



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1564 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 5th December, 2018)

FARIDA IMINZA CHANZU.....CLAIMANT

VERSUS

TAUSI APARTMENTS

MANAGEMENT TRUSTEES LIMITED.....RESPONDENT

JUDGEMENT

1. The Claimant herein filed her Memorandum of Claim on 9/9/2014 through the firm of M/s Kang'ahi S & Associates Company Advocates. Her claim is that she was employed by the Respondent from 2005 to 31st January 2014 at the Respondent's Company at Tausi Apartments Management Trustees Limited.
2. She stated that she served as Caretaker of the Respondents during the period and executed her duty with diligence, etiquette and rationale.
3. She avers that on 11.2.2014, she was issued with a termination letter signed by the Respondent's Babu Sagoo. There were no reasons given for the termination.
4. She contends that there was no hearing accorded to her before the termination. She contends that she never went for leave during the 9 years she served the Respondent and that she was never involved in any misconduct of any nature.
5. She seeks payments totaling 252,000/= as per her Memorandum of Claim.
6. The Respondents filed their defence in this matter on 21.10.2014 through the firm of Abdulrahman, Saad and Associates Advocates. In the defence they deny ever employing the Claimant. Their defence is actually a denial of all the Claimant's averments.
7. They however in paragraph 7 of the defence contradict themselves by admitting they employed the Claimant in 2006 but that she never executed her duties well. That she was involved in fraud in that she was entrusted to collect monies from the tenants on behalf of the Respondent for water and electricity bills but she failed to remit the same to Respondent.
8. They aver that she had been warned severally but never changed. They therefore decided to terminate her services but paid her in lieu of notice.
9. The Respondents did not call any witness and so they did not adduce any evidence before Court to counter the Claimant's case.
10. The Claimants filed submissions where they reiterate the averments in the claim.
11. I have examined the evidence and submissions of the Parties. The issue for consideration are as follows:-

1) Whether the Claimant's termination was fair and lawful.

2) Whether the Claimant is entitled to the remedies sought.

12. On the 1st issue, the Claimant indicated that she was terminated by the Respondents for no reasons. Indeed the termination letter assigned no reasons to the termination - the Claimant was not also taken through the disciplinary process as envisaged.

13. Section 43 of Employment Act states as follows:-

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee”.

14. Section 41 of Employment Act on the other hand envisages that there will be no termination without due process.

15. The Claimant was indeed terminated without valid reasons and without due process.

16. Section 45(2) of Employment Act 2007 states as follows:-

(2) “A termination of employment by an employer is unfair if the employer fails to prove:

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason:-

(i) related to the employee’s conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure..”.

17. It is my finding that the Claimant’s termination was unfair and unjustified in the circumstances.

18. On the 2nd issue, due to the unfairness meted against the Claimant, I find for her and award her as follows:-

1. 6 months as compensation for unfair termination = 6 x 12,000 = 72,000/=.

2. 3 years leave allowance = 3 x 12,000 = 36000/=.

3 Service pay for 9 years = 15 days salary for each year worked = ½ x 12000 x 9 = 54,000/=.

Total = 162,000/=

4. The Respondent will also pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 5th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant –Present

No appurtenance for Respondent