



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 618 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 15th March 2016)

ESTHER VUJEDE LUMADEDE CLAIMANT

VERSUS

BENEDICTE TICHIT RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein filed his statement of claim dated 16th of April 2015 *via* Kituo cha Sheria.
2. The Claimant claims unfair dismissal and refusal by the Respondent to pay outstanding terminal benefits.
3. The Claimant's case is that she was employed by the Respondent as a House help/Ayah from the 6th of January 2014 via an oral contract of service.
4. The Claimant was to be paid a monthly basic salary of Kshs. 15,000.00, housing allowance equivalent to 15% of her basic salary that is Kshs. 2,250.00, and NSSF and NHIF remitted to the said bodies.
5. The Claimant avers that she faithfully and diligently discharged her duties, was paid her basic salary of Kshs. 15,000.00 but that the Respondent refused to pay the agreed sum of her house allowance, and remit her NSSF and NHIF dues.
6. The Claimant claims that she made several oral complaints and demands but to no avail which in turn created a frosty relationship between her and the Respondent which went on until the Respondent decided to summarily and orally dismiss the claimant on the 26th of January 2015.
7. The Claimant maintains that no explanation was forthcoming as to her dismissal and the Respondent simply told her that her services were no longer required.
8. The Claimant avers that she was issued with a summary dismissal letter dated 26th January 2015.
9. The Claimant argues that her dismissal was in breach of Section 41 of the Employment Act 2007, and Article 10, 41 and 47 of the Constitution Kenya.
10. It is also the Claimant's case that she was dismissed without being accorded a fair hearing which

- amounts to unfair labour practices contrary to section 41 (1) of the Constitution of Kenya and also went against the national principles of governance as enshrined in Article 10 of the Constitution of Kenya.
11. The Claimant argues that the decision to dismiss her is an unfair administrative action contrary to Section 35(1), 36 of the Employment Act 2007 as read with Article 47 of the Constitution of Kenya was not complied with by the Respondent.
 12. The Claimant avers that Section 41 and 45 of the Employment Act 2007 was blatantly breached by the Respondent while terminating the Claimant's employment, further that she breached Section 31 of the Employment Act, 2007 by failing to provide the Claimant employment.
 13. She states that she was never issued with a show cause letter, no hearing was ever conducted before her dismissal and her formal demand was never heeded.
 14. The Claimant avers that the Respondent failed to pay her terminal dues and be issued with a Certificate of Service prompting her to report the matter to the Nairobi City County Labour Office, where she was intimidated by the officer resulting in her approaching Kituo cha Sheria.
 15. She urges the Court to award her as claimed.
 16. The Respondent filed their Response to the Statement of Claim dated 18th of May 2015 via the firm of R. M Mochache & Company Advocates and denies the allegations made in the Claimant's Statement of Claim.
 17. The Respondent claims that the Claimant lodged a formal complaint against the Respondent at the County Labour Office Nairobi reference number ML/NBI/LD64/EAM/8/1/15 where the office determined that the Respondent deposited one month salary in lieu of notice Kshs. 15,000.00 together with half salary being in respect of service pay Kshs.7,500.00.
 18. She further states that the office deducted from the said amount the sum of Kshs. 20,000.00 being the salary advance admitted by the Claimant in a text message by the said Claimant to the Respondent on the 28th day of January 2014 at 1924 hours.
 19. The Respondent avers that the Claimant constantly asked for advances and financial assistance which she declined to have deducted from her monthly salary.
 20. The Respondent avers that out of her own good gesture, she regularly bought food and clothing for the Claimant's two children and granted her numerous paid leave days so that she may be able to spend valuable time with her children.
 21. The Respondent states that the Claimant's actions herein are opportunistic and intended to further take advantage of the Respondents' generous acts of philanthropy toward her and her family.
 22. The Respondent claims that when she paid the Claimant at the end of the month, she paid her additional sums for NHIF and NSSF as the Claimant had explained to her that she would make the remittances directly via Mpesa and she trusted her to do so.
 23. The Respondent denies dismissing her orally without any explanation and asks the Court to note that the Claimant has attached a certificate of Service herewith.
 24. The Respondent therefore prays for the Claim to be dismissed with costs.
 25. I have examined all evidence on record from both parties.
 26. It is not clear the circumstances under which the Claimant was dismissed but on 26/1/2015 the Respondents served her with a termination letter stating that she didn't trust her and could not therefore leave her with her baby. It is not clear what had transpired before this action was taken

because the Respondent only mentioned “what had transpired in their previous discussion” without any details.

27. In situations like this where the contract involves a delicate issue concerning a baby and where there is no trust, termination may follow but the law must be adhered to. The process of notice and a proper hearing should be given.

28. In this case, there is no proof that a hearing did occur as envisaged under Section 41 of Employment Act 2007.

29. I therefore find that the termination was unfair and I award the Claimant:

1. *1 months salary in lieu of notice = 15,000/=.*

2. *House allowance being 15% of salary x 13 months worked = 29,250/=.*

3. *Service pay for 1 month = 15 days salary = 7,500/=.*

4. *12 months salary as compensation for unlawful termination = 15 x 12 months = 180,000/=*

Total = 231,750/=

Plus costs and interest.

The Claimant should also be issued with a Certificate of Service.

Read in open Court this 15th day of March, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant in person – Present

No appearance for Respondent