



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 90 OF 2017

HILDA WANJIRU WAWERU.....CLAIMANT

VERSUS

GATARAKWA FARMERS CO-OP SOCIETY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 17th November, 2017)

JUDGMENT

The claimant filed the statement of claim on 30.03.2017 through Warutere & Associates. The claimant prayed for judgment against the respondent for:

- a) General damages for unlawful dismissal.
- b) Outstanding dues as set out in the pension scheme rules.
- c) One month's salary in lieu of notice at Kshs. 13, 292.00.
- d) Unpaid leave for one year Kshs.13, 292.00.
- e) Costs of the suit.

The response to the statement of claim was filed on 30.05.2017 through Gachiru Kariuki & Company Advocates. The respondent prayed that the suit be dismissed with costs.

The claimant was employed by the respondent as a cashier effective sometimes in July, 1993. Later the claimant was promoted to the position of Secretary Manager and at termination her pay was Kshs. 13, 292.00 per month.

The respondent placed the claimant on compulsory leave as per the letter dated 21.12.2016 on the allegations of office mismanagement and withholding information. By the letter dated 30.01.2017 the claimant's employment was terminated with effect from 01.02.2017. The reasons for termination were listed including not keeping records of house rents and hall hire and some proceeds not available; borrowed milk cans from Lamuria Farmers being not returned which was a loss; failure of the respondent being represented in certain board of directors; payment of Kshs. 4, 374.00 to a farmer who had not delivered the milk; failure to report loss of 913 litres of milk valued at Kshs. 28, 303.00; withholding letters and information from the respondent's partners and answering rudely when asked about it; failure to keep milk records and reports for example, cheese records; salary increases without the management consent; and from September 2015 to October 2016 the society had lost 23, 633.00 litres of milk valued at Kshs.732, 623.00.

The **1st issue** for determination is whether the termination was unfair. The claimant laments that she was not given a fair hearing. The respondent's case is that she was given a fair hearing on 24.01.2017. The record of the proceedings of 24.01.2017 was not filed. The respondent's chairman and witness (RW) confirmed that the particulars of the allegations and the grounds stated in the dismissal letter had not been given to the claimant throughout disciplinary proceedings. In such circumstances the court returns that the procedure leading to termination cannot be said to have been fair as envisaged in section 45(2) (c) of the Employment Act, 2007. The court returns that the claimant's lamentation that she was not afforded a fair chance to defend herself was valid. Further, the court returns that the respondent was not justified to revisit previous and stale disciplinary matters or grievances as reasons for termination. Finally, the evidence before the court failed to establish the specific reason the respondent relied upon to terminate the contract of employment.

The **second issue** for determination is whether the claimant is entitled to remedies as was prayed for. The court makes the following findings:

- a) The claimant prayed for general damages for unlawful dismissal. The claimant had served for a long period of time of over 22 years. The court has considered the claimant's record of service which was clean. The claimant did not contribute to the termination. The court returns that 12 months' pay under section 49(1) (c) of the Employment Act, 2007 will meet justice in the case. At termination the claimant earned Kshs. 13, 292.00 and is awarded **Kshs.159, 504.00** accordingly.
- b) No evidence and submissions was made about the claim for outstanding dues as set out in the pension scheme rules and the court returns that the prayer will therefore fail.
- c) As there was no termination notice the court awards one month's salary in lieu of notice at **Kshs. 13, 292.00**.
- d) The claimant is awarded unpaid leave for one year **Kshs.13, 292.00** as prayed for.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) Payment of **Kshs.186, 088.00** by 15.01.2018 failing interest to be payable at court rates from today till full payment.
- b) The respondent to pay costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 17th November, 2017**.

BYRAM ONGAYA

JUDGE