



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 945 OF 2012**

**ELIZABETH ADHIAMBO ODUOR.....CLAIMANT**

**VERSUS**

**DR. SHALIN VORA.....RESPONDENT**

**JUDGMENT**

1. By memorandum of claim filed on 4<sup>th</sup> June 2012, the claimant averred that she was employed by the respondent as a house maid on 9<sup>th</sup> July, 2007 and worked as such until 24<sup>th</sup> April, 2012 when the respondent unlawfully terminated her services. Upon termination, the claimant referred the matter to her union who demanded that she be paid her terminal dues.
2. On 7<sup>th</sup> May, 2012 the claimant's union official visited the respondent's house to settle the matter but the respondent refused and only paid the claimant Kshs 60,000/= and told the union to go to court.
3. The respondent on its part averred that during her employment, the claimant was treated in a fair and respectable manner and was duly paid her monetary wages on time. According to the respondent, sometimes in the month of May 2012, the services that were being offered by the claimant became unnecessary and were no longer needed. The respondent wrote to the claimant and informed her of the same.
4. The claimant herein does not deny that she was notified of the intention to terminate her services. The letter attached to her bundle of documents as annexure I is the letter of intention to terminate her services with effect from 24<sup>th</sup> April, 2012, some twenty days to come. It is therefore not correct for the claimant to aver that her services were terminated without notice.
5. An employment relationship is terminable by either party provided the party initiating the termination conforms with law and procedure of termination of services. That is to say the party initiating the termination where it's an employer ought to give reason and notice for the termination as per the contract of employment or as provided in the Employment Act.
6. The respondent in this case informed the claimant that her services would no longer be needed. She was not being terminated on account of any misconduct or dereliction of duty. A disciplinary hearing was therefore not necessary. The respondent needed only to comply with the provisions of section 40 of the Employment Act concerning redundancy. Section 40 requires (in paraphrase) that before termination on account of redundancy an employer should among others notify the employees union where such employee is unionsable or in other cases, the Labour Officer in charge of the area of the reasons and

extent of the redundancy. The employee is further entitled to payment of leave due in cash and one month's salary in lieu of notice. The employer shall further pay such employee severance pay at the rate of not less than fifteen days pay for each year of service.

7. The respondent claimed to have paid the claimant Kshs 60,000/= as terminal dues and that she executed a discharge voucher to that effect. Although the claimant does not deny receiving the payment, it was her contention that the payment was not enough. The discharge voucher was not exhibited in the pleadings to enable the court ascertain what the heads of compensation were.

There is also the claim by the claimant of underpayment, as overtime and annual leave. The respondent did not appear to have responded to these claims in its memorandum of response.

8. In view of the parties' decision to rely on the documents as filed and dispense with oral evidence, the court will regard these claims as uncontroverted.

9. The court therefore awards the claimant as follows;

	<b>Kshs</b>
(a) One months' salary in lieu of notice	8,723
(b) One month's salary in lieu of leave	8,723
(c) Severance pay at 15 days for each completed year of service	17,400
(d) Salary underpayment	34,747
(e) Public Holidays	25,520
(f) Annual leave for 4 years	<u>24,360</u>
	<b><u>119,473</u></b>
(g) Less Already paid	60,000
	<b><u>59,473</u></b>

10. The claimant will further have costs of the suit.

It is so ordered.

Dated at Nairobi this 10<sup>th</sup> day of February 2017

**ABUODHA JORUM NELSON**

**JUDGE**

Delivered this 10<sup>th</sup> day of February 2017

**ABUODHA JORUM NELSON**

**JUDGE**