salary at Kshs. 41,072.
- c) Overtime worked at Kshs. 48,849.
- d) Pro-rata annual leave at Kshs. 4,432.
- e) Rest days at Kshs. 17,640.

Total .....Kshs. 121,463

2. The Respondent filed a Statement of Response, on 30<sup>th</sup> April 2012. It is denied that the Claimant was an Employee of the Respondent. The Respondent concedes to have terminated her contract for gross misconduct. She is not entitled to any terminal benefits.

3. The Claim was heard during the Court's service fortnight, on 8<sup>th</sup> November 2018. The Respondent did not attend Court. The Claimant was heard ex parte.

4. The Claimant adopted her Witness Statement filed on 15<sup>th</sup> March 2017, her Documents and Pleadings, as her evidence. She restated her

employment history with the Respondent, and her terms and conditions of employment, as stated in her Pleadings. Her contract was terminated on 29<sup>th</sup> November 2011. She sought the assistance of her Trade Union. There was communication between her Union and her Employer, but no settlement. She prays the Court to assist her in terms of her Claim.

***The Court Finds:-***

5. The Claimant has established that she was employed by the Respondent as a Sales Representative, for a period of 7 ½ months, between March 2011 and 19<sup>th</sup> November 2011. She earned a monthly salary of Kshs. 5,000. It is not true as alleged by the Respondent, that the Claimant was not an Employee of the Respondent. She cannot have been dismissed for gross misconduct by the Respondent, if she was not an Employee.

6. She does not claim that her contract was unfairly terminated. It is not necessary to enquire into the reason and procedure of termination.

7. She prays for notice pay, overtime, pro-rata annual leave and rest days, all adding to Kshs. 121,463.

8. She has adequately supported her prayers through her evidence.

IT IS ORDERED:-

***a) The Claim is granted as prayed at Kshs. 121,463.***

**Dated and delivered at Kisumu this 16<sup>th</sup> day of November 2018**

**James Rika**

**Judge**