



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1179 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 1st September 2017)

JUDITH MUNYASA.....CLAIMANT

VERSUS

ESTHER KADONDI.....RESPONDENT

JUDGMENT

1. The Claimant filed suit on 16th June, 2016, seeking terminal benefits from the Respondent. She states that on 15th September, 2005 she was employed by the Respondent as a domestic help at a monthly salary of 8,000/= which was gradually increased to Ksh. 9,000/=.

2. She states that she served the Respondent diligently until 14th April, 2015, when the Respondent terminated the Claimant's employment and the Respondent failed to pay her her terminal dues which she claims are as follows:

a. One month's pay in lieu of notice	-	9,780.95
b. Underpayments		
i. September – December 2005		
(4335-4000) x 3	-	1,005.00
ii. May 2206-December 2007		
(5195-5000) x 20	-	3,900.00
iii. May 2012 – April 2013		
(8579.80 -8000) x 12	-	6,957.60
iv. May 2013 –December 2013		
(9780.95 – 8000) x 8	-	14,247.60

v. January 2014 – April 2015

9780.0 - 9000) - 12,495.20

c. Overtime

i. Public Holidays

(9780.95/30 x 99) - 64,554.27

ii. Rest days 2005-2013

(9780.95/30 x 299) - 194,966.90

iii. 2014-2015

(9780.95/30 x 31) - 20,214.00

d. Service Pay

(9780.95/15 x 115/12) - 46,867.10

e. Annual leave

(9780.95/30 x 21 x 115/12) 65,613.90

f. House allowance

(9780.95 x 15/100 x 115) 194,966.90

g. Unfair termination

(9780.95 x 12) 117,371.40

Total - 726,695.32

3. She prays for her claim to be allowed in the above-mentioned terms.

4. The Respondent entered appearance through the firm of J.A Amollo & Associates who filed a Response to the Memorandum of Claim wherein they admit the existence of an employment relationship between the Claimant and the Respondent but deny the tabulation of terminal dues tabulated in the Memorandum of Claim.

5. The Respondent avers that the Claimant was dismissed on account of gross misconduct and in accordance with the employment laws and labour practices. She states that upon terminating of the Claimant's services, the Respondent made payment of Kshs. 15,000/= to the Claimant being one month's salary in lieu of notice and salary for days worked which payment was done through MPESA and the Claimant acknowledged receipt.

6. She further denies underpaying the Claimant and denies the claim for house allowance as she alleges that she provided reasonable accommodation for she was a resident worker and she was considered part of the Respondent's family. That the Claimant enjoyed amenities and accommodation provided by the Respondent which the Respondent states were valued at a conservative figure of Shs. 25,000.00.

7. The Respondent further contends that she allowed the Claimant leave days which were taken at

varied times spread through the year, one day off each week and an additional day each month to allow the Claimant go for medical review on account of her apparent poor health.

8. The Respondent also filed a counterclaim in which she claims the Respondent owed her money. She avers that during the tenure of employment, the Respondent granted the Claimant an interest free loan of Shs. 30,000 in the year 2014 which was to be repaid within a period of one year which the Claimant never did.

9. Further, the Respondent avers that in the same year, 2014, she furnished the Claimant's house at an approximate cost of Shs. 60,000 which cost was repayable by the Claimant within a period of one year, which was never done despite calls to do so.

10. The Respondent also claims that she bought the Claimant a mobile phone worth Shs. 3,499, which remained her property during the existence of the employment relationship and she did not return it on termination.

11. The Respondent prays for the Claim to be dismissed and the counterclaim to be allowed to the tune of 93,499/=.

12. In the reply to the Defence to Counterclaim the Claimant states that the Shs. 15,000 seen on the MPESA statement was actually sent to her but the Respondent never indicated what it was for. In the defence to the Counterclaim the Claimant denies having ever been advanced any loan and that the furniture in her house was given to her by the Respondent and there had been no agreement to repay and she had taken it as a good gesture. She prays for the counterclaim to be dismissed with costs.

13. In evidence the parties reiterated the contents in their pleadings and urged the Court to allow their respective prayers.

14. I have considered the evidence and submissions of both parties. I note in cross examination that the Claimant states that she used to stay at the Respondent's house and the claim of house allowance would be untenable. She also admits that the Respondent allowed her to go on off during Easter and when she was bereaved and she had about 5 bereavements and was allowed time off to go and bury her relatives.

15. She further admits that she used to be allowed time off during Christmas and would return to work at the beginning of the year. She admits she was also give a TV set and a sofa set by the Respondent.

16. In view of the above admission, the claim for leave days and holiday pay would not also be payable.

17. It is not clear how this relationship was however terminated. In view of the fact that the Respondent terminated the Claimant without due process since there is no indication of a hearing process, I find that the Claimant is entitled to the following remedies:

1. 1 months salary in lieu of notice = 9,000/=

2. 10 years service pay = $\frac{1}{2} \times 9,000 \times 10 = 45,000/=$

3. 6 months salary as damage for unlawful termination = $6 \times 9,000 = 54,000/=$

Total = 108,000/=

4. The Respondent will also pay costs of this suit.

Read in open Court this 1st day of September, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant present in person

No appearance for Respondent