



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 48 OF 2016

BETH WANJIRU WANGUI.....CLAIMANT

VERSUS

LICHI SECURITY SYSTEMS LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 21st July, 2017)

JUDGMENT

The claimant filed the statement of claim on 04.03.2016 through Warutere & Associates. The claimant prayed for judgment against the respondent for:

- a) General damages for unlawful termination.
- b) One month's salary in lieu of termination notice Kshs. 8,000.00.
- c) One month unpaid salary Kshs. 8,000.00.
- d) Costs of the suit.

The respondent's statement of defence was filed on 13.05.2016 through Karweru & Company Advocates. The respondent prayed that the respondent's suit be dismissed with costs.

The claimant's case is that she was employed by the respondent as a security guard effective 17.07.2014 until 03.11.2015 when she was suspended from work for 21 days on account of poor performance and to resume duty on 26.11.2015. It turned out that she had been told to resume on 25.11.2015 and she was asked to apologise in writing and she complied. She then worked until 01.12.2015 when the respondent complained about her reporting after suspension belatedly on 26.11.2015 instead of 25.11.2015. She apologised by the letter dated 03.12.2015 being the 2nd apology letter. She was then asked to check with the office later to see if she would be taken back but she was not recalled. It was the claimant's case that she checked sometimes towards end of December 2015 but she was told by the office operations officer one Fridah that the manager one Mathenge had conveyed that the claimant had been terminated from employment.

The salary for October had not been paid and the claimant prayed for it per prayer (c) and before the hearing, by consent of the parties, it was ordered that the **Kshs. 8,000.00** be paid as prayed for. The claimant prayed for service pay for one year and 4 months.

The court has considered the material on record and returns as follows:

1. The respondent terminated the claimant verbally without a notice and a hearing against section 41 of the Employment Act, 2007. She is awarded **Kshs.8, 000.00** for unfair termination being one month pay under section 49(1) (c) of the Act. While making that finding the court considers that the claimant had served for about 16 months and she had substantially contributed to her termination by conceding to belated reporting after suspension and as per her apology letters; and further the undisputed suspension established previous unclean record of service manifested with unsatisfactory performance.

2. The claimant is awarded **Kshs. 8,000.00** being one month pay in lieu of termination notice and as prayed for.

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

a) Payment of the sum of **Kshs.24, 000.00** by 01.09.2017 failing interest to be payable at court rates from the date of the judgment till full payment.

b) The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 21st July, 2017.**

BYRAM ONGAYA

JUDGE