



REPUBLIC OF KENYA
IN THE EMPLOYMENT LABOUR AND RELATIONS COURT

AT MOMBASA

CAUSE NO. 795 OF 2015

LUCY WENDY PAMBA.....CLAIMANT

VERSUS

LENZ ENTERPRISES LTD.....RESPONDENT

JUDGMENT

Introduction

1) The Claimant brought this Suit on 30.11.2016 claiming terminal dues plus compensation for unfair termination of his contract of service by the respondent on 10.9.2015. The respondent has however denied liability for unfair termination and averred that the claimant was only serving on probation basis and as such she is not entitled to the reliefs sought.

2) The issue of determination revolve around the manner of termination and the reliefs sought. The claimant testified as cw1 but the defence called no witness and never attended the hearing.

Claimant's Case

3) Cw1 testified that she was employed by the respondent on 15.7.2015 as manager for Beauty Saloon, Barber, Car-wash and welding monthly salary was Kshs. 20,000 per month.

4) On 10.9.2015, he sought permission from the respondent's Director Mr. Walter Museti to go to her daughter's college after being called by the Principal. After visiting the college Principal, she passed through respondent's sister company which was holding a Car-wash promotion. She then returned to the office at 4 pm only to receive a phone call from the respondent's Director Mr. Walter telling her that her services had been terminated. She contended that the termination was unfair because it was grounded on any reason and she was not given any prior hearing. She therefore prayed for compensation and certificate of service. She concluded by stating that on 11.9.2015, Mr. Walter Museti gave her an undated termination letter followed a Certificate of Service.

Analysis and Determination

5) After careful consideration of the evidence and submissions presented to the court, it is clear that the claimant was employed by the respondent, under an oral contract of service, from 15.7.2015 to 10.9.2015 when she was summarily dismissed. The issues for determination are:-

a) Whether the termination was unfair.

b) Whether she is entitled to the reliefs sought.

Unfair Termination

6) Under section 45(2) of the Employment Act, termination of employee's contract of service is unfair if the employee fails to prove that it was grounded on a valid and fair reason and that it was done after following a fair procedure. In this case no reason was cited for the termination in the termination letter or by phone. In addition the respondent never called any witnesses to prove and justify the reasons for the termination as required by section 43, 45 and 47(5) of the Act.

7) In addition, the respondent has not proved by evidence that she accorded the claimant fair hearing before termination as required by section 41 of the Act. The said section provides that before terminating the services of the employee on ground of misconduct, poor performance or physical incapacity, he shall first explain to the employee, in a language he understands and in the presence of a fellow employee of his choice, the reason for which termination is contemplated and thereafter invite the employee and his chosen companion to avail their defence for consideration before the termination is decided. Failure by the respondent to prove that she terminated the claimant on grounded on valid and fair reason and that fair procedure was followed, rendered the termination of the claimant's contract of service unfair within the meaning of section 45 of the Act, and I so find and hold.

Reliefs

8) Under section 50 of the Act, I award the claimant Kshs. 20,000 being one month's salary in lieu of notice plus Kshs. 60,000 being 3 months' salary compensation for unfair termination. In awarding the little compensation, I have considered the fact that she had worked for the respondent for a very short time of three months. The claim for general damages for hardship and emotional stress is dismissed because it is catered for by the compensation awarded. The claim for Certificate of Service is also dismissed because she was issued one copy of which she produced in court as exhibit.

Disposition

9) For the reasons that the dismissal of the claimant was unfair, I enter judgment for her in the sum of Kshs. 80,000 plus costs and interest.

Signed, Dated and Delivered at Mombasa this 24th day of November 2017.

ONESMUS MAKAU

JUDGE