



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 309 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 16th November 2017)

GERALDINE MUSABI ORIEDO.....CLAIMANT

VERSUS

ROSE MSAKU T/A OJAY HOSTELS.....RESPONDENT

JUDGMENT

1. The Claimant herein filed her Memorandum of Claim on 12.3.2013 through the firm of Wandabwa Advocates.
2. The Respondent was duly served and entered appearance on 29/4/2013. The Respondent also filed a defence on 8/3/2013. This case was then set down for hearing on 12.7.2017.
3. The Respondents were duly served but they failed to attend Court. This case then proceeded in the Respondents absence.
4. Since the Respondents had filed a defence, I will consider their defence in arriving at the verdict in this claim.
5. The Claimant's evidence is that she worked for Respondent with effect from 4.2.2012. She indicated that she was initially employed as Hostel Administrator but there were no enough workers and so she became Caretaker, House Keeper and Cook and also used to Market the hostel. She finally signed her employment contract on 8/6/2012 as per Appendix GMO 1.
6. Her salary was 12,000/= per month. She avers that she did her work diligently without any off. That at one point however, she asked to be allowed to take an off to settle a personal problem at the High Court. While there, she got a text message from the Manager Timothy informing her that she had been sacked. They informed her that they will call her to a meeting to explain why she had been sacked but this was never to be. The text sacking her came on 9.9.2012. She stated that she was paid 3,945/= through her advocate and nothing else.
7. She avers that she was not paid her August 2012 salary and her terminal dues which she now seeks. She also seeks damages for unfair termination.
8. In their Response, the Respondent state that the Claimant was employed as a Matron and at no point was she directed to perform other duties.
9. The Respondent also deny withholding the Claimant's dues but contend that she refused to collect them

and they were paid through her advocates on record. They contend that the Claimant was dismissed for gross misconduct and accordingly. She is not entitled to any relief sought in the Memorandum.

10. I have considered the evidence from both parties and submissions filed by the Claimant. The issues for determination are as follows:-

1. *Whether there were valid reasons to warrant dismissal of the Claimant.*
2. *Whether due process was followed.*
3. *Whether the Claimant is entitled to remedies sought.*

11. On the 1st issue, the Respondent have stated that the Claimant was dismissed for gross misconduct. They have however not demonstrated the misconduct in question. The details of the alleged misconduct are also not given even in their Statement of Defence.

12. Section 43 of Employment Act states as follows:-

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

13. By virtue of this Section, reasons that would warrant an employee to terminate the services of an employee, such reason must be real and not imagined or perceived. In case of summary dismissal Section 44 of Employment Act also enumerates instances which would warrant summary dismissal. None of these reasons have been demonstrated before Court and have existed to warrant dismissal. It is therefore my finding that there were no valid reasons to warrant dismissal of the Claimant.

14. In the same vein, the Claimant has stated that she was dismissed vide text message. There was no notice or a disciplinary hearing before the said dismissal. The Respondent failed to observe the Employment contract wherein they had indicated the contract could be terminated by 7 days notice. I find that due process was therefore not followed before the Claimant was dismissed.

15. It is my finding therefore that the Claimant was unfairly and unjustly dismissed and I declare the dismissal unfair and unjustified. The Claimant was on a 3 months' contract which was to expire on 31st October 2012. Since the contract was terminated before its due date, I award Claimant the salary due for the unexpired period upto 31.10.2012 and this translates to salary for 3 months given that she was not paid her August 2012 pay. This is = $3 \times 12,000 = 36,000/=$.

16. I also award Claimant notice = **12,000/=**

17. I further award Claimant 6 months salary as damages for unfair termination = $6 \times 12,000 = 72,000/=$

Total = 120,000/=

18. Plus costs and interest with effect from the date of this Judgement.

Dated and delivered in open Court this **16th day of November, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Khasiani for Claimant- Present

No appearance for the Respondent