



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 723 OF 2014
MARGARET LIHABI NGAIRA.....CLAIMANT
VERSUS
WINFRIDA NGUMU CHARLES.....RESPONDENT

JUDGMENT

1. The claimant herein avers that she was employed in April, 2013 by the respondent as a domestic worker at monthly pay of Kshs.8000/=.
2. She worked until 5th January, 2013 when her services were terminated. According to her on 22nd December, 2013 she was granted leave of absence to celebrate Christmas with her family but on 3rd January, 2014 the respondent called and asked when she was resuming duties. She avers that the dismissal was contrary to rules of natural justice and section 41 of the employment Act. She therefore sought an order for compensation by the Court.
3. The respondent entered appearance through the firm of D. W. Muyundo and Associates and filed a brief response to the claim which merely denied the claimants claim and put her to strict proof.
4. When the matter came for hearing, on 24th June, 2015 I allowed the claimant to proceed ex parte after I was convinced that the respondent was duly served.
5. At the hearing the claimant repeated most of the averments in her memorandum of claim. She stated that on 5th January, 2014 she was informed enroute to work that her services were not needed as the respondent had found someone else. According to her she was not given any reason for dismissal and had to look for a friend to provide her accommodation. The 2nd respondent further refused her entry to her premises to take her personal belongings and has never given her back her personal belongings.
6. Termination or dismissal from Employment has to be carried out in accordance with the Employment Act. That is to say an employer must have valid and justifiable reason for dismissal, the reasons and or justification must be reasonably communicated to the employee and his or her representations heard. Where termination or dismissal does not comply with the Act the Court will declare such termination unfair and dismissal wrongful.
7. The claimant in this suit has averred that she was dismissed from employment via a phone call while enroute back to work. No reason was offered by the respondents. The respondent offered none either in the pleadings or evidence in Court. The Court is therefore inclined to believe the claimant that there were

no reasons for her dismissal. The Court therefore pronounces the dismissal wrongful and the termination unfair and awards the claimant as follows:-

Kshs.

- a. On month's salary in lieu of notice.....8,000.00
- b. Pro rate pay for leave for 9 months worked
(15 days leave x 286).....4,290.00
- c. Five months salary for unfair dismissal.....40,000.00

52,290.00

d. Costs of the suit

8. The respondents shall issue the claimant with a certificate of service.

9. It is so ordered.

Dated at Nairobi this 5th day of February 2016

Abuodha J. N.

Judge

Delivered this 5th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge