



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 66 OF 2016

JOTHAM NYAMIKA OSEKO.....CLAIMANT

-VERSUS-

JULIE MUTHONI GITHINJI.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th July, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 05.04.2016 through Gori, Ombongi & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. General damages 12 months' salaries for unlawful termination Kshs. 126, 000.00.
- b. Arrears for December Kshs. 1, 200.00.
- c. Arrears for January Kshs. 700.00.
- d. Monthly Salary for February Kshs. 10, 500.00.
- e. Days worked in March Kshs. 1, 750.00.
- f. Overtime dues Kshs. 12, 800.00.
- g. Interest on a, b, and d above till payment in full.

The memorandum of defence was filed on 16.05.2016 through Peter M. Muthoni & Company Advocates. The respondent prayed for the dismissal of the entire suit with costs.

The claimant testified that he was employed by the respondent and worked for 3 months being December 2015, January 2016 and February 2016. On 05.03.2016 the claimant testified that the respondent terminated his employment because he had requested for a letter of appointment. The respondent then authored a short message to the claimant's cell phone that the claimant leaves employment. The claimant showed the court the message the claimant had received from the respondent's cell phone no. 0722 719978 and which the claimant confirmed to be her number. The message had been received on 20.03.2016 at 1343 Hrs. the claimant testified that his monthly pay was Kshs. 10, 500.00. The claimant confirmed that he stayed at his uncle's house and who was housed by the respondent's mother (the

claimant's uncle being the employee of the respondent's mother). The claimant's case was that he was paid by installments and in cash without any record or documentation and he was owed by the respondent as claimed in the memorandum of claim.

The respondent's case was that the claimant was housed by his uncle at the respondent's home because the uncle was employed by the respondent's family as a guard. The respondent assigned the claimant casual work on and off at Kshs.250.00 per day. The claimant worked for the respondent, according to the respondent's testimony, in December 2015, January 2016 and February 2016 and that the claimant was paid all his wages. The respondent dismissed the claimant because work was going down and she admitted making the short message the claimant had showed the court. Further the respondent testified that she fired the claimant because the claimant refused to follow her instructions. In a contradictory fashion, the respondent testified that the claimant was a good worker as she liked the claimant's job. The respondent testified that she kept no records when she paid the claimant.

The only issue for determination is whether the claimant is entitled as prayed for. The court has considered the evidence on record, the pleadings and the submissions and makes findings as follows:

a. The respondent has admitted sending to the claimant the cell phone short message thus, **“Nyamiaka, your lack of respect to my work and the people you're working with is wrong. It saddens me that you're behaving in this manner. I don't think you are pleased with the job you are doing! Today is 5th March, I owe you February salary plus Sh. 700.00 balance including overtime for days worked beyond specified working hours which I will work out. I will make sure by 10th you'll have received full payment of what I owe you. Otherwise, please leave now.”** The evidence shows the message was sent on 20.03.2016 at 1343Hrs but the body of the message shows it was authored on 05.03.2016. Nevertheless, taking all the evidence into account the court returns that the claimant's employment was terminated on 05.03.2016 by the short message on the cell phone being the date the respondent authored the message.

b. In view of the short message on the cell phone and in absence of any further documentation on the dispute, the court returns that the claimant has established, on a balance of probabilities, that he is entitled to monthly salary for February, 2016 Kshs. 10, 500.00; 5 days worked in March 2016 Kshs. 1, 750.00, overtime of 8 days Kshs. 12, 800.00. Arrears for December 2015 and January 2016 were not mentioned in the short message and on a balance of probabilities the court returns that the claimant is not entitled to the arrears as claimed.

c. The reason for termination of the claimant's employment was not clear as per the respondent's evidence and the court returns that the termination was unlawful and unfair under section 43 of the Employment Act, 2007. The court has considered that the parties had been in employment relationship for roughly 3 months and the court returns that a month's pay of Kshs. 10, 500.00 will meet the ends of justice in this case.

In conclusion judgment is hereby entered for the claimant against the respondent for:

1. The respondent to pay the claimant Kshs.35, 500.00 by 01.09.2016 failing interest to be payable at court rates from the date of the suit 05.04.2016 till full payment.
2. The respondent to pay the costs of the suit.

Signed, dated and delivered in court at Nyeri this **Friday, 29th July, 2016.**

BYRAM ONGAYA

JUDGE