



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 443 OF 2012

CAROLINE K. NJUGUNA.....CLAIMANT

VERSUS

CITY STAR RESTAURANT (TRADING AS COFFEE LOUNGE).....RESPONDENT

JUDGEMENT

1. The claimant herein stated that she was employed on 15th October, 2010 as a Barister. The appointment was oral. Her salary was Kshs 4,200 per week.
2. On 7th February, 2012 she obtained respondent's permission to attend a maternity ante-natal clinic but was compelled to return to work the same day which was not possible as the clinic session concluded after official working hours. On reporting to work the next day the respondent's managers Messrs Lumumba and Abdighany confronted the claimant in the changing room and informed her she would be summarily dismissed on account of pregnancy and sickly demeanor. The claimant therefore regarded the dismissal as unfair and sought judgement against the respondent for compensation for unfair dismissal.
3. The respondent denied the claimants averments and stated that the claimant deserted duties without any reason. The respondent further deemed that the claimant was granted permission to attend ante-natal clinic and further stated that in case of such permission was granted to any employee, it is usually accompanied with a sick off sheet duly signed by the doctor and returned to the respondent.
4. The respondent further averred that around 5th August, 2011 the claimant was hired as a casual labourer at a daily wage of Kshs 600. On 1st September, 2012 the claimant was issued with a written contract outlining her terms and conditions of service but she declined to sign the said contract. The respondent therefore continued to pay the claimant on daily basis as was obtaining before.
5. The respondent further averred that the claimant failed to produce any ante-natal clinic attendance card or any sick leave sheet from the doctor and by insinuating the respondent dismissed her due to pregnancy is intended to tarnish the respondent's name.
6. The respondent dismissed the claimant for absconding duties. A dismissal on account of absconding duties requires that the employer took steps to seek out the employee accused of absconding duty and asking such employee to show cause why his or her services should not be terminated for absconding duties. This is necessary because such employee may for reasons unexpected or matter beyond such employee's control be unable to report to work and or inform the employer of the unscheduled absence. The period of absence is also an important factor to take into account before taking a decision to dismiss.

7. The court has further observed in similar matters that the decision to dismiss is measured by reasonable standards. That is to say, would a reasonable employer in the circumstances dismiss? If the answer is yes, the dismissal will be upheld.

8. The claimant herein was away for one day. According to her, she was verbally given a sick off by her supervisor who insisted she must come back to work the same day. She was not able to but came back the next day. The claimant produced an appointment card for 7th February, 2012. Hospital attendance may at times depending on the nature of ailments or medical facility attended take a long time hence it was not surprising that the claimant may have finished the procedure late and could not report to work as expected. Her return to work with that explanation was an acceptable reason for absencing oneself from work and no reasonable employer would dismiss on that ground alone unless the employee has been in the habit of doing this previously. A warning letter or admonishment would have sufficed.

9. To this extend the court reaches the conclusion that the reason for dismissing the claimant was invalid and or unjustifiable hence finds the dismissal unfair.

10. The court therefore enters judgement against the respondent as follows:

a. One month's salary in lieu of notice Kshs 16,800

b. Six months salary as compensation Kshs 100,800

Kshs 117,600

c. Costs of the suit

11. It is so ordered.

Dated at Nairobi this 21st day of July 2017

Abuodha J. N.

Judge

Delivered this 21st day of July 2017

In the presence of:-

..... for Claimant

.....for Respondent

Abuodha J. N.

Judge