



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 67 OF 2014

ROSANAEL KARIUE ODERO.....CLAIMANT

v

KENTMERE (1986) LIMITED.....RESPONDENT

JUDGMENT

1. Rosanael Kariue Odero (Claimant) was offered employment through a letter dated 28 January 1992 as a Receptionist by Kentmere (1986) Ltd (Respondent).
2. On 24 January 2014, the Claimant instituted legal proceedings against the Respondent alleging unfair termination of employment on 15 May 2013.
3. Although served with the Memorandum of Claim and Summons, the Respondent did not file a Response, and the Cause proceeded as an undefended Cause on 12 July 2018 (affidavit of service on record depose that the Respondent's Manager Paul Migithi was served on 10 February 2014 and accepted service but declined to sign in acknowledgment thereof).
4. The Claimant testified and closed her case.

Unfair termination of employment

5. The Claimant's testimony was that in May 2013 she was recalled by her Manager while on leave and upon reporting they engaged in discussions.
6. During the discussions, the Manager walked out allegedly because the Claimant was talking in a loud voice, and the next day the Manager told her that her services were no longer required. He instructed her to see the Accountant for her dues.
7. The Claimant testified that the dismissal was unfair because there was no notice of termination of employment or a hearing.
8. In terms of section 35 of the Employment Act, 2007, written notice of termination of employment is required and because the uncontroverted evidence before Court is that there was no notice, the Court finds that the termination of the Claimant's employment was unfair.
9. There was also no evidence that a hearing as contemplated by section 41 of the Act was held or conducted.
10. The Claimant is therefore entitled to 1 month pay in lieu of notice (basic pay was Kshs 23,372/- per month).
11. Considering the length of the Claimant's service of 21 years, the Court is of the view that 12 months' compensation would be fair (gross monthly pay was Kshs 27,759/-).

Terminal dues

12. The Respondent issued the Claimant with a schedule of terminal benefits which were to be paid in instalments.
13. The Claimant's testimony that out of benefits, Kshs 116,123/50 remained outstanding was not rebutted and the Court will allow the head of claim.

Conclusion and Orders

14. The Court finds and holds that the termination of the Claimant's employment was unfair and awards her

(a) Pay in lieu of notice	Kshs 23,372/-
(b) Balance of benefits	Kshs 116,123/50
(c) Compensation	Kshs 333,108/-
TOTAL	Kshs 472,603/50

15. Claimant to have costs on half scale.

Delivered, dated and signed in Nairobi on this 9th day of November 2018.

Radido Stephen

Judge

Appearances

For Claimant Ms. Martins instructed by Oyatta & Associates

Respondent did not participate

Court Assistant Lindsey