



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

CAUSE NUMBER 378 OF 2013

BETWEEN

MWATHA MULWA.....CLAIMANT

VERSUS

LEENA APPARELS LIMITED.....RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Munyithia, Mutugi, Umara & Muzna Advocates for the Claimant

B.W.Kenzi & Company Advocates for the Respondent

JUDGMENT

1. This Claim was initiated at the Resident Magistrate's Court at Mombasa, as Civil Suit Number 176 of 2007. It was transferred through an order of this Court made on 23rd March 2016. It had earlier been transferred irregularly through an order of the Principal Magistrate's Court Mombasa, issued on 2nd October 2013. The original file went missing, compelling the Claimant to apply for file reconstruction.

2. The Claimant states she was employed by the Respondent as a Checker Q.C. from November 1997 to July 2006. She was summarily dismissed on or about 4th July 2006. Her last salary was Kshs. 6,500. She seeks Judgment against the Respondent for:-

- a) 3 months' salary in lieu of notice.
- b) Leave pay for 8 years worked.
- c) Holiday pay for 8 years.
- d) Off- days for 8 years.
- e) 2 days worked in July 2006.
- f) Costs.
- g) Interest from the date of filing the Claim.
- h) Any other suitable relief.

3. The Respondent filed its Statement of Defence, which is dated 16th February 2007. Its position is that Parties appeared before the Labour Office Mombasa on 24th August 2006. The Labour Office, upon hearing representations from both sides, recommended that the Claimant is

paid terminal dues amounting to Kshs. 2,373, comprising pro-rata leave, 2 days worked, and underpayment of wages for May and June 2006. The Claimant declined this. The Respondent was advised to hold this amount by the Labour Office, and is ready to pay what was found due to the Claimant by the Labour Office.

4. The Court directed in the presence of the Claimant's Advocate, and in the absence of the Respondent's Advocate, on 22nd November 2018, that this being an old matter filed in 2007, the same be considered and determined under Rule 21 of the Employment and Labour Relations Court [Procedure] Rules 2016. Parties were directed to file and exchange their Submissions on or before 7th December 2018. The matter was set for mention on 7th December 2018. None of the Parties appeared. There are no Submissions on record, at the time of writing this Judgment. The Court marked proceedings as closed, paving way for preparation and delivery of this Judgment.

The Court Finds:-

5. The Claimant was employed by the Respondent as a Checker Q.C between November 1997 and July 2006. Her last salary was Kshs. 6,500 per month.

6. She was summarily dismissed on 4th July 2006. This was under the old Employment Act Cap 226 the Laws of Kenya.

7. The dispute was reported to the Labour Office Mombasa, under the provisions of the Trade Disputes Act, Cap 234 the Laws of Kenya.

8. It was investigated by the Labour Office. Parties appeared before the Labour Office and made their representations. It was found, and recommended that, the Claimant should be paid a total sum of Kshs. 2,373 as terminal dues.

9. The Claimant was not satisfied with this recommendation, and filed the present Claim in Court.

10. She has not persuaded the Court, through the material on record that she is entitled to 3 months' salary in lieu of notice; annual leave for the entire period worked; holidays pay for the entire period; and off-duty days for the period served.

11. The prayer for 2 days' salary, for work done in July 2006, should not have been made, as there was an offer for payment of the same, in the recommendation of the Labour Office.

12. The Court is of the view that the dispute, having been investigated by the Labour Office, the recommendation of the Labour Office, in the absence of any evidence compelling the Court to depart from the path taken by the Labour Office, should be adopted as the Judgment of the Court. The Claimant has not shown the Court why she disagreed with the recommendation. Her prayers are not based on any contract exhibited before the Court.

IT IS ORDERED:-

a) The Respondent shall pay to the Claimant terminal benefits at Kshs. 2,373, as recommended by the Labour Office on 24th August 2006.

b) No order on the costs.

c) Interest allowed at 14% per annum from the date of Judgment.

Dated and delivered at Mombasa this 21st day of December 2018.

James Rika

Judge