



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA
CAUSE NO. 429 OF 2016
RACHAEL MUMBUA KIMINZA.....CLAIMANT
VS
THE SEA BREEZE SENIOR SCHOOL.....1ST RESPONDENT
NORAH BAHAT SABAYA.....2ND RESPONDENT

JUDGMENT

Introduction

1. This is a claim for terminal dues plus compensation or unlawful and unfair termination of the claimants employment by the respondent on 3.5.2016. It is the claimants case that she had worked for the respondent as a teacher for three years and had no disciplinary issues with her employer before being terminated without any prior notice or any hearing. As at the time of her termination, she was earning kshs. 12000 per month which was not inclusive of house allowance.
2. The respondent never filed any defence to the suit despite service of summons and pleadings and as such the suit proceeded ex parte on 12.1. 2017 when the claimant testified as CW1 and thereafter filed written submission.

Claimant's case

3. CW1 stated that she was employed by the respondent as a teacher and worked for three years before she was abruptly terminated on 3.5.2016. On the said day, she reported back to work after school holiday ready to work only to be told verbally that her services had been terminated. She had not been given any prior notice or told the reason for the termination of her services and heard.
4. In view of the foregoing reasons, Cw1 contended that her termination was unfair and prayed for compensation and all her benefits accruing from her employment contract inclusive of refund of her unremitted National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) contributions.

Analysis and Determination

5. After careful consideration of the material presented to the court, it is not disputed that the claimant was employed by the respondent for a monthly salary of kshs.12000 for three years up to 3.5.2016. It is further not disputed that the reason for the termination was not disclosed, and no prior notice or hearing

was given to the claimant before terminating her contract. The issues for determination are: -

(a) Whether the termination of the claimants employment was unfair.

(b) Whether the reliefs sought should be granted.

Unfair termination

6. Under section 45(2) of the Employment Act, termination of employment by the employer is unfair if the employer fails to prove that it was grounded on valid and fair reason and that it was done after following a fair procedure. In this case the respondent has not filed any defence and adduced evidence to prove the reason for the termination and fair procedure as required by the section 45 above. Consequently, the court finds in favour of the claimant that she was unfairly terminated.

7. In reaching the foregoing opinion, I have considered the uncontested evidence by the claimant that she was abruptly terminated without any justifiable reason, prior notice or fair hearing. I am therefore satisfied that the claimant has discharged her burden of proving unfair termination under section 47(5) of the Employment Act.

Reliefs

Notice and Compensation

8. Under section 49(1) and (4) of the Act, I award the claimant kshs 12000 being one month salary in lieu of notice plus kshs 72000 being 6 months gross salary as compensation for unfair termination.

Unremitted NSSF and NHIF deductions

9. The claimant prays for refund of NSSF and NHIF deductions which were never remitted to the respective Funds for a period of 3 years. No evidence of the alleged deduction and non remittance was adduced either in form of payslips or statements generated from the NSSF or the NHIF. Consequently, I dismiss the claims for refund of the two items.

Disposition

10. For the reason that the claimants contract of service was unfairly terminated, I enter judgment for the claimant in the sum of **kshs. 84000** plus costs and interest.

Signed, dated and delivered at Mombasa this 14th day of July 2017.

O.N. MAKAU

JUDGE