



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.950 OF 2014

CAROLINE NAFULA BURARE..... CLAIMANT

- VERSUS -

LAVINGTON SECURITY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 09.06.2014 through S.M Kitonga & Company Advocates. The claimant prayed for judgment against the respondent for:

a) A declaration that the respondent pays the claimant all the dues that are unpaid as follows:

i) One month salary in lieu of notice Kshs.8, 580.00.

ii) Overtime Kshs.257, 180.00.

iii) Unpaid leave Kshs.27, 180.00.

iv) Service charge Kshs.13, 860.00.

v) Amount deducted and not refunded Kshs.1, 000.00.

b) Compensation for unfair termination of the claimant's services Kshs. 102, 960.00.

c) Costs of the suit.

d) Interest on (a), (b) and (c) at Court rates.

e) Any other relief that the Honourable Court may deem fit to award.

The respondent filed defence and answer to the memorandum of claim on 11.08.2014 through Kale Maina and Bundotich Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The respondent employed the claimant initially on casual basis from 01.03.2008 to 02.08.2012.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for. The Court has considered all the material on record and makes findings as follows:

1) The claimant's case as pleaded is that she was terminated from employment on 02.08.2012. She filed the memorandum of claim on 09.06.2014. She claims unpaid overtime and underpayments throughout the period of service. The Court finds that the claims are in the nature of a continuing injury and the cause of action is limited to 12 months from the date of cessation of injury as provided under section 90 of the Employment Act, 2007. The Court finds that the 12 months lapsed on or about 02.08.2013 and the cause of action in that respect was clearly time barred. The two prayers will fail.

2) There is no dispute that the claimant's last deployment with the respondent was at Kenya National Civic Education and the

respondent lost the contract for security services at that premises and it was taken up by another security company known as Hatari Security Limited. The respondent's case is that the claimant decided to get employed by Hatari Security Limited. The evidence is that the claimant wrote on 16.08.2012 to resign from the respondent's employment. The claimant's evidence was that she resigned to access her uniform deposit and she was paid Kshs. 4, 000.00 and the balance was Kshs. 1, 000.00 subject of the present claim. The Court returns that as per the respondent's account, the claimant opted to voluntarily quit the respondent's employment when she resigned and failed to report for redeployment after the respondent lost the contract for security services to Hatari Security Limited. Accordingly the separation was not unfair and the prayer for compensation for alleged unfair termination will fail.

3) The claimant has established that she was deducted uniform dues Kshs.5, 000.00 and was refunded Kshs.4, 000.00 and the Court returns that she is entitled to **Kshs.1, 000.00** as prayed for.

4) The claimant has claimed for service charge of Kshs. 13, 860.00 but whose statutory or contractual basis was not established and the prayer will fail.

In conclusion judgment is hereby entered for the parties for:

a) The respondent to pay the claimant **Kshs.1, 000.00** by 15.11.2013 failing interest at Court rates to be payable thereon from the date of the suit till full payment.

b) Each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 2nd November, 2018.

BYRAM ONGAYA

JUDGE