



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 684 OF 2015**

**AZIBETAH NGONYELE MUDAGALE .....CLAIMANT**

*VERSUS*

**MARY NYALUOK NYUON ..... RESPONDENT**

M/S Wekesa for Claimant

**JUDGMENT**

1. In a statement of Claim filed on 21<sup>st</sup> April, 2015, the Claimant seeks for terminal benefits in addition to damages for unlawful dismissal. The Claimant testified under oath in support of the particulars of the Claim to the effect that she was employed by the Respondent as a house help on 30<sup>th</sup> January, 2012, at a monthly salary of Kshs. 7,000/= per month which was later raised to Kshs. 9,000/=.
2. That she performed her duties carefully, properly and to the satisfaction of the Respondent until 2<sup>nd</sup> April, 2015, when she was terminated by the respondent who refused to pay her terminal dues set out in the claim.
3. The Claimant states that she worked for a minimum of 18 hours a day and was never allowed to go on leave for the entire 3 year period that she was employed by the Respondent. She alleges that through the acts of the Respondent she was subjected to suffering and hardship through denial of adequate weekly and annual rest, underpayment and exposure to inhuman working hours.
4. The Claimant prays for the Claim to be allowed as drawn.
5. The Respondent was served with the pleadings and the notice for formal proof. The Respondent did not file any response and the suit is therefore undefended.

**Compensation**

6. Claimant seeks compensation in terms of section 49(1) (c) as read with Section 49 (4) on unlawful and unfair dismissal. The Claimant was underpaid not granted leave and worked for long hours in violation of her basic employment rights set out in the Employment Act, 2007 and Article 41 of the Constitution of Kenya 2010.
7. She was not paid terminal benefits upon dismissal. She had served the Respondent diligently for three years and the sudden dismissal caused her loss and damage.

8. The Court refers to the case of: **Mebo Ambogo Lundu v Moses Nderitu [2014] eKLR** in which it was held:

*“It is clear Mr. Nderitu engaged Ms. Lundu as his Domestic Worker and Loader, and terminated the employment relationship without regard to the law governing that relationship. He was not concerned about substantive justification or fairness of procedure in the termination; did not care about her accrued benefits borne of her 10 years of toil; he ignored her right to social security; and chose to let the Claimant leave as she had entered the relationship: un-recognized. She was never availed any letter of employment or termination, or her certificate of service. She was completely un-recognized.”*

9. Rika J. awarded the Claimant:

**(a) 6 months’ salary in compensation at Kshs.57,000/=; and**

**(b) One month salary in lieu of notice at Kshs.9,500/=;**

**(c) Service pay at 15 days’ salary for each completed year of service at 54,807;**

10. In **Mary Nafula Ingati v Ruth Hankel Martha & another [2014] eKLR** The Claimants in the suit were domestic servants and this Court held:

*“The conduct by the Respondents was detrimental to the welfare of the Claimants. The situation was not helped by the summary dismissal on mere suspicion without notice. For these reasons, this court awards the 1<sup>st</sup> and 2<sup>nd</sup> Claimants 10 months’ salary each for the unlawful and unfair summary dismissal in spite of the good service they both had provided the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for considerable long time.”*

11. In **Linet Akasa Shikoli v Lilian Otundo [2014] eKLR**, the Court found that although there was a reason for termination of employment, the Respondent had a duty to follow procedure set out in sections 41 and 45 of the Employment Act 2007. The Court awarded one (1) month’s salary as compensation.

12. In the present case therefore the court awards the Claimant equivalent of six (6) month’s salary as compensation in the sum of Kshs. 58,680.00.

### **Salary Arrears**

13. The Claimant was not paid salary for March 2015 and is awarded Kshs. 9,780.00

### **In lieu of leave**

14. The Claimant did not take leave for three years and is entitled to at least 21 days for each completed year of service in terms of section 28 (1) (a) of the Employment Act. The Court awards her Kshs.29,342.85/= accordingly.

### **Service Gratuity**

15. The Claimant was not registered with NSSF nor was any Social Security contribution made on her behalf. The Claimant is awarded gratuity calculated at 15 days salary for each completed year of service in the sum of Kshs. 14,071.40.

### **Underpayments**

16. The Claimant relies on the General Wages Regulations pursuant

to the Labour Institutions Act to claim minimum wage for the period served between January 2013 to

March 2015. The Regulations are attached to the Statement of Claim. The Court awards underpayments in the sum of Kshs. 60,303.00 being the amount paid less the minimum wage for the period of years served.

### **Punitive Damages**

17. The claim for award of punitive damages due to underpayment has no merit and is dismissed.

### **Overtime**

18. The Claimant testified that she worked a minimum of 18 hours a day. This was not well elaborated by the Claimant and in the Court's view is not plausible. The Court finds this claim not proved and dismisses the same.

19. In the final analysis, total award to the Claimant is Kshs.162,997.25/= with interest at Court rates from the date of filing suit till payment in full except with regard to compensation which is payable with interest from the date of judgment.

20. Costs to follow the outcome.

**Dated, Signed and Delivered on this 31st day of October, 2017.**

**MATHEWS NDERI NDUMA**

**JUDGE**