



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 608 OF 2015**

**BETWEEN**

**DORCAS MUENI MULI ..... CLAIMANT**

**VERSUS**

**KAPRIC APPARELS [EPZ] LIMITED..... RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Otieno Asewe & Company Advocates for the Claimant*

*Federation of Kenya Employers for the Respondent*

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**JUDGMENT**

1. The Claimant filed her Statement of Claim on 14<sup>th</sup> August 2015. She states she was employed by the Respondent as a Mass Production Machinist, in the year 2010. Subsequently she was placed on short term contracts. The last commenced on 2nd January 2015. It was for 1 year, but was terminated prematurely on 30<sup>th</sup> April 2015 on medical grounds. Her salary as of the date of termination was Kshs. 13,525 monthly. She had been diagnosed with chronic anemia resulting from the nature of her work. On 11<sup>th</sup> May 2015, Dr. Anwar of Port Reitz Hospital recommended the Claimant is placed on light duty. The Respondent instead coerced the Claimant to resign, and paid her terminal benefits of Kshs. 27,141. She claims termination was unfair as it was in breach of Sections 41, 45 and 47 of the Employment Act 2007. She prays for Judgment against the Respondent for:-

- a) 1 month salary in lieu of notice at Kshs. 13,525.
- b) Salary for the unexpired period of 8 months at Kshs. 108,200.
- c) Outstanding annual leave at Kshs. 13,004.
- d) Gratuity at Kshs. 53,060.

e) 12 months' salary in compensation for unfair termination at Kshs. 162,300

Total.... Kshs. 350, 0889

f) Declaration that termination was unfair and discriminatory.

g) General damages for discrimination.

h) Certificate of Service to issue.

i) Costs.

j) Interest.

k) Any other suitable relief.

2. The Respondent filed its Statement of Response on 17<sup>th</sup> September 2015. Its position is that the Claimant was employed by the Respondent from 1<sup>st</sup> March 2011. She requested for termination. She did so for medical reason. She was paid all her dues which she voluntarily accepted. The Respondent prays the Claim is dismissed with costs to the Respondent.

3. Parties agreed to have the dispute considered and resolved on the strength of the record. They confirmed filing of their Closing Submissions, on 14<sup>th</sup> December 2016 when date for delivery of Judgment was scheduled.

**The Court Finds:-**

4. The Claimant's employment history and terms and conditions of service with the Respondent, are not materially in dispute.

5. On 30<sup>th</sup> April 2013, she wrote to the Respondent as follows:-

*“As per attached medical report, I hereby request you to terminate my contract on medical grounds, as my condition has made me not perform my duties accordingly. It is hard for me to make this decision, but I have no option since my condition is not improving. I look forward to your assistance on the above request.”*

6. There is nothing on record to show the Claimant was coerced by anyone to write the above letter. She alleges she was coerced. She does not say by whom. The letter was received by Management in the presence of Chief Shop-steward. It is doubtful that the Workers' elected Representative, could silently witness an Employee being forced to resign. It was for the Claimant to prove coercion. ***She did not and her Claim must consequently fail, without an order on costs.***

Dated and delivered at Mombasa this 30<sup>th</sup> day of June 2017

**James Rika**

**Judge**