

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 133 OF 2018

ALICE WANGUI WAMBUGU.....CLAIMANT

VERSUS

G.M. KARIUKI HARDWARE LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant was an accountant employed by the Respondent at its hardware shop in Nyeri. She was employed on 26th August 2015 and was dismissed on 11th September 2017. The letter stated that the dismissal was due to circumstances beyond its control. The Claimant averred the dismissal was unlawful and unfair as she was on maternity leave and was due to resume work on 16th October 2017. The claim was undefended despite the Respondent having been served with the suit papers and it proceeded as an undefended cause. She testified that the dismissal caught her by surprise and was totally unexpected. She claimed salary arrears computed as Kshs. 296,576/-, redundancy pay of Kshs. 39,246.50 and severance pay of Kshs. 117,739.50. She also sought costs of the suit.

2. The Claimant filed written submissions in which she submitted that the dismissal having not followed the provisions of Section 41, 43 and 45 of the Employment Act was unfair and unlawful. She submitted that the dismissal was discriminative as it was at a time she was on maternity leave. She relied on the cases of **G M V v Bank of Africa Limited [2013] eKLR**, **Yvonne Achitsa Odedere v Maseno University [2017] eKLR** and **Claudine Wanjiku Mboce v Exxon Investments Limited & Another [2017] eKLR** where the Claimants were dismissed while on maternity or ordinary leave which the courts termed as unfair labour practice.

3. The Claimant was dismissed while on leave. This was a classic example of unfair labour practice as defined by Onyango J. in the case of **Yvonne Achitsa Odedere v Maseno University (supra)**. The Claimant however did not avail the bank statement for the period covering October 2017 or November 2017 to show there was no payment made after she was issued with the final dues calculation which dues included arrears and other emoluments she was entitled to. The Claimant therefore did not discharge her burden to prove she was entitled to the sums that she alleged were not paid and which formed the bulk of her claim. In absence of such proof there is no capacity to find in her favour for the sums. The only finding in her favour is that she was dismissed during leave, maternity leave for that matter which was unfair within the meaning of Section 43 and 45 of the Employment Act. She is therefore entitled to 3 months salary as compensation as well as costs of the suit which I assess at Kshs. 50,000/-.

4. In the final analysis I enter judgment for the Claimant for:-

- a. Kshs. 144,900/- 3 months salary compensation
- b. Costs of Kshs. 50,000/-
- c. Interest on the sums above at court rates from date of judgment till payment in full.

It is so ordered.

Dated and delivered at Nyeri this 13th day of December 2018

Nzioki wa Makau

JUDGE