



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 76 OF 2016

(Before D. K. N. Marete)

STELLA CHEPKOECH TANUI.....CLAIMANT

VERSUS

RAPID SECURITY LIMITED.....RESPONDENT

JUDGEMENT

This matter was originated by way of an undated Statement of Claim.

The issue in dispute is therein cited as;

“wrongful dismissal/unfair termination.”

The respondent in a Respondent Statement of Defence dated 29th April, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that she was engaged by the respondent on 13th February, 2015 as a day security officer – Guardette at a basic salary of Kshs. 4,000.00 per month exclusive of housing allowance. She continued and in April and May 2015 her salary was increased to Kshs. 5,500.00, again, exclusive of house allowance.

In June, 2015, this was increased to Kshs. 7,000.00 whereas Legal Notice No. 117 of 2015 called for Kshs. 10,954.70.

The claimant's further case is that she did work tirelessly and diligently to promote the interest of the respondent. Her further case is that on 5th May, 2015 she fell ill at her workplace and was taken to hospital by a relative on failure of the respondent to do the same. She incurred a hospital bill of Kshs. 2,200.00 which amount has not been reimbursed by the respondent to date. She did not take leave nor was she compensated for overtime hours worked during her one year of employment.

On 9th March, 2016, her services were terminated on grounds of reporting to work after four days hospitalisation. This was done in the presence of her supervisor and the operations manager. This is contrary to the convention No. 158 and also an infringement of her employment rights and privileges.

She claims as follows;

Basic Salary as at Termination – Kshs. 7,000.00/=

1. Days worked in March, 2016 and Not paid:

8 days x 8.6 hrs x 10,954.70 x 1.15/ 225.3 A.H.P.A = Kshs. 3,8476.00

2. Under payments

a) Legal notice No. 197 of 2013 (Kshs. 9,780.95/=)

FebruaryMarch

2015

(i) Basic salary earned; Kshs. 4,000.00/=

$(9,780.95 \times 1.15 - 4,000.00) \times 2 \text{ months} = \text{Kshs. } 14,496.20$

(ii) April, 2015

Basic salary earned; Kshs. 5,500.00/=

$(9,780.95 \times 1.15 - 5,500.00) \times 1 \text{ months} = \text{Kshs. } 5,748.20$

(iii)May, 2015

Basic salary earned; Kshs. 5,500.00/=

$(10,954.70 \times 1.15 - 5,500.00) \times 1 \text{ months} = \text{Kshs. } 7,097.90$

b) Legal Notice No., 117 of 2015 (Kshs. 10,954.70)

June, 2015 – March, 2016

Basic salary earned: Kshs. 7,000.00/=

$(10,954.70 \times 1.15 - 7,000.00/=) \times 11 \text{ months} = \text{Kshs. } 61,576.95$

3. Overtime worked and not paid @ one and half times

a) Legal Notice No. 197 of 2013: Kshs. 9,780.95/=

February April, 2015

(i)Normal Hour rate @ 1 1/2 hrs

$220.1 \text{ hrs} \times 8,780.95 \times 1.5/225.3 \text{ A.H.P.A} = \text{Kshs. } 14,332.80$

(ii) Rest/Holidays @ Double rate (2 hrs)

$132 \text{ hrs} \times 9,780.95 \times 2/225.3 \text{ A.H.P.A} = \text{Kshs. } 11,461.00$

b) Legal Notice No. 117 of 2015 (Kshs. 10,954.70)

May, 2015 – March, 2016

(i) Normal Hourly rate @ 1 1/2 hrs

$883.2 \text{ hrs} \times 10,954.70 \times 1.5/225.3 \text{ A.H.P.A} = \text{Kshs. } 64,415.40$

(ii) Rest/Holidays @ Double rate (2 hrs)

$624 \text{ hrs} \times 10,954.70 \times 2/225.3 \text{ A.H.P.A} = \text{Kshs. } 60,681.15$

4. Accrued annual leave @ 26 working days per year

$26 \text{ days} \times 10,954.70 \times 1.15 \times 1\text{yr} \times 8.6 \text{ hrs}/ 225.3 \text{ A.H.P.A} = \text{Kshs. } 12,502.85$

5. Leave travelling allowance for 3 yrs worked

$(3,000.00 \times 1) = \text{Kshs. } 3,000$

6. Half kilogram quality laundry soap per month at Kshs. 60.00/=

$60.00 \times 12 \text{ months} \times 1 \text{ yr} = \text{Kshs. } 720/=$

7. Uniform reimbursement

$1 \text{ pair at kshs. } 4,500/= = \text{Kshs. } 4,500/=$

8. Medical claim/reimbursement

$700.00 + 1,500.00 = \text{Kshs. } 2,200$

9. One month pay in lieu of Notice

$10,954 \times 1.15 \times 1 \text{ month} = \text{Kshs. } 12,597.90$

10. 12 months compensation for wrongful dismissal/unfair/termination

$10,954.70 \times 1.15 \times 12 \text{ months} = \text{Kshs. } 151,174.85$

GRAND TOTAL AMOUNT = Kshs. 430,352.10

She prays for a declaration and orders as follows;

1. That, the termination of the employment of the Claimant herein on account of illness was unfair, unlawful and illegal, hence, NULL and

VOID.

2. That, the respondent pays the claimant herein the sum of Kshs. 430,352.10 as tabulated at paragraph 10 hereinabove.

3. That, the respondent pays the claimant herein compensation for the lost income at the rate of Kshs. 12,507.90/= per month respectively,

from the 8th March, 2016, the effective date of the wrongful dismissal and/or unfair termination of her employment service, to the date of judgement of this suit.

4. That the respondent pays interest on the total amount at court rates.

5. That the respondent pays a twenty percent (20%) interest on the award every month until settlement is cleared.

6. That, the respondent issue the claimant herein with “Certificate of Service” within the mandatory provisions of Section 51 of the Employment Act, No. 11 of 2007, Laws of Kenya.

7. That, cost of this suit be provided for by the respondent.

The respondent denies the claim and ever having employed the claimant as alleged in the terms and or conditions, in the manner and style pleaded in paragraph C (1) – (6) of the Memorandum of Claim.

The respondent’s further case is that if the claimant ever fell ill, which is denied, the respondent complied with the law by facilitating her medication as follows;

a) Relieving her of her duties on 5th March, 2016 to seek medical attention.

b) Issuing her with a dispatch note to allow her seek medical attention and return to work once she was able to do so.

c) Assigning another guard to her work station immediately she reported that she was unwell.

d) Directing her to submit hospital bills once treated for reimbursement.

The respondent’s further case is that;

a) On 8th March, 2016; the claimant reported to the office of the respondent alleging that she had been admitted at Mbagathi hospital for 4 days and was not ready for redeployment.

b) The claimant was requested to go back to the hospital and retrieve a sick sheet and discharge letter so as to be further assisted.

c) On 9th March, 2016; the claimant reported back with a sick sheet dated 8th March, 2016 and stated that she had lost the discharge letter and was once again requested to go back to the hospital and get a copy.

d) On 10th March, 2016; the claimant went straight to her work station at Rangchem Mitihani House and took all her belongings including her work uniform.

e) The claimant voluntarily and knowingly deserted her duties.

The respondent’s other case is that the claimant is the author of her predicament by desertion of duty. Besides, the claim arose in Nairobi and therefore raises issues of geographical jurisdiction that would be raised at trial. In sum, she deems the claim as vexatious, frivolous and an abuse of the process of court which should be dismissed with costs.

The matter came to court on 23rd June, 2016 when the claimant in the absence of the respondent agreed on a disposal on the basis of the pleadings on record.

The issues for determination therefore are;

1) Whether the termination of the employment of the claimant was wrongful, unfair and unlawful?

2) Whether the claimant is entitled to the relief sought?

3) Who bears the costs of the claim?

The 1st issue for determination is whether the termination of the employment of the claimant was wrongful, unfair and unlawful. The respective cases of the parties are antagonistic on this. The claimant in support of her case adduces several annexures in support of the claim but does not at all offer any annexure or other evidence in support of the open and contentious issues of this dispute.

She does not shed light on her illness and medication or even termination of employment.

The respondent disputes the analogy of the claim and in defence sets out a case of mistrust, misconduct and desertion of duty by the claimant. This is not disputed, addressed or in any way answered by the claimant. Instead, she chooses to go by the pleadings before court. I find that on the basis of what is presented in these pleadings, the claimant has not brought out and proven a case of unfair termination of employment by the respondent. This is because despite the respondent's version of events leading to termination, she keeps mum and does not controvert the same. I therefore find a case of lawful termination of employment and hold as such.

On a finding of lawful termination of employment at issue number 1 above, the claimant is not entitled to the relief sought.

I am therefore inclined to dismiss the claim with costs to the respondent. And this answers all the issues for determination.

Delivered, dated and signed this 19th day of July 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Claimant in person.
2. Onsongo & Company Advocates for the respondent.