

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 259 OF 2016

**KENYA UNION OF DOMESTIC, EDUCATION INSTITUTIONS, HOSPITAL AND ALLIED
WORKERS (KUDHEIHA)...CLAIMANT**

VERSUS

**BLACK AND WHITE RESTAURANT
LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 16th June, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 10.11.2016 alleging the unfair termination of its member, Ruth Wairimu Wainaina, the grievant. The claimant prayed for judgment against the respondent for:

- a. One month pay in lieu of notice Kshs.6, 500.00.
- b. Service pay for 3 years for 15 days per year of 3 years' service Kshs. 9, 750.00.
- c. Pay for due but untaken annual leave for 3 years Kshs.19, 500.00.
- d. Underpayment of salaries throughout service Kshs. 154, 416.80.
- e. House allowance due for 38 months Kshs.37, 050.00.
- f. 12 months of compensation for unfair termination Kshs.78, 000.00.
9. Total claim Kshs.305, 216.80.

The respondent appointed Thuita Kiiru & Company Advocates to act in the case per the notice of appointment of advocates dated 15.03.2017. The respondent did not file a defence and the defendant's advocate failed to attend the hearing on the ground that the defence had not been filed. The hearing proceeded ex-parte.

The grievant testified to support her case. The respondent employed the grievant by a verbal agreement on 01.02.2011 as a housekeeper at Kshs. 4,500.00 per month. She served diligently for 38 months and she was not given a written contract of service. On 10.04.2014 she reported at work as usual and at about 11.00a.m her supervisor one Rose summoned her and verbally conveyed that the claimant had been fired with immediate effect because she lacked the letter of appointment. At that time the grievant was paid a salary of Kshs.6, 500.00 per month. She testified that she was given weekly rest days but no annual leave throughout her service. She further claimed underpayment and house allowance per the Regulation of Wages (General) (Amendment) Order, 2013.

The court has considered the evidence and the material on record and returns that the claimant is entitled as prayed for. While awarding the 12 months' pay in compensation the court has considered the grievant's clean record, that she desired to continue in employment, that she did not contribute to her termination and that the reason for her termination was the employer's failure to issue the written contract

of service as provided for in sections 9 and 10 of the Employment Act, 2007. The court further considers that the grievant was not a member of the NSSF and is entitled to service pay under section 35 of the Act. As the claimant is successful, it is awarded costs of the suit fixed at **Kshs.25, 000.00** only.

In conclusion judgment is hereby entered for the claimant against the respondent for payment of **Kshs.330, 216.80** by 01.08.2017 failing interest at court rates to be payable thereon from the date of this judgment till the date of full payment.

Signed, dated and delivered in court at **Nyeri** this **Friday, 16th June, 2017**.

BYRAM ONGAYA

JUDGE