



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 397 OF 2014**

**ROSE BILHA**  
**WATIRI.....CLAIMANT**

**VERSUS**

**KIMANI OPERATIONS**  
**LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. This action is brought by the Claimant, Rose Bilha Watiri against her former employer, Kimani Operations Limited. The claim is contained in a Memorandum of Claim dated 13<sup>th</sup> March 2014 and filed in Court on even date.

2. The Respondent filed a Memorandum of Defence on 1<sup>st</sup> August 2014. At the hearing, the Claimant testified on her own behalf and Michael Kamau Kimani testified for the Respondent.

**The Claimant’s Case**

3. The Claimant was employed by the Respondent on 1<sup>st</sup> December 1994 initially as a Caretaker and later as a Supervisor. She was not given a letter of appointment.

4. The Claimant worked for the Respondent until 30<sup>th</sup> April 2013 when her employment was terminated. She states that there was no valid reason for the termination and that the Respondent did not observe due process.

5. The Claimant reported a dispute at the Ministry of Labour upon which the Respondent made some payment to her. She now claims the following:

- a. Balance of severance pay due.....Kshs. 28,500.00
- b. 3 months’ salary in lieu of notice.....57,000.00
- c. Balance of leave days due.....172,900.00
- d. Overtime (inclusive of public holidays).....1,180,988.64
- e. 12 months’ salary in compensation.....228,000.00

f. Costs plus interest

### **The Respondent's Case**

6. In its Defence filed on 1<sup>st</sup> August 2014, the Respondent denies having employed the Claimant in 1994, stating that the Claimant was initially employed as a casual labourer at its construction sites. From 2011, the Claimant was employed on a continuous basis.

7. The Respondent denies that the Claimant ever worked as a supervisor and states that she performed odd jobs such as cleaning and caretaker assignments.

8. The Respondent states that following conciliation meetings at the Ministry of Labour the Claimant was paid all her dues which she acknowledged and thus discharged the Respondent from any further claims.

9. The Respondent states that the Claimant was terminated after she was implicated in theft of trappers worth Kshs. 1 million. Upon interrogation by the Respondent and the police, the Claimant was unable to defend herself.

### **Findings and Determination**

10. There are three issues for determination in this case:

a. Whether the Claimant's claim was extinguished by the conciliation agreement reached at the Ministry of Labour;

b. Whether the termination of the Claimant's employment was lawful and fair;

c. Whether the Claimant is entitled to the remedies sought.

### **Conciliation Agreement**

11. In its pleadings and submissions, the Respondent states that the Claimant's claim was fully settled at the Ministry of Labour. The Claimant herself told the Court that she reported a dispute at the Ministry of Labour. She also produced an agreement dated 12<sup>th</sup> August 2013 between herself and the Respondent with the County Labour Officer, Nyayo House as a witness. Pursuant to this agreement the Claimant executed a form of discharge on 23<sup>rd</sup> September 2013.

12. The law recognises conciliation as a critical process in the adjudication of employment and labour disputes. Specifically, Section 47(1)&(2) of the Employment Act, 2007 provides for resolution of employment disputes before a Labour Officer. Further, the Constitution of Kenya at Article 159(2)(c) enjoins the Court to promote alternative dispute resolution.

13. The Court was referred to the decision by **Rika J** in **Jane Maureen Mbuya Okedi v United (EA) Ware House Limited [2015] eKLR** where the Claimant's claim was struck out because she had voluntarily submitted herself to conciliation where an agreement was reached.

14. Faced with a similar situation in **Elizabeth Wanjiru Njogu v Kangei and Nyakinyua Building Co. Ltd (Cause No 385 of 2011)** this Court stated as follows:

***“A party who voluntarily submits himself to ADR and even reaps the benefits thereof cannot come to Court and question the process if they did not take issue during the process. The Court will only interfere with the process and/or outcome of ADR if manifest miscarriage of justice has occurred or where the Constitution or any written law has been contravened.”***

15. I have looked at the case now before me and find that the Claimant voluntarily subjected herself to

conciliation before a duly appointed Conciliator. The conciliation ran full circle and the Claimant was compensated. To interfere with the outcome of the conciliation to which both parties consented would be to render the constitutional and statutory provisions on ADR wholly ineffective.

16. In light of the foregoing findings, the Claimant's' claim is dismissed with no order for costs.

17. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS**

**14<sup>TH</sup> DAY OF OCTOBER 2016**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Enonda for the Claimant

Mr. Kuria for the Respondent