



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2222 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 18th April 2016)

JOSEPHINE KILOTO MATOLO CLAIMANT

VERSUS

RAGOS TRADING COMPANY LIMITED RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant instituted the suit by way of Memorandum of Claim dated 3rd November 2012 through the firm of Namada & Company Advocates seeking orders against the Respondent for:
 - a. *A declaration that the dismissal of the Claimant from employment was unlawful and unfair and she is entitled to payment of her terminal dues and compensatory damages.*
 - b. *An order for payment of the Claimant's terminal dues and damages totaling Kshs. 203,400/=.*
 - c. *An order for the Respondent to pay costs of this suit plus interest thereon.*
2. The Memorandum is supported by the Verifying Affidavit of one Josephine Kilot Matolo.

Facts

3. The Claimant herein was employed by the Respondent as a General Labourer with a salary of KShs. 300 a day. On or about the 15th of February 2010, a Mr. Hussein one of the Respondents manager, called her into his office and for unexplained reasons, informed her that she had been dismissed from employment and her services were no longer required.
4. She was asked to hand over all company property in her possession and to leave the premises immediately.
5. The Claimant states that she reported the matter to her Union, The Kenya Union of Commercial Food & Allied Workers who wrote to the Respondents urging them to pay her dues but no response was forthcoming.
6. She states that in her dismissal the Respondent flouted key tenets of the rules of natural justice with reckless abandon failing to lay any charges against her or to give her an opportunity to defend

herself before dismissing her from employment. She was not granted a hearing.

7. She further states that the refusal by the Respondent to pay her terminal dues has put her in a very uncomfortable position. She tabulates her terminal dues:

i. ***One month's salary in lieu of Notice being Kshs. 300 x 30 days Kshs. 9,000.00***

ii. ***Pay in lieu of untaken leave for 6 years in service being Kshs. 9000 x 6.... Kshs. 54,000.00***

iii. ***Gratuity for every completed year of service being 18/30 x 9,000.00 Kshs. 32,400.00***

8. She further seeks compensation for the abrupt loss of income and trauma and inability to meet her continuing obligations as a result of which she greatly suffered at 12 months gross salary coming to Kshs.108,000.00.

9. In her submissions the Claimant reiterates that she was not given any notice, nor was she given a show cause letter before her dismissal. She was also not given a hearing .This was against the provisions of the law as envisioned in Section 41 of the Employment Act 2007.

10. She further submits that the employer must prove that the reason for termination is valid and fair but also that the employment was in a fair manner. She relies on the case of **William Opetu versus Patel Cause no 909 of 2011** where the respondent did not controvert the Claimants evidence, or offer alternative reason for termination of the Claimants employment, and the Judge Lady Justice Ndolo found that the termination of her employment was unfair within the meaning of Section 45 of the Employment Act, 2007.

11. She also submits that she did not go on leave and was not paid sums in lieu of leave, further, her NSSF and NHIF was not remitted for the entire period that she worked for the Respondent and prays that these sums be awarded by the court.

Respondents case

12. The Respondent filed their replying memorandum on the 18th of February 2013.

13. They deny that the Claimant was employed as a general labourer but was employed as a production mechanist from 9th of November 2009 until January 2010 on a three month contract. She was entitled to and was paid a monthly salary of KShs. 6,130.00 and a housing allowance of Kshs. 1,000.00. They have attached a copy of her contract of employment duly signed by the claimant and a copy of her ID.

14. They also deny that they employed her as from February 2005 as the Respondent company was incorporated in February of 2008 and they have attached a copy of the certificate of incorporation.

15. They deny that the termination of her employment was unlawful as her contract was set to expire on January 10th of 2010. They further state that they paid her terminal dues amounting to Kshs. 1500.00 and attach a copy of the petty cash receipt.

16. They called one witness Mr. Mohammed Isack Abdi the managing director of the company who reiterated the contents of their memorandum affirming that she only spent the 3 months in their employ.

17. They submit that the claimant is not entitled to any of the reliefs she seeks as she was not engaged by the Claimant for a period of more than 3 months. Her termination was not unlawful and accordingly the reliefs pleaded should fail in their entirety.

18. Having considered the evidence of both parties, the issues for determination are as follows:

1. *When the Claimant was engaged by the Respondents.*
2. *How the Claimant was terminated if at all and the circumstances under which she left the employment of the Respondent.*
3. *Whether the Claimant is entitled to prayers sought.*

19. The Claimant has stated that she was employed by the Respondent in February 2005 to 15th February 2010. She states that she had no letter of appointment.

20. The Respondents deny ever employing the Claimant in 2005 and state that they were incorporated in 2008 as per their Appendix 2. Appendix 2 shows the certificate of incorporation of the Respondent dated 26/6/2008 and therefore it is upon the claimant to disprove this. If at all the Claimant worked for Respondent before 2008, then that must have been a different entity.

21. The Claimant's contract of employment dated 9.11.2009 – Appendix 1 shows that she was employed on 9.11.2009 for a period of three months. This contract is signed by the Claimant and the Claimant in her evidence admitted signing it.

22. With the evidence of the Respondent uncontroverted it is apparent that the Claimant worked for Respondent from November 2008 and her contract ended in January 2010.

23. There is no proof of any other engagement after January 2010 and evidence points to the fact that the Claimant's employment ended due to effluxion of time and the assertion by the Claimant that she was dismissed does not hold any water.

24. After the contract ended, the Claimant states that she was paid 1,500/= under that contract which she also admits.

25. It is therefore apparent that the Claimant has not proved her case as required. I dismiss it accordingly with costs to the Respondents.

Read in open Court this 18th day of April, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent