



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 578 OF 2014

ROSELYN KAMONYA MWASHI.....CLAIMANT

VERSUS

AMINA IBRAHM.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant’s claim brought by a Memorandum of Claim dated 6th April 2014 and filed in court on 7th April 2014, is for compensation for unlawful termination of employment and payment of terminal dues.

2. The Respondent filed a Statement of Response on 30th April 2014. Both parties gave *viva voce* evidence and also filed written submissions.

The Claimant’s Case

3. The Claimant states that she was employed by the Respondent as a house servant from 7th August 2013 until 11th February 2014 when her employment was terminated. At the time of her termination, the Claimant was earning a monthly salary of Kshs. 8,000.

4. The Claimant claims that the termination of her employment was unjustifiable and that she was not given an opportunity to be heard. The Claimant further claims that she was not paid her terminal dues. She contends that her monthly salary should have been at least Kshs. 9,781 plus a house allowance of Kshs. 1467.

5. The Claimant’s claim is as follows:

- a) 12 months’ salary in compensation.....Kshs. 134,976
- b) 1 month’s salary in lieu of notice.....11,248
- c) Prorata leave.....4,125
- d) Salary for 10 days worked in February 2014.....3,937
- e) Salary underpayment for 6 months @ 3,248.....19,488

f) Overtime 3 hours per day.....243,000

g) Costs plus interest

The Respondent's Case

6. In her Statement of Response dated 29th April 2014 and filed in court on 30th April 2014, the Respondent admits having employed the Claimant as a house servant from 1st September 2013 until 10th February 2014.

7. While denying the Claimant's entire claim, the Respondent states that the Claimant absented herself from work on numerous occasions. The Respondent also accused the Claimant of using abusive language. The Claimant was therefore dismissed for gross misconduct. The Respondent avers that prior to the dismissal, the Claimant was issued with several warnings.

Findings and Determination

8. There are two (2) issues for determination in this case:

a) Whether the termination of the Claimant's employment was lawful and fair;

b) Whether the Claimant is entitled to the remedies sought

The Dismissal

9. In her Statement of Response, the Respondent states that the Claimant was dismissed on account of gross misconduct. However, in her testimony before the Court, the Respondent stated that the Claimant's employment came to an end upon resumption of duty by the Respondent's former house help, who had been away on maternity leave. No explanation was given for this apparent contradiction and no evidence was provided to support any of the grounds.

10. In the circumstances, the Court arrived at the conclusion that the Respondent had no valid reason for terminating the Claimant's employment, as required under Section 43 of the Employment Act. It was also evident that the Claimant was not given an opportunity to be heard prior to the termination, as provided under Section 41 of the Act.

11. The result is that the termination of the Claimant's employment was substantively and procedurally unfair and she is entitled to compensation.

Remedies

12. In light of the foregoing, I award the Claimant three (3) months' salary in compensation. In making this award, I have considered the Claimant's length of service as well as the Respondent's conduct prior to the termination.

13. In the final submissions filed on behalf of the Respondent, the claims for notice pay, leave pay and salary for 10 days in February 2014 are conceded. The claim for salary underpayment is also admitted.

14. The claim for house allowance, which the Claimant attempted to introduce in final submissions was not pleaded and is therefore not payable. The claim for overtime compensation was not proved and is dismissed.

15. Before pronouncing the final award in this matter, I need to deal with the question of the Claimant's employment period, which has a bearing on the tabulation of her claim. The Claimant states that she worked for the Respondent from 7th August 2013 until 11th February 2014. On her part, then Respondent

gives the Claimant's employment period as 1st September 2013 until 10th February 2014.

16. The law places the responsibility of documenting the employment relationship on the employer. In this case, the Respondent clearly failed to discharge this responsibility and the Court therefore invokes Section 10(7) of the Employment Act and adopts the Claimant's position with regard to her employment period.

17. In the end, I enter judgment in favour of the Claimant as follows:

a)	3	months'	salary	in	compensation.....	Kshs.	29,343		
b)	1	month's	salary	in	lieu	of	notice.....	9,781	
c)	Prorata	leave	pay	for	6	months	(9,781/30x1.75x6).....	3,423	
d)	Salary	underpayment	for	6	months	(1,781x6).....	10,686		
e)	Salary	for	10	days	in	February	2014	(9,781/30x10).....	<u>3,260</u>
Total.....							56,493		

18. This amount will attract interest at court rates from the date of judgment until payment in full.

19. The Claimant will have the costs of the case.

20. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 19TH DAY OF DECEMBER 2017

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JUDGE

Appearance

Mr. Kandere for the Claimant

Miss Karumba for the Respondent