



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 59 OF 2017

ADELAIDE IGOKI KIURA.....CLAIMANT

VERSUS

PLATINUM CREDIT LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 3rd November, 2017)

JUDGMENT

The claimant filed the memorandum of claim in person on 06.03.2017. She prayed for judgment against the respondent for:

- a) A declaration that the termination of the contract of employment was unfair or unlawful.
- b) Salary arrears for November 2015.
- c) 3 months' salary in lieu of termination notice per clause 4 of the employment contract.
- d) Pay for leave due but not taken for 2010 to 2015 making 5 years.
- e) Service pay for 5 years under section 35 of Employment Act.
- f) Accrued overtime not paid from 2010 to 2015.
- g) Certificate of service per section 51 of the Act.
- h) Allowances denied including house and commuter allowance.
- i) Full compensation for loss of employment for the remainder of years the claimant was to attain 60 years of age.
- j) Damages for the breach of the contract of employment or loss of employment.
- k) Costs of the employment.
- l) Interest.
- m) Any other relief or order the court shall deem fit to grant or award.

The claimant served the claim and summons and the respondent filed the memorandum of appearance on 31.03.2017 but failed to file and serve a response. Despite service, the respondent did not attend the hearing.

The claimant was employed by the respondent by the agreement dated 01.12.2010. The claimant was employed as a credit officer at the respondent's Embu Satellite Branch. The tenure of the contract was until attainment of 60 years of age.

On 17.02.2015 the claimant was promoted to Branch Coordinator in the Sales and Administration Department effective February 2015. Without due appraisal and evaluation, on 19.08.2015, the respondent demoted the claimant to the position of a Team Leader allegedly per company policies but in breach of the contract of employment - because no appraisal had informed the decision of demotion. The claimant protested and upon evaluation she was demoted on 30.11.2015 but which in essence, the claimant testified, was a termination because she was placed on leave from 10th to 30th November 2015 with instructions to handover the respondent's assets, staff identification card and pending calculation of final dues. The claimant received the respondent's letter of 25.11.2015 computing her final dues at Kshs.42, 717.00.

First, the court finds that the termination was unfair and unlawful. If the respondent desired to terminate the contract of service on account of poor performance, the respondent was to serve a notice and afford the claimant a hearing per section 41 of the Employment Act, 2007. Instead, the respondent unilaterally demoted the claimant without due appraisal and when the claimant raised a grievance she was evaluated and then demoted with further punishment of unexplained termination. The court finds that the claimant had a valid complaint and such complaint could not constitute a valid reason for termination as per section 46(h) of the Employment Act, 2007. The court finds that the termination was not fair both in procedure and substance. The claimant desired to continue in employment. She did not contribute to her double punishments of demotion and termination. The claimant looked forward to retirement upon attainment of 60 years of age. The court finds that the double punishments as was imposed amounted to a serious aggravating factor. Accordingly, the claimant is awarded 12 months' compensation for unfair termination under section 49(1) (c) of the Act being **Kshs.24, 200.00** making **Kshs.290, 400.00**.

Second, for the other remedies as prayed for the court makes findings as follows:

- a) The claimant is entitled to a declaration that the termination of the contract of employment was unfair or unlawful.
- b) The claimant is entitled to salary arrears for November 2015 **Kshs. 24, 200.00**.
- c) The claimant is entitled to 3 months' salary in lieu of termination notice per clause 4 of the employment contract making **Kshs.72, 600.00**.
- d) In absence of any other material before court, the claimant is entitled to pay for leave due but not taken for 2010 to 2015 making 5 years thus **Kshs. 121, 000.00**. Section 28 of the Act applies in that regard.
- e) The claimant testified that she was a member of NSSF and the court returns that she is not entitled to service pay for 5 years under section 35 of Employment Act as prayed for and in view of section 35(6) thereof.
- f) The claimant did not give evidence to justify the prayer for accrued overtime not paid from 2010 to 2015 and the same is hereby declined as it was not established.
- g) The claimant is entitled to a certificate of service per section 51 of the Act.
- h) The claimant gave no evidence and justification for allowances denied, including, house and commuter allowance, and the prayer is hereby declined.

i) The claimant has not showed any reason that vitiates her capacity to engage in gainful activities after she lost employment. Accordingly her prayer for full compensation for loss of employment for the remainder of the years the claimant was to attain 60 years of age is hereby declined.

j) The claimant is awarded costs of the suit fixed at **Kshs. 30, 000.00**.

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

a) The declaration that the termination of the employment of the claimant by the respondent was unfair and unlawful.

b) The respondent to pay the claimant **Kshs. 538, 200.00** by 15.12.2017 failing interest at court rates to be payable from the date of this judgment till full payment.

c) The respondent to deliver to the claimant a certificate of service per section 51 of the Act by 15.12.2017.

Signed, dated and delivered in court at **Nyeri** this **Friday, 3rd November, 2017**.

BYRAM ONGAYA

JUDGE