



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 175 OF 2016

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS.....CLAIMANT**

VERSUS

**DOMESTIC CLEANING SERVICES, NOW, FOURTEEN AGENCIES.....1ST
RESPONDENT**

**SAMUEL KINYUA.....2ND
RESPONDENT**

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

JUDGMENT

The claimant trade union filed the memorandum of claim on 15.08.2016 alleging the unfair termination of its member Zipporah Kanyaa, the grievant. Claimant prayed for judgment against the respondent for:

- a) reinstatement of the grievant to her former position and treat her in all respect as if her employment had not been terminated; or
- b) re-engage the grievant in work comparable to that which she performed prior to her termination or other reasonably suitable job at the said wages.
- c) Compensation up to 12 months gross wages for the wrongful termination.
- d) In alternative to reinstatement the respondent to pay the grievant Kshs. 166, 287.40 being Kshs. 10, 377.80 one month notice pay; Kshs. 7, 288.70 accrued annual leave; prorated leave for 4 months Kshs. 2, 429.60; house allowance for the period of employment Kshs. 21, 628.00; and 12 months compensation Kshs. 124, 533.00.

The respondent filed the memorandum of response and counterclaim on 31.10.2016 through C.M. King'ori & Company Advocates. The respondent prayed for judgment against the claimant for:

- a) Equivalent of a month's pay in lieu of resignation notice.
- b) Costs of the suit and interest.
- c) Dismissal of the claimant's case with costs.

The 1st issue is to determine the grievant's terms of service and whether the termination was unfair. The grievant's case is that she was the respondent's employee on permanent terms of service effective 24.05.2013 in the capacity of a cleaner. The employment was verbal. The claimant's case was that the 2nd respondent telephoned her and asked her to leave employment. That was on 24.12.20014 and she asked for reasons but the reasons were not given. Her supervisor one Mercy ensured that she left the place of work in compliance with the verbal termination through the telephone conversation with the 2nd respondent.

The claimant admitted that she had signed the contract on terms and conditions on 22.08.2014 being a six months contract renewable subject to above average performance, good commendation and availability of work. The contract stated that it voided all prior contracts and that it took effect from the date of signing by the 1st respondent being on 25.08.2014.

The court returns that the claimant having signed the six months contract, she was thereby bound by it. The signed contract constituted her prevailing terms of service at the time of the termination.

The grievant admitted that she was requested to go on transfer to Nairobi but she was not willing to do so. The 2nd respondent testified that he founded Fourteen Agencies on 25.02.2004 and prior to 01.08.2014 Fourteen Agencies did not deal with cleaning services. He had no ownership rights in Domestic Cleaning Services but he took up its staff about 01.08.2014 and employed the grievant on 25.08.2014 per contract on record. She worked until 12.09.2014 when the client she had been deployed to serve found her working elsewhere and rejected her deployment. The 2nd respondent decided to issue a verbal warning and to transfer her to Nairobi and she opted to terminate the employment. Thus, the respondent counterclaimed for one month pay in lieu of notice.

The court returns that the grievant by her own evidence and as per the evidence by the 2nd respondent opted not to go on transfer in Nairobi. The claimant's claims for unfair termination are therefore unjustified. The court further returns that following the refusal by the claimant to go on transfer, the mutual agreement was that the parties separate; as the respondent did not take out disciplinary proceedings in that regard, it was unfounded for the respondent to allege that the grievant had resigned. Accordingly, the respondent is not entitled to the counterclaim.

In conclusion, judgment is entered for the parties for dismissal of the memorandum of claim as well as the counterclaim with orders that each party to bear own costs of the suit.

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

BYRAM ONGAYA

JUDGE