



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

**AT NAIROBI**

**CAUSE NO.1947 OF 2016**

**JOYCE VIHENDA CHAHILU.....CLAIMANT**

**VERSUS**

**GICHINA AVIN.....RESPONDENT**

**JUDGEMENT**

1. The Claimant, Joyce Chahilu filed Memorandum of Claim on 22<sup>nd</sup> September, 2016 and summons served upon the Respondent on 30<sup>th</sup> September, 2016. An Affidavit of Service was filed to this effect on 28<sup>th</sup> October, 2016 by Charles Mutua Mwanzi. There was no appearance or defence filed. On 1<sup>st</sup> December, 2016 the matter came for directions and noting the absence of Respondent and no defence filed, the court directed that the Respondent be served again. On 13<sup>th</sup> February, 2017 when the matter came for hearing, the Respondent was absent and the court directed that the Respondent be served by the Court Process server. This was done on equal date by Boniface Maina, a process server and an employee of the Judiciary who filed Affidavit of Service noting the Respondent had been served. On the hearing date, there was no appearance.

2. Being satisfied that the Respondent was served but opted not to attend, the court proceeded to hear the claimant.

**Claim**

3. In March, 2013 the Claimant was employed by the Respondent as a House help at her private residence at a monthly salary of Kshs.10, 000.00 but without a letter of employment. She served diligently until December, 2015 when the Respondent terminated her services without notice, reason or a hearing. There were no terminal dues paid.

4. The Claimant is seeking the following;

*Salary in lieu of notice Kshs.10, 954.00;*

*Service pay Kshs.6, 025.00;*

*Leave pay Kshs.21, 725.00;*

*House allowance Kshs.55, 862.00;*

*Compensation Kshs.131, 448.00; and*

*Costs.*

5. The Claimant testified in support of her case that upon employment by the Respondent she was not issued with an employment letter and worked for long hours from 6am to 4.30pm for 6 days a week. There was a rest day on Sunday. No leave was allowed and there was no payment in lieu of taking leave. She had to rent a house as no accommodation was given or allowance.

6. On 31<sup>st</sup> December, 2015 the Claimant was paid her wages and terminated from here employment there was no reason given, notice or hearing for the Claimant to defend herself on any allegations leading to termination. No terminal dues were paid.

### **Determination**

7. This is a court for employment and labour relations. Where an employee is terminated from their employment such as the Claimant and disputes the same, recourse is to this court pursuant to section 47 of the Employment Act. Where an employer such as the Respondent is served and fails to attend, file defence or in any manner challenge the claim, the claim by the employee must be addressed on its merits.

8. Section 10 of the Employment Act read together with section 8 and 9 requires an employer to issue an employee with an employment contract spelling out the terms and conditions of employment. See **Robai Musinzi versus Mohammed Safdar Khan [2013] eKLR. Where there is no written contract spelling terms and conditions of employment, the employer is exposed to all manner of claims unlike an employee is in such circumstances if protected in law.**

**9. To protect domestic employees, the court in Linnet Akasa Shikoli versus Lillian Otundo [2014] eKLR held;**

*Domestic Employees have for long worked outside the formal labour market. There have been no legal regulatory framework, and many a Domestic Employee, have suffered harsh terms and conditions of employment, in the hands on hard taskmasters. The society is changing, and domestic work is currently being mainstreamed into the agenda of fair and decent work, and a face given to the oftimes unrecognizable and unknown Domestic Employee, through Domestic and International Legislative Instruments.*

*The main Instrument that has set the pace for change in Domestic Work is the ILO Domestic Workers Convention No. 189 of 2011.*

10. Kenya has not ratified the ILO Domestic Workers Convention No. 189 of 2011 and the rights and safeguards therein though not yet available, the Employment Act, 2007 give parameters within which all employees in Kenya should enjoy fair labour relations. Before termination of employment, an employer must issue notice in terms of section 35, 43 and 41 of the Employment Act; give reason(s) that are valid, genuine and fair; ensue the employee is given a hearing and ensure terminal dues are pad. When the employer has not complied, by virtue of section 45 of the Act, such termination amounts with being procedurally and substantively unfair for lack of due process and justifiable cause.

11. In this case I find no challenge to the claimants set out by the claimant. I therefor make a finding that the termination was without due cause and thus unfair and contrary to mandatory provisions of the law.

### **Remedies**

12. The Claimant was paid kshs.10, 000.00 per month instead of the lawful wage due at kshs.10, 594.00 and the due owing shall be computed based on the minimum wage.

**Notice pay is due as Kshs.10,594.00; service pay for 2 years is due at kshs.10,594.00; leave arising**

**for 2 years is due at Kshs.21,908.00; and the house allowance payable for 34 months is owing Kshs.55,862.00. The Claimant is also awarded 12 months compensation for unfair termination at Kshs.131, 448.00.**

Orders accordingly.

**Dated, delivered in open court at Nairobi this 16<sup>th</sup> day of March, 2017.**

**M. MBARU**

**JUDGE**

In the presence of:

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