



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO 659 OF 2014
VIOLET VUGUTSA ODENYI.....CLAIMANT
VS
MANOJ CHUDASAMA.....RESPONDENT

AWARD

Introduction

1. The Claimant's claim brought by Statement of Claim dated 16th April and filed in Court on 17th April 2014 is for wrongful dismissal and failure to pay terminal dues. The Respondent filed a Statement of Defence on 23rd May 2014. Both parties gave sworn evidence and thereafter filed written submissions.

The Claimant's Case

2. The Claimant was employed by the Respondent as a house help at a monthly salary of Kshs. 6,000 effective 3rd June 2008. On 17th February 2014, the Claimant reported for duty but was locked out by the security guard manning the gate. The Claimant called the Respondent on phone who told her that she had been dismissed. She was not paid her terminal dues.

3. The Claimant states that for the entire period of her employment with the Respondent, she was not paid house allowance. Further, she was underpaid in the year 2013. It is the Claimant's case that the termination of her employment was unlawful and unfair. She claims the following:

- a. A declaration that the termination of her employment was wrongful and unfair
- b. 12 months' salary in compensation for unlawful termination
- c. One month's salary in lieu of notice.....Kshs. 8,780.00
- d. Salary for 10 days worked in February 2014.....4,390.38
- e. Prorata leave for 8 months.....4,728.00
- f. Underpayment.....64,980.00
- g. Severance pay.....30,395.59

h. House allowance.....105,360.00

i. Certificate of service

j. Costs

The Respondent's Case

4. In his Statement of Defence dated 22nd May and filed in Court on 23rd May 2014, the Respondent admits having employed the Claimant as a house help but states that her salary was Kshs. 8,000. The Respondent further states that the Claimant was summarily dismissed for theft, a matter that was reported to the local Chief and the Police. The Respondent also accuses the Claimant of insubordination and indiscipline.

5. The Respondent denies owing the Claimant any money in terminal dues. The claim for underpayment is specifically denied.

Findings and Determination

6. There are two 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 Termination

7. In his Statement of Defence the Respondent states that the Claimant was summarily dismissed for stealing his personal effects. In his testimony however, he told the Court that the Claimant deserted duty. No explanation was given for this obvious contradiction and the Court arrived at the conclusion that the Respondent was not telling the truth and rejected his evidence.

8. Consequently, the Court adopts the Claimant's evidence that she was dismissed without a justifiable cause and without due notice. This flies in the face of Section 45 of the Employment Act, 2007. Additionally, the Claimant was not subjected to any disciplinary process as required under Section 41 of the Act and the dismissal was therefore procedurally unfair.

9. Significantly, the Respondent admitted in cross examination that he reported to the Police about the alleged theft by the Claimant on 22nd February 2014, after the Claimant had left his employment. On this account, the Court formed the opinion that the allegations of theft were aimed at intimidating the Claimant. This amounts to an unfair labour practice that must be firmly discouraged.

10. Overall, the Court finds that the termination of the Claimant's employment was substantively and procedurally unfair and she is entitled to compensation.

Remedies

11. Before addressing the issue of the remedies available to the Claimant, I need to make a determination on her salary as at the time she left the Respondent's employment. The Claimant testified that her monthly salary was Kshs. 6,000. On his part, the Respondent stated that he paid the Claimant a monthly salary of Kshs. 8,000 which was inclusive of house allowance.

12. In support of his case, the Respondent produced some salary vouchers ostensibly signed by the Claimant. The Claimant denied ever having been issued with any salary vouchers and denied the signature attributed to her. The Respondent admitted in cross examination that the signature appearing on the salary vouchers is different from the Claimant's signature appearing on her the verifying affidavit.

13. I have already stated that this Court disbelieves the Respondent's evidence and this, coupled with the apparent difference between the Claimant's signature appearing on her affidavit and the one appearing on the salary vouchers leads to the inescapable conclusion that the salary vouchers exhibited by the Respondent are forgeries meant to mislead the Court. As a result, the Court adopts the figure of Kshs. 6,000 as the Claimant's salary as at the time of her leaving the Respondent's employment.

14. That settled, I now proceed to award the Claimant twelve (12) months' salary in compensation for unlawful and unfair termination of employment. In making this award I have taken into account the Claimant's length of service as well as the Respondent's conduct in the termination transaction and more importantly his deliberate attempt to mislead the Court by rendering conflicting evidence.

15. I further award the Claimant one (1) month's salary in lieu of notice as well as salary for 17 days in December 2014. The Respondent did not produce any leave records to counter the claim for leave pay which therefore succeeds and is allowed. By the Respondent's own admission, he did not remit any National Social Security Fund (NSSF) contributions on the Claimant's account and she is therefore entitled to service pay.

16. With regard to the claim for underpayment in the year 2013, the Court has looked at the Regulation of Wages (General) (Amendment) Order, 2013 which fixed the basic minimum wage for house servants at Kshs.9,780.95. To this figure the Court loads the sum of Kshs. 1,467 as house allowance and adopts the cumulative figure of Kshs. 11,248 as the Claimant's monthly salary for purposes of this claim.

17. Finally I make an award in favour of the Claimant in the following terms:

a) 12 months' salary in compensation.....Kshs.	134,976
b) 1 month's salary in lieu of notice.....	11,248
c) Salary for 17 days in February 2014.....	6,374
d) Prorata leave for 8 months (11,248/30x1.75x8).....	5,249
e) Service pay for 5 completed years (11,248/30x15x5).....	28,120
f) Underpayment in 2013 (9,780.95-6,000x12).....	45,371
g) House allowance for 67 months (1,467x67).....	<u>98,289</u>
Total.....	329,627

18. I further direct the Respondent to issue the Claimant with a certificate of service. The Claimant will have the costs of this case. The award amount will attract interest at court rates from the date of the award until payment in full.

19. These are the orders of the Court.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 15TH DAY OF APRIL 2016

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JUDGE

Appearance:

Mr. Khalwalwe for the Claimant

Mr. Njuguna for the Respondent