



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 378 OF 2015

BETWEEN

FLORENCE KIVINZA NAJOLI ...
CLAIMANT

VERSUS

LATIFFA SAID KHALIFA ...RESPONDENT

Rika J

Court Assistant: Boniface Kombe

Mr. Anaya Advocate instructed by Matete Mwelese & Company Advocates for the Claimant

No appearance for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010

1. The Claimant filed her Statement of Claim, on the 10th June 2015. She states she was employed by the Respondent as her Domestic Help, on the 17th July 2011. She worked up to 16th April 2014 when the Respondent unfairly and unlawfully terminated her contract of employment.

2. Her starting salary was Kshs. 5,000. The Respondent reduced this to Kshs. 3,000. When the Claimant refused to take the lowered rate, her contract was terminated. She reported the dispute to the County Labour Office. The Respondent did not settle her Claim there, and she resorted to Court. She was never allowed to take her annual leave. She claims from the Respondent:-

- a. ***1 month salary in lieu of notice at Kshs. 5,000.***
- b. ***12 months' salary in compensation for unfair termination at Kshs. 60,000.***
- c. ***2 years accrued annual leave at Kshs. 10,000.***
- d. ***Gratuity at Kshs. 5,000.***
- e. ***16 days worked at Kshs. 3,076***
- f. ***Underpayment at Kshs. 2,000 per month at Kshs. 48,000.***

Total Kshs. 128,000

g) Certificate of Service, Costs.

2. There is an Affidavit of Service filed by a Court Process Server, showing the Respondent was served with the Court Summons. She did not enter appearance or file anything in response. She was notified of the hearing date and acknowledged service of the hearing notice, but did not show up for the hearing on the 29th October 2015. The Claimant gave her evidence, and closed her case, on this date.

3. The Claimant restated the contents of her Statement of Claim in her evidence.

The Court Finds:-

4. In the absence of any counterevidence, the Court is satisfied the Claimant was employed by Mrs. Latiffa, at a salary of Kshs. 5,000 per month. She worked as the Respondent's Domestic Help from 17th July to 16th April 2014. Mrs. Latiffa unilaterally slashed the Claimant's salary to Kshs. 3,000. The Claimant rightly refused this reduction. The Respondent terminated the Claimant's contract, and refused to make amends at the Labour Office, which compelled the Claimant to seek the assistance of the Court.

4. Termination was without valid reason, and did not follow fair procedure, as demanded by Sections 41, 43 and 45 of the Employment Act 2007. ***The Claimant merits compensation for unfair termination, which the Court grants at the equivalent of 6 months' salary, totaling Kshs. 30,000.***

5. ***The claims for notice pay at Kshs. 5,000; 16 days worked at Kshs. 3,076; and underpayment at Kshs. 48,000 are allowed as prayed.*** They have adequate support in law, and the evidence adduced by the Claimant. Similarly the Certificate of Service is granted by the law under Section 51 of the Employment Act 2007.

6. The claim for gratuity at Kshs. 5,000 was not explained to the Court. It was not shown what instrument; what law; wage order; or contract, allowed the Claimant to have 1 month salary in gratuity, for the 4 years worked. At the Labour Office, the Claimant asked for 3 years' service pay of Kshs. 14,670. She did not in her evidence, or in the Submissions filed by her Advocate, explain what gratuity of Kshs. 5,000 represented; whether this was the same thing as service pay; and if the same, why there is a discrepancy in the sums sought under the head, at the various dispute resolution platforms. This prayer is rejected.

7. Accrued annual leave again is computed on the basis of 2 years. The Claimant stated she never went on leave. Annual leave for the 2 unspecified years is calculated on the basis of 30 days' salary at Kshs. 5,000. The Claimant did not show that she was entitled to 30 days of annual leave. At the Ministry of Labour, the Claimant sought 21 days of annual leave. The Court is not convinced this prayer is merited.

IN SUM, IT IS ORDERED:-

[a] Termination was unfair.

[b] The Respondent shall pay to the Claimant 6 months' salary in compensation, at Kshs. 30,000.

[c] The Claimant is allowed notice pay at Kshs. 5,000; 16 days worked at Kshs 3.076; and underpayment at Kshs. 48,000.

[d] The total sum of Kshs. 86,076 shall be paid by the Respondent to the Claimant within 30 days of the delivery of this Award.

[c] The Respondent to avail to the Claimant her Certificate of Service forthwith.

[d] Costs, and interest at 14% per annum from the date of the delivery of this Award, till payment is made in full, granted to the Claimant.

Dated and delivered at Mombasa this 4th day of March, 2016

James Rika

Judge