



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 620 OF 2014

FAITH WAITHAKA.....CLAIMANT

VERSUS

FLEXENCLOSURE KENYA LIMITED..... RESPONDENT

JUDGMENT

1. This suit proceeded ex parte after the Court was reasonably persuaded that the respondent though served, failed to enter appearance and file a defence.
2. According to the claimant, she was employed by the respondent in August, 2010 as a Bid Engineer at a salary of USD3000 per month. She worked until 19th November, 2013 when she claimed the respondent terminated her services without any lawful excuse.
3. In her evidence in Court the claimant stated that after working for the respondent for 2 ½ years she went on maternity leave. When she returned she was moved to sales. According to her, the sales had commission plan contract which she signed. According to the commission sales plan she had a target of USD 8 million a year. It was her evidence that she was entitled to leave but did not take leave since she had just returned from maternity leave.
4. It was her evidence that her immediate boss on 19th November, 2013 told her the company was restructuring and that her position would be redundant. She was issued with a letter to that effect but she refused to sign for it since she did not agree with it.
5. It was her evidence that she reported the issue to the Ministry of Labour who told her they were not informed of the redundancy. She was not paid her terminal dues when she was declared redundant.
6. Section 40 of the Employment Act makes provisions for declaration of redundancy. The respondent neither entered appearance nor filed a defence which could have probably rebutted the claimant's assertions. The Court therefore only has the claimant's evidence.
7. Redundancy is a form of termination of employment and where it is done contrary to the provisions of the Act the Court will declare such termination unfair.
8. The Court therefore awards the claimant as follows:-

- One month's salary in lieu of notice.....3,000
 - a. Eight months salary for unfair termination
of services.....24,000
 - b. Untaken leave for 21 days.....3,000
- USD 30,000

c. Costs of the suit.

9. It is so ordered.

Dated at Nairobi this 8th day of April 2016

Abuodha J. N.

Judge

Delivered this 8th day of April 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge