



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1336 OF 2012

WINFRED MBULA MULWA.....CLAIMANT

VERSUS

VEGPRO KENYA LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Winfred Mbula Mulwa against her former employer, Vegpro Kenya Limited. The claim is contained in a Memorandum of Claim dated 30th March 2012 and amended on 3rd February 2014.

2. The Respondent filed a Memorandum of Defence on 28th September 2012 but did not call any witnesses. The Claimant testified on her own behalf. Both parties filed written submissions.

The Claimant’s Case

3. The Claimant states that she was employed by the Respondent in December 2000, as a Work House Attendant. She was later transferred to Quality Control.

4. On 14th February 2012, the Claimant was summoned by the Respondent’s Human Resource Manager, who informed her that her services had been terminated. She states that she was terminated because she had sued the Respondent for compensation for injuries sustained while on duty. She adds that upon termination she was not paid her terminal dues. She now seeks the following:

- a) 1 month’s salary in lieu of notice.....Kshs. 7,600
- b) Leave pay for 12 years..... 91,200
- c) Service pay for 12 years.....68,400
- d) 12 months’ salary in compensation..... 91,200
- e) Costs of the case

The Respondent’s Case

5. In its Memorandum of Defence dated 24th September 2012 and filed in Court on 28th September 2012,

the Respondent states that the Claimant was a casual labourer hired on need basis. She was not required to report to work on a daily basis and her employment was terminable at the end of each day.

6. The Respondent denies terminating the Claimant's employment on account of her filing a work injury claim.

7. The Respondent denies the Claimant's entire claim as pleaded.

Findings and Determination

8. There are two (2) issues for determination in this case:

- a. Whether the Claimant has made out a case for unlawful termination of employment;
- b. Whether the Claimant is entitled to the remedies sought.

The Termination

9. The Claimant testified that her employment was terminated upon her filing a work injury claim against the Respondent. The Respondent, while denying the Claimant's claim states that she was a casual labourer whose employment was terminable at the end of each day. However, no evidence was led to support the Respondent's averment in this regard. The Claimant told the Court that she worked continuously five (5) days a week from December 2000 until February 2012.

10. Both in the Claimant's cross examination and the final submissions filed on behalf of the Respondent, Counsel for the Respondent pushed the argument that the Claimant's claim was unsustainable because she did not produce any documents to prove the terms of her employment. With much respect, this is the wrong path to take.

11. The law places the responsibility of keeping employment records on the employer and where these records are not produced, the Court will invoke Section 10(7) of the Employment Act, 2007 and adopt the Claimant's testimony on the terms of employment. The Respondent's averment that the Claimant was a casual employee, which is unsupported and unsubstantiated is therefore rejected.

12. Consequently, the Court finds that the Claimant was continuously employed by the Respondent from December 2000 until February 2012. The Court further finds that the termination of her employment was without justifiable cause as defined in Section 43 of the Employment and Act and unprocedural as set out under Section 41 of the Act.

Remedies

13. In light of the foregoing findings, I award the Claimant twelve (12) months' salary in compensation. In arriving at this award, I have considered the Claimant's length of service and the Respondent's, conduct prior to the termination. I also award the Claimant one (1) month's salary in lieu of notice.

14. In the absence of leave records and evidence of National Social Security Fund (NSSF) remittances on behalf of the Claimant, the claims for leave pay and service pay also succeed and are allowed. In tabulating the Claimant's claim, the Court adopts the figure of Kshs. 8,724 being the applicable minimum wage, as the Claimant's monthly salary.

15. Ultimately I enter judgment in favour of the Claimant in the following terms:

- a) 12 months' salary in compensation.....Kshs. 104,688
- b) 1 month's salary in lieu of notice.....8,724

c) Leave pay for 11 years (8,724/30x21x11).....67,175

d) Service pay for 11 years (8,724/30x15x11).....47,982

Total.....228,569

16. This amount will attract interest at court rates from the date of judgment until payment in full.

17. The Claimant will have the costs of this case.

18. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 1ST DAY OF SEPTEMBER 2017

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JUDGE

Appearance:

Miss Serem for the Claimant

Mr. Muturi for the Respondent