



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 796 OF 2014
(Before D. K. N. Marete)

EVERLYNE AWINO ODERA.....CLAIMANT
VERSUS
AFRICA YOUTH TRUST.....RESPONDENT

JUDGMENT

The matter was originated by way of a Memorandum of Claim dated 10th May, 2014. The issues in dispute are therein cited as;

- a. Unfair termination/dismissal*
- b. Non-payment of terminal dues and compensatory damages*

The claim is not defended, or at all. This is all despite service.

The Claimant’s case is that at all material times to this claim, and particularly from about the 4th November, 2010, she was employed by the Respondent as an Office Assistant. She worked to satisfaction and earned Kshs.20,000.00 per month.

It is the Claimant’s further case that on or about 30th September, 2013, the Respondent’s Human Resource Manager, one, Catherine Onyango, called her to her office and told her to go home and not to report back until advised by herself. She has not been called back to-date.

The Claimant’s other case is that on 14th September, 2013, the Human Resource Manager called her and informed her to pick her letter of dismissal and this was eventually sent to her through her e-mail address. She has thereafter severally sought audience with the said Catherine Onyango for explanation on dismissal to no avail.

She claims as follows:

- i. One month’s salary in lieu of noticeKshs.20,000.00*
- ii. Payment in lieu of unpaid/untaken leave*

For the year 2013 duration of service

being Kshs.20,000 x 1 yearKshs.20,000.00

iii. Accrued salary for 14 days worked

in November 2013.....Kshs.9,500.00

iv. An order for the Respondent to pay the Claimant's Costs of this claim plus interest thereon.

This matter was heard on 5th April, 2017 with the Claimant restating her case.

The issues for determination therefore are:

1. Whether the termination of the employment of the Claimant was wrongful, unfair and unlawful.
2. Whether the Claimant is entitled to the relief sought.
3. Who bears the costs of this course?

The 1st issue for determination is whether the termination of the employment of the Claimant was wrongful, unfair and unlawful. The Claimant reiterated her case at the hearing of this matter on 5th April 2017. The Claimant further reinforces her claim on the following documents which come in support of her claim;

1. NHIF Member Data Summary
2. NSSF Professional Member Statement of account
3. Payslips for January 2013, May 2013, September 2012, July 2013, June 2013
4. A demand letter dated 6th March 2014 to the Respondent.

This is evidence indicating an employment relationship *inter partes*. I therefore find a case of wrongful, unfair and unlawful termination of employment and hold as such. And this answers the 1st issue of determination.

The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i. One month's salary in lieu of noticeKshs.20,000.00
- ii. Payment in lieu of untaken leaveKshs.20,000.00
- iii. Unpaid salary for 14 days worked in November 2013Kshs.9,500.00
- iv. Twelve (12) months compensation for unlawful termination of employmentKshs.240,000.00
- Total of claimKshs.289,500.00**

v. The costs of this claim shall be borne by the Respondent

Delivered, dated and signed this 7th day of April 2017.

D. K. Njagi Marete

Judge

Appearances

1. Mr. Mulaku instructed by Namada & Company Advocates for the Claimant
- 2.No appearance for the Respondent