



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1781 OF 2013

DORCUS AONO.....CLAIMANT

VERSUS

AMINA DURAD.....1ST RESPONDENT

PHILIP DURAD.....2ND RESPONDENT

JUDGEMENT

The claimant herein was filed on 4th November, 2013 and the respondent entered appearance on 12th November, 2013 but no defence was filed and there was no attendance at the hearings scheduled to hear the claim. Being satisfied that the respondent was aware of proceedings herein and service had been properly effected, the claimant was heard on her evidence.

The claimant being an adult female was employed by the respondents in their family residence and home as a Cleaner/Domestic Worker in November, 2011 to 15th October, 2013 at a monthly wage of Kshs.7,000.00. There was no letter of employment issued to the claimant of pay statements for the monthly wage.

The claimant was not accommodated or paid a house allowance by the respondent and was forced to rent a house for Kshs.3,000.00 per month. There was no compensation.

On the evening of 13th October, 2013 a cousin of the respondents requested the claimant to bring a house help the following day which she did and as she went to the respondents, the new house help was left at the gate waiting clearance.

On the morning of 14th October, 2013 the 1st respondent found the new house help at the gate and demanded to know what her intentions were. She then ordered her to vacate the premises. In the evening the respondents questioned the claimant about the new house help at the gate, there was an exchange of words the respondents directed the claimant not to report on duty the next day until further notice. The claimant suspected there was a grudge between her and the respondents due to underpayments and request for her salary to be increased.

The claim is that the termination of employment was unfair, terminal dues were not paid and the underpayments due should be paid in full.

The claimant testified in support of her claim.

The failure by the respondent to file any defence or the work records with regard to the claimant's

employment is regretted. This denies the court the material upon which the claims made are to be assessed. Section 10(6) of the Employment Act, 2007 requires an employer, once a claim is filed against them by an employee to file a defence and the work records. The employer being the custodian of such work records thus makes it easy for the court to analyse and assess what is due to an employee without incurring so many costs. Where some issues are summary, such can be agreed upon by the parties without the necessity of a lengthy trial.

In this case the claimant testified that she was earning Kshs.7,000.00 without any other benefit. The failure to issue the claimant a written contract is contrary to section 8, 9 and 10 of the Employment Act, 2007. The failure to issue a payment statement also go contrary to section 17 and 20 of the Act.

Where the claimant was terminated from her employment to no justifiable cause and for i=having her friend and fellow house help wait for work at the gate, such I find is a matter that does not warrant summary dismissal and had the respondents given the claimant a hearing, such is a matter which should have been well resolved and this claim avoided. The termination was inherently unfair and contrary to section 43 and 45 of the Employment Act, 2007.

The claimant is seeking due owing due to underpayment of her wages and based on the 2013 Wage Orders. For a Cleaner/Domestic house in 2013 the minimum wage was kshs.9,780.95 per month. Where the claimant earned Kshs.7,000.00 from November, 2011 to October, 2013, such was an underpayment and the difference is due. for the 22 full months worked, the claimant is entitled to Kshs.2,780.95 x 22 = Kshs.61,180.90 in underpayments.

Notice pay is due in a case of unfair termination of employment and where such notice was not given. The claimant is entitled to Kshs.9,780.95 in notice pay.

Housing or a house allowance is a right due to the claimant in terms of section 31 of the Employment Act, 2007. In the sector the claimant worked a 15% of her minimum wage was due in house allowance where no housing was provided for by the employer. The claimant is thus entitled to kshs.32,277.30 in house allowances.

With the award for underpayments, the house allowances due, the claimant is placed in equity where she should have been while in employment with the respondent. such is sufficient compensation.

Accordingly, judgement is hereby entered for the claimant for underpayments due at Kshs.61,180.00; once pay Kshs.9,780.95; house allowance due at Kshs.32,277.30 together with costs.

Delivered in open court at Nairobi this 31st day of October, 2017.

M. MBARU

JUDGE

In the presence of:

Court Assistants: David Muturi & Nancy Bor

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