



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 51 OF 2015

GRACE WAITHERA HUNGLI.....CLAIMANT

VERSUS

RILEY SERVICES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 4th November, 2016)

JUDGMENT

The claimant filed the statement of claim on 24.03.2015 through Gori, Ombongi & Company Advocates. The claimant prayed for judgment against the respondent for:

- (a) Terminal benefits of Kshs.201, 206.00 being refund for deduction of uniform for 6 months Kshs. 6,000.00; 3 months pay in lieu of the termination notice Kshs. 30, 822.00; salary arrears from December 2014 to March 2015 Kshs. 41, 096.00; and 12 months' pay for compensation Kshs. 123, 288.00.
- (b) Costs of the suit.
- (c) Interest on (a) and (b) above.

The response and counterclaim was filed on 19.06.2015 through Obura Mbeche & Company Advocates. The respondent counterclaimed for payment of Kshs. 8, 629.92 being pay in lieu of resignation notice and for dismissal of the claimant's statement of claim with costs.

The claimant was employed by the respondent on renewable annual contract as a guard and the first of such renewable contract was for June 2013 to June 2014. The last of such annual contracts was for June 2014 to June 2015. The respondent lost a contract to supply security services to the judiciary sometimes in December 2014. It was the claimant's case that she was thereby asked to leave employment on 07.01.2015. She was not given pay for December 2014 and she handed over as was required of her by the respondent. The claimant testified that she would not agree to continue in the respondent's employment even if the respondent had offered her a job at the time of the hearing of the case. The claimant stated that she had not declined redeployment from Nyeri.

The respondent's case, as per the respondent's witness (RW), was that the claimant was employed on 31.12.2004 following a security service contract between the judiciary and the respondent. The claimant was deployed at the Law Courts in Nyeri. Upon the lapsing of the security contract with the judiciary, the respondent arranged to redeploy all its affected employees but the claimant declined to take up the redeployment. Thus the claimant opted to leave duty without notice. When she failed to take up the redeployment, she was summarily dismissed per the letter dated 16.02.2015 with a right of appeal but the

claimant never appealed. The respondent admitted owing the claimant Kshs. 12, 197.00 being pay for days worked in January 2015. In view of her deserting duty, RW testified that one month pay was recovered in lieu of her termination notice.

The **1st issue** is whether the termination was unfair. RW testified that he discussed with the claimant the issue of redeployment but the claimant declined to accept redeployment after the contract with the judiciary lapsed. The court has considered that discussion and the claimant's testimony that she would not take up employment with the respondent and the court returns that the termination was not unfair.

The **2nd issue** is whether the parties are entitled to the remedies as prayed for. The court finds as follows:

(a) RW admitted that the uniform was returned to the respondent by the claimant and the uniform was clearly the property of the respondent. The court returns that the claimant is entitled to the **Kshs. 6, 000.00** as prayed for being refund of the deductions on uniform.

(b) As the court has found that the termination was not unfair, the claimant is not entitled to pay in lieu of the termination notice and further is not entitled to payment by way of compensation for unfair termination.

(c) RW confirmed that December 2014 salary was not paid and termination was on 16.02.2015. The court returns that the claimant is entitled to **Kshs. 25,685.00** being pay for 2.5 months at Kshs. 10, 274.00 per month.

(d) The evidence is that the claimant was dismissed from service and did not resign. Accordingly the counterclaim for Kshs. 8, 629.92 being pay in lieu of notice was misconceived and the counterclaim will fail.

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

(a) The respondent to pay the claimant **Kshs. 31, 685.00** by 15.12.2016 failing interest to be payable at court rates from the date of this judgment till the date of full payment.

(b) The counterclaim is dismissed.

(c) The respondent to pay costs of the counterclaim and the claimant's suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 4th November, 2016.**

BYRAM ONGAYA

JUDGE