



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 20 OF 2015**

**VERONICA WANGUI NDERITU.....CLAIMANT**

**VERSUS**

**JIKAZE TRADERS SACCO SOCIETY LTD.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 1<sup>st</sup> July, 2016)

**JUDGMENT**

The claimant filed the memorandum of claim on 18.02.2015 through Kimunya & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the termination of the claimant was unlawful.
- b. Damages for wrongful dismissal.
- c. Kshs. 10, 500.00 being unpaid salary for January 2015.
- d. Gratuity for 3 years served Kshs. 31, 500.00.
- e. One month salary in lieu of notice Kshs. 10, 500.00.
- f. Salary underpayments for the period worked.
- g. Unpaid house allowance Kshs.56, 700.00.
- h. Unpaid leave for 2014 Kshs. 10, 500.00.
- i. Deductions for NSSF not submitted Kshs.60, 000.00.

The respondent filed the statement of defence on 18.03.2015 through Nderitu Komu & Company Advocates. The respondent opposed the suit.

The claimant's case is that she was employed by the respondent since 06.02.2012 and she became confirmed as a permanent employee from 24.11.2012 to 28.01.2015. She was employed as a general clerk. Upon initial appointment, she served for 6 months' probationary service.

In December 2014 the claimant testified that she applied for annual leave. The leave was denied but later in January 2015 she was given annual leave from 19.01.2015 to report back in February 2015. On Thursday 28.01.2015 while on annual leave she found a letter at the door steps at her residence. The letter was by the respondent conveying that the claimant had been dismissed from employment. The letter dated 28.01.2015 stated thus, **“Due to unavoidable circumstances and financial constraints the entire board of management/ supervision committee members JIKAZE SACCO SOCIETY LTD have unanimously decided to terminate your employment (services) from JIKAZE SACCO SOCIETY LTD w.e.f from 30<sup>th</sup> January 2015. A month's salary will be given in lieu of notice. Thank you for the services you have rendered to the Sacco.”** The letter was signed by John K. Ndegwa, the respondent's Chairman.

At termination the claimant earned Kshs. 10, 500.00 per month plus an allowance of Kshs. 500.00 and as general clerk she performed secretarial duties of typing, book keeping, cleaning the office and working with the respondent's auditors. As of her own knowledge, the claimant testified that she was not aware of the respondent's financial difficulties as was alleged in the termination letter. The last share capital had been Kshs. 3, 200, 000.00 and the last declared dividend was 7% so that the reason for the termination was not genuine. The claimant stated that she knew another person called Lilian was employed to replace her. The claimant further testified as follows:

- a. That she was not paid house allowance throughout her service and the respondent did not provide housing accommodation.
- b. She was paid Kshs. 500.00 being tea allowance plus Kshs.10, 500.00 being salary per month. Some payment vouchers stated the allowance as such tea allowance while others simply referred to it as allowance.
- c. She was not paid January 2015 salary as well as one month pay in lieu of notice.
- d. She claimed leave days due but not taken. She claimed one day for 2013 and 21 days for 2014.
- e. Prayer on NSSF was withdrawn because the same had been paid or remitted.
- f. The salary paid at end month was agreed upon between the parties.

The **1<sup>st</sup> issue** for determination is whether the termination of the contract of employment was fair. The respondent's witness RW conceded that there was no time to give notice. The alleged reason for termination being difficult financial times has not been shown to have existed. The relevant financial statements were not filed or produced to show the alleged financial statement. The court returns that the procedure for termination on account of redundancy under section 40 of the Employment Act, 2007 was not followed at all. Further, the reason for termination as envisaged in section 43 of the Act is found to have been invalid – there is no reason to discredit the claimant's evidence that at all material time the respondent's financial position was sound. The court returns that the termination was unfair for want of due process and a valid reason. The court has considered that the claimant was the respondent's founder staff, she served with dedication and she was keen to continue in employment. The court has noted the aggravating circumstance whereby the respondent mistreated the claimant by denying her annual leave and then sacking her during a forced leave without due notice and preparation. She is awarded **Kshs. 132, 000.00** being 12 months' gross salaries at Kshs. 11, 000.00 per month.

The **2<sup>nd</sup> issue** for determination is whether the claimant is entitled to the other remedies as prayed for. The court makes findings as follows:

- a. The claimant is entitled to **Kshs. 10, 500.00** being unpaid salary for January 2015 as the same has not been shown to have been paid.
- b. The prayer for gratuity for 3 years served Kshs. 31, 500.00 and NSSF not remitted Kshs.60, 000.00 were dropped and the claimant is not entitled accordingly.
- c. The claimant is entitled to a month's salary in lieu of termination notice **Kshs. 10, 500.00**.
- d. The salary underpayments for the period worked was not specifically quantified in the pleadings and was not established because evidence by both parties was that the amount paid per month was the agreed payment.
- e. The claim for unpaid house allowance Kshs.56, 700.00 was not justified as it was unfounded as the monthly pay was agreed upon and the court finds that it was paid as agreed consolidated monthly pay and all inclusive.
- f. The claimant is entitled to unpaid leave for 2014 **Kshs. 10, 500.00**.

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

1. The declaration that the termination of the claimant's employment by the respondent was unfair and unjustified.
2. The respondent to pay the claimant a sum of **Kshs. 163, 500.00** by 01.09.2016 in default interest to be payable thereon at court rates from the date of this judgment till full payment.

3. The respondent to pay the claimant's costs of the suit.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 1<sup>st</sup> July, 2016**.

**BYRAM ONGAYA**

**JUDGE**