



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 324 OF 2014

ALPHINE ANYANGO ALOO.....CLAIMANT

VERSUS

CLINIX HEALTH CARE LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 5th March 2014 and filed in Court on even date, the Claimant has sued the Respondent for unlawful and unfair termination of employment.
2. The Respondent filed a Statement of Defence on 7th May 2014 but did not attend the hearing in spite of due notification. The Claimant testified on own behalf and also filed written submissions.

The Claimant’s Case

3. The Claimant states that she was employed by the Respondent on 6th April 2011 as a Clinical Administrator/Cashier at a monthly salary of Kshs. 15,000. She claims to have been underpaid. In addition she states that she was not paid her salary for the months of April and May 2013 plus four (4) days in June 2013.

4. The Claimant further states that the Respondent unlawfully terminated her employment on 4th April 2013. Her claims is as follows:

- a) Underpayment.....Kshs. 138,636.30
- b) Salary for April 2013.....22,264.50
- c) Salary for May 2013.....25,381.60
- d) Salary for 4 days in June 2013.....3,904.85
- e) 2 months balance of maternity leave.....50,763.20
- f) 1 month’s salary in lieu of notice.....25,381.60
- g) 12 months’ salary in compensation.....304,579.20

h) Certificate of service

i) Costs plus interest

The Respondent's Case

5. In its Statement of Defence filed on 7th May 2014, the Respondent denies having employed the Claimant as a cashier or in any other capacity.

6. The Respondent goes on to state that the Claimant absconded duty without a justifiable cause and thus occasioned the termination of her employment.

Findings and Determination

7. There are two issues for determination in this case

a) Whether the termination of the Claimant's employment was lawful and fair;

b) Whether the Claimant is entitled to the remedies sought.

The Termination

8. The Claimant's employment was terminated by letter dated 4th June 2013 stating as follows:

"Dear Madam,

RE: TERMINATION OF SERVICE

It has come to the knowledge of the management that you have been collecting money from other tenants who are on the same premises with our clinic in the pretext and/or claiming that you have been authorized to do so by the management for settling water bills facts which are so (sic) well within your knowledge.

In doing so you violated the code of conduct by not only tarnishing the company's name but also being unfaithful to the company as you

never informed it of the same until it was discovered from reliable sources.

Subsequently an audit carried out in your clinic in which you were in charge indicate that there was a discrepancy of Ksh. 2306/=.

You are hereby terminated from service effective from the date of this letter pursuant to section 44(3) as read together with section 44(4)(a) of the Employment Act 2007 of the laws of Kenya.

You are required to hand over all equipment of the company in your possession and clear with the head office immediately.

Yours faithfully

(Signed)

Mark Joseph Mabonga

Human Resource Manager"

9. The termination letter accuses the Claimant of unauthorized collection of money from neighbouring tenants as well as loss of the sum of Kshs. 2306. In its Statement of Defence filed in Court on 7th May 2014, the Respondent introduced yet another charge of absconding duty. No evidence was adduced in support of either charge nor was the apparent divergence explained.

10. While denying the Respondent's allegations against her, the Claimant told the Court that she was terminated after asking to be paid her salary for the months of April and May 2013.

11. In light of the equivocating nature of the Respondent's allegations against the Claimant which were not tested at the shop floor, the Court finds that the Respondent had no valid reason for terminating the Claimant's employment as expected under Section 43 of the Employment Act. Moreover, none of the charges were ever put to the Claimant for her response as required by Section 41 of the Act.

Remedies

12. In sum, the Court finds that the termination of the Claimant's employment was substantively and procedurally unfair and awards her six (6) months' salary in compensation. In making this award I have taken into account the Claimant's length of service as well as the Respondent's conduct prior to the termination. I further award the Claimant one (1) month's salary in lieu of notice. The claim for salary arrears was uncontested and is allowed.

13. The claims for underpayment and maternity leave pay were not proved and are dismissed.

14. Ultimately I enter judgment in favour of the Claimant in the following terms:

- a) 6 months' salary in compensation.....Kshs. 90,000
- b) 1 month's salary in lieu of notice.....15,000
- c) Salary for April and May 2013.....30,000
- d) Salary for 4 days in June 2013.....2,000
- Total.....137,000**

15. This amount will attract interest at court rates from the date of judgment until payment in full.

16. I direct the Respondent to issue the Claimant with a certificate of service and to pay the costs of the case.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF JULY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Okemwa for the Claimant

No appearance for the Respondent