



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.2052 OF 2015

PATRICIA MUSAVILI..... CLAIMANT

- VERSUS -

MAC'S PHARMACEUTICALS LIMITED..... RESPONDENT

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

JUDGMENT

The claimant filed the memorandum of claim on 18.11.2015 through Mbuthia Kinyanjui & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the claimant's employment services with the respondent were terminated wrongfully, maliciously and unfairly.
- b) Payment of terminal benefits.
- c) Kshs.96, 516.00 salaries for May and April 2015.
- d) Kshs.154, 669.58 being 4 years' salary increment as a union member at 9% per year.
- e) Kshs.540, 000.00 12 months salaries in compensation.
- f) Letter of recommendation.
- g) Any other or further relief that the Honourable Court may deem fit and just to grant.

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

The respondent employed the claimant as a quality assurance inspector by the letter dated 01.10.2012 and effective the same 01.10.2012. She worked well and was promoted to head of quality control as per the letter dated 15.07.2014 and effective 01.07.2014.

The claimant started having problems with the respondent when she enrolled for further studies. Her case was that the respondent was aware of her school attendance. By the letter dated 13.04.2014 she was warned about absenteeism and unsatisfactory work performance. The letter stated that she had failed to attend work on Saturday 11.04.2015 as was assigned and thereby failing to present reports on Monday 13.04.2015 as was expected and planned. The letter stated that she was found to be more interested in personal activities than office duties. Further it stated that she had been absenting herself from duty without authority and she came at work at her own pleasure time. Her negative attitude had affected her department. Further duties assigned in January had not been accomplished. New equipments she had asked had been supplied but for six months after the supply they had not been used. The letter concluded thus, "**We wish to warn you that unless you improve your performance and attendance we shall be forced to terminate your services with the organisation. You must therefore be guided accordingly.**"

The claimant was subsequently terminated from employment by the letter dated 30.04.2015. The letter stated that during the preparation for the audit on 24.04.2015, her department was unattended as she left office on 22nd and 23rd in the afternoon without any authority and without bothering the impact of the inspection on the organisation. Further, it stated that she was not in touch with her department as most operational documents were not in place and those which were available she did not understand them. Thus the respondent took the view that she was unlikely to change her attitude and behaviour towards work towards improving attendance and performance. Her services were therefore terminated. She was given one month notice effective 30.04.2015 and within which she was to handover to the head of quality assurance and clear.

The **1st issue** for determination is whether the termination was unfair. The Claimant testified and stated that she undertook studies which disrupted her work schedules but that the respondent knew she was studying. The claimant further stated in her witness statement thus, **“...The Respondent only started having problems with my work the last several months leading to the termination of my employment. The problems the Respondent was having with me were problems that had very legitimate and genuine reasons, reasons the respondent was well aware of. None the less the Respondent went ahead and terminated my employment without considering my reasons.”** The Court has considered that statement which is part of the claimant’s evidence and returns that the respondent must have had genuine reasons to terminate the claimant’s employment and the claimant knew as much. The reasons as at termination are found to have been valid and genuine as envisaged in section 43 of the Employment Act, 2007. In any event, the respondent terminated by giving a one month notice per clause 19.1 of the letter of appointment dated 01.10.2012 and as would be generally permissible under section 35 of the Employment Act, 2007. The Court returns that the termination was not unfair.

The **2nd issue** for determination is whether the claimant is entitled to the remedies prayed for. The Court makes findings as follows:

- a) The Court returns that the claimant is entitled to **Kshs.96, 516.00** salaries for May and April 2015.
- b) The claim for Kshs.154, 669.58 being 4 years’ salary increment as a union member at 9% per year will fail because the claimant provided no evidence to show her union membership and she exhibited no collective agreement under which the claim would be anchored.
- c) The claimant is entitled to certificate of service per section 51 of the Employment Act, 2007.
- d) The claimant is awarded costs of the suit.

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

- a) Payment of **Kshs.96, 516.00** by 01.12.2018 failing interest at Court rates be payable thereon from the date of filing the suit till full payment.
- b) The respondent to deliver the claimant’s certificate of service by 01.12.2018.
- c) The respondent to pay the claimant’s costs of the suit.

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

BYRAM ONGAYA

JUDGE