



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**  
**CAUSE NO. 257 OF 2016**

**ESTHER WAITHIRA KAMANDE.....CLAIMANT**

**VERSUS**

**CHINA GEZHOUBA GROUP LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday, 20<sup>th</sup> December, 2017)

**JUDGMENT**

The claimant filed the memorandum of claim on 09.11.2016 through Jessee Kariuki & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A finding that the termination of the claimant's employment by the respondent was unjustified, unlawful, unfair, wrongful and illegal.
- b. Special damages of Kshs. 129, 937.52 being Kshs.64, 968.76 salaries for July and August 2016; one month pay in lieu of notice Kshs. 32, 494.38; and compensation for one month per year Kshs.32, 484.38.
- c. General damages for unfair and wrongful termination of the claimant arising from the dismissal.
- d. Costs of this suit.
- e. Interest from the date of dismissal till full payment at court rates.
- f. Any other or further relief that the court may deem fit to grant.

The claimant's case is that she was initially employed by the respondent by the letter dated 06.10.2014 and deployed at the respondent's Four Ways Suraya area in Kiambu County. The respondent redeployed the claimant to its Gikihi construction site in Murang'a County and the claimant continued to serve as a cook. On 14.08.2016 the respondent summoned the claimant to the head office at Mununga within Murang'a County. She was informed that the head cook at the head office was travelling to China and that she had to assume the duties of that head cook stationed at Mununga. On 15.08.2016 or 22.08.2016 she reported on duty as newly redeployed and she was summoned to the accountant's office and informed that her services were no longer needed.

The memorandum of response was filed on 27.04.2017 through Miller & Company Advocates. The respondent prayed that the suit be dismissed with costs. The respondent admitted that the parties were in employment relationship. However, the respondent pleaded that the claimant was never summoned and dismissed from employment as she alleged. Instead, it was the respondent's case that the claimant

wilfully and without notice deserted her employment. Thereafter the respondent made efforts to trace the claimant but her whereabouts was unknown.

The main issue for determination is whether the termination of the claimant's contract of employment was unfair. The claimant testified that she was summoned by some lady whose name she had forgotten and told that she had been fired. The claimant stated that it was on 22.08.2016, the lady came to the kitchen, told her that she had been terminated, and gave her Kshs. 39,000.00 as terminal dues. She was not given reasons for the termination and she declined to take the terminal dues because she demanded to be given a termination notice and reasons for the termination. The claimant further testified that she had filed civil case no. 278 of 2016 in the Magistrate's Court at Kigumo for claims related to injuries she had suffered while on duty. She had filed the case on 19.08.2016 and she was terminated on 22.08.2016. It was the claimant's case that the injury claim had led to her termination from employment.

The respondent's witness (RW) confirmed that the respondent's accountant was a lady known as Cecilia. The court has considered the evidence. The court returns that the claimant's evidence was credible that she was verbally dismissed when the lady from accounts told her she had been dismissed. The respondent failed to call the accountant and the court returns that the claimant's evidence has not been rebutted in that regard. In any event the respondent has not offered any reason for failure to initiate disciplinary action against the claimant in event of the alleged desertion but about which the court returns that the claimant did not desert duty. The court finds that the claimant was verbally dismissed as per her account. The termination was without a valid reason as envisaged in section 43 of the Employment Act, 2007.

The court has considered that the claimant desired to continue in employment and that she did not contribute to her termination. The court has considered the aggravating circumstance that the claimant's dismissal was engulfed with her injury claim and the suit she had filed in that regard. Under section 46 (h) the claimant was entitled to initiate the suit for the injury claim and such initiation would not constitute a fair reason for dismissal or for imposition of a disciplinary penalty. In the circumstances of the case and taking the factors enumerated into consideration the court awards the claimant maximum compensation under section 49(1) of the Act being 12 months' salaries ant Kshs. 32, 484.38 per month making a sum of **Kshs.389, 812.56**. The claimant is also awarded **Kshs. 32, 484.38** pay in lieu of notice, **Kshs.32, 484.38** pay for July 2016, and half month pay for August 2016 making **Kshs.16, 242.19**.

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

- a. The declaration that the termination of the claimant's employment was unjustified, unlawful, and unfair.
- b. The respondent to pay the claimant a sum of **Kshs.471, 023.51** by 01.02.2018 failing interest at court rates to be payable thereon at court rates from the date of this judgment till full payment.
- c. The respondent to pay costs of the suit.

**Signed, dated and delivered** in court at Nyeri this **Wednesday, 20<sup>th</sup> December, 2017**.

**BYRAM ONGAYA**

**JUDGE**