



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.2064 OF 2015

MAXMILLA MWABISHI WISHENGA.....CLAIMANT

- VERSUS -

MARGARITA GUEST HOUSE.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 14th December, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 20.11.2015 in person. He prayed for judgment against the respondent for:

- a) Pay in lieu of notice Kshs.9, 867.00.
- b) Pay in lieu of leave Kshs. 8, 313.00.
- c) 2 years' services pay Kshs. 9, 867.00.
- d) Wage underpayment Kshs. 32, 688.00 plus 33, 505.00.
- e) Pay on work on rest 104 rest days Kshs. 42, 952.00.
- f) 12 months compensation at Kshs. 9, 867.00 per month giving Kshs. 118, 404.00.
- g) Certificate of service under section 51 of Employment Act, 2007.

The respondent filed the memorandum of response on 15.01.2016. The respondent prayed that the suit be dismissed with costs.

There is no dispute that the respondent employed the claimant as a cleaner effective 04.01.2011. During service the respondent severally served written warnings upon the claimant upon stated grounds of misconduct or poor performance. On 01.08.2013 the claimant was placed on a compulsory leave. By the letter dated 18.07.2013 the claimant opted not to proceed on compulsory leave. Instead by that letter the claimant resigned and apologised. The final dues were paid except Kshs. 1, 732.00 missed in the computation and the respondent was willing to issue the certificate of service.

First, in view of the resignation, the Court returns that the termination of the contract of service by way of the claimant's resignation did not amount to unfair termination. Allegations for unfair termination and compensation in that regard will fail.

Second, the claimant resigned on 18.07.2013. The Court finds that the claims for underpayment, house allowance, and work on rest days were of a continuing nature and ceasing on 18.07.2013 and the suit was filed on 20.11.2015 outside the time of limitation for such continuing injuries being 12 months under section 90 of the Employment Act, 2007. They will fail as time barred.

Third, the claimant testified she had been on leave in February 2013 and in view of that evidence, the Court returns that the claim for pay in lieu of annual leave will fail on a balance of probabilities.

Fifth, the Court returns that the claimant was paid all terminal dues including days worked except Kshs. 1, 732.00 as pleaded for the respondent.

In conclusion judgment is hereby entered in the suit with orders:

- a) The respondent to pay the claimant Kshs. 1, 732.00 and to deliver a certificate of service in 7 days.
- b) Each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 14th December, 2018.

BYRAM ONGAYA

JUDGE