



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

AT NYERI

CAUSE NO.186 OF 2016

HANNAH WAIRIMU MAINA.....CLAIMANT

VERSUS

MICHAEL MURAYA KIRARA.....1ST RESPONDENT

HARISSON MBARU KIHARA.....2ND RESPONDENT

(BOTH RESPONDENTS TRADING AS METUMI BAR)

(Before Hon. Justice Byram Ongaya on Friday 12th May, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 07.09.2016 through Kirubi Mwangi Ben & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Payment of terminal dues of Kshs. 329, 183.00 being one month pay in lieu of notice Kshs. 10, 497.00; public holidays Kshs. 6, 648.00; annual leave for 2 years Kshs. 14, 696.00; service gratuity at 15 days per year for 2 years served Kshs.10, 497.00; underpayment of wages Kshs.116, 794.00; house allowance Kshs.44, 087.00; and 12 months pay for compensation for unfair termination Kshs.125, 964.00.
- b. Costs of the suit and interest.
- c. Any other or better relief the honourable court may deem fit to grant.

The response to the claim was filed on 11.10.2016 through Kimwere Josphat & Company Advocates. The respondent prayed that the respondent's claim be dismissed with costs.

The parties agreed that the suit be determined on the basis of pleadings, documents and submissions on record. The court has taken into account all the material on record and makes findings on the issues in dispute as follows:

- a. There is no dispute that the parties were in a contract of employment but there is dispute about the period the employment subsisted. The claimant says she was employed by the respondents as a waiter at the bar from May 2014 to July 2016 when her services were terminated on account of redundancy. The respondents state that the claimant had served the respondent and her service was

broken to work elsewhere and was reemployed on 01.01.2016 by the respondents and terminated in July 2016. There is no reason to doubt the respondent's account and the court returns that the employment was from 01.01.2016 to July 2016.

b. As redundancy notice was not served per section 40 of the Employment Act, 2007 and taking into account the period of service of 7 months, the claimant is awarded one month pay in lieu of termination notice. She is not awarded under section 49(1) (c) of the Act for the alleged unfair termination in view of her misleading account on the period served and in view of the short term of her service. The award is for the claimant's statutory monthly pay being **Kshs. 9, 372.0 0** in lieu of termination notice.

c. The claim on public holidays is allowed at **Kshs. 669.80** as per the respondents' submissions.

d. As per the respondents' submissions pay in lieu of annual leave is awarded at **Kshs. 1, 458.00** as an amount the respondents are willing to pay.

e. As the claimant served for 7 months, severance pay is not awarded in view of section 40 (1) (g) of the Act.

f. The claimant is awarded underpayment at 7 months served making statutory monthly wage Kshs. 9, 372 less monthly wage as paid Kshs.6000 per month and the difference is Kshs.3, 372.0 times 7 months thus **Kshs.23, 604.00**.

g. Service pay is declined as submitted for the respondent and as the service was for less than a year.

h. There was no evidence on the claim for house allowance and the same is deemed unjustified. The basis of the formulae as invoked in the submissions for the respondent was not explained or justified.

In conclusion judgment is entered for the claimant against the respondents for:

a. The respondents to pay the claimant **Kshs.35, 103.80** by 01.07.2017 failing interest at court rates to be payable thereon from the date of this judgment till full payment.

b. The respondents to pay the claimant's costs of the suit

Signed, dated and delivered in court at **Nyeri** this **Friday, 12th May, 2017**.

BYRAM ONGAYA

JUDGE