



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 303 OF 2014
EDDAH AUMA ODEDE CLAIMANT
VERSUS
HARTLANE PHARMACEUTICALS LIMITED ...RESPONDENT

Mr. Rakuro for claimant

Mr Wekesa for respondent

JUDGMENT

1. The suit was filed on 3rd March 2014 seeking maximum compensation for unlawful and unfair termination of employment on account of redundancy and payment of terminal benefits to wit;
 - a. one month salary in lieu of notice Kshs.25,381.59;
 - b. eight (8) days arrear salary for the month of February 2014 Kshs.6,768.40;
 - c. leave due – twenty one (21) days Kshs. 17,767.05;
 - d. unpaid house allowance Kshs.55,703.30;
 - e. overtime Kshs.32,148.30;
 - f. underpayments Kshs.187,059.30;
 - g. seven (7) public holidays Kshs.11,844.74.

Facts of the case

2. The claimant worked for the respondent in the position of cashier and storekeeper earning a monthly salary of Kshs.12,000. The claimant worked continuously from 1st April 2013 up to 8th February 2014 when her employment was terminated.
3. The claimant reported to work on the 8th February 2014, a Sunday and was informed that her services were no longer required and that she should await word from the manager Mr. Joseph Oluoch Owoko. No further communication was given to her as advised. No reasons were given for the termination.

4. The claimant was not paid terminal benefits upon termination of employment.
5. On 17th February 2014, she wrote a demand letter to the respondent seeking the various reliefs sought herein but the same was not responded to hence this suit.
6. The claimant testified under oath in support of the particulars of claim.
7. The claimant prays that she be awarded as prayed.

Response

8. The respondent filed a memorandum of reply to the claim on 15th April 2014 with leave of court.
9. The employment of the claimant is admitted except with regard to the terms “*cashier and storekeeper*” and states that the claimant was employed as a general labourer, whose basic minimum wage is Kshs.9,780.95 as per wages order for 2013 plus 15% house allowance which is Kshs.1,467.14 making a gross salary of Kshs.11,247.14.
10. The respondent denies that the claimant was entitled to be paid as a cashier or storekeeper and that the computations in the statement of claim are not based on the actual salary paid out to the claimant but on a figure meant for a cashier and a storekeeper.
11. The claimant was not given letter of appointment and so did not produce any nor did the respondent produce one.
12. The respondent did not appear on the day of the hearing and therefore only participated in the trial by filing written submissions relying on the memorandum of reply and annexures thereto.
13. In the written submissions filed on 19th May 2016, the respondent submits that the claimant ought to have claimed;
 - i. one month salary in lieu of notice in the sum of Kshs.12,000;
 - ii. twenty one (21) days untaken leave in the sum of Kshs.8,400;
 - iii. nil house allowance;
 - iv. Kshs.440 unpaid overtime Kshs.32,550;
 - v. five (5) unpaid public holidays worked Kshs.4,000; and
 - vi. no compensation.

14. The respondent submits that, this was a redundancy and it had offered to pay the claimant in terms of section 40 (1) of the Employment Act, but the claimant did not collect the dues offered in terms thereof.

15. The respondent prays that the suit be dismissed with costs.

16. Determination

- a. Whether the redundancy was effected for a valid reason and fair procedure;
- b. Whether the claimant is entitled to the reliefs sought.

17. Issue (a)

It is not in dispute that the claimant was declared redundant when she reported to work on 8th February 2014. The claimant had only served the respondent for ten (10) months.

18. It is clear that the claimant was not given any notice of intended termination on account of redundancy and the labour office was not notified of the intended declaration of redundancy at least one month prior.

19. No explanation was given to the claimant as to why he was selected for termination. She was only told that her services were not required.

20. The claimant was not paid severance pay which is a mandatory payment upon termination on account of redundancy.

21. From the facts not in dispute, it is apparent that the declaration of redundancy of the claimant was in violation of section 40 (1) of the Employment Act, and was therefore unfair termination in terms of section 45 (1) of the Employment Act, 2007.

22. Accordingly, the claimant is entitled to the following reliefs set out in the statement of claim:

- a. One month salary in lieu of notice;
- b. Compensation in terms of section 49 (1) (c) of the Act, for unfair termination of employment.

23. In this respect the claimant had only served a period of ten (10) months and lost prospects of career growth and source of income.

24. The claimant was not prepared for the termination and suffered loss and damage. The loss of the job was for no fault of the claimant and the fact that he was not paid any terminal benefits aggravated the situation.

25. Accordingly, the court awards the claimant equivalent of five (5) months salary in lieu of notice.

26. The court has considered the evidence tendered on the salary of the claimant and is satisfied that the claimant earned a monthly gross salary of Kshs.12,000 up to the time of termination. There is no evidence to support the position that the claimant was entitled to a higher salary.

27. Accordingly the court awards the claimant;

- a. Kshs.12,000 in lieu of notice;
- b. Kshs.60,000 compensation being equivalent of five (5) months salary.

The respondent does not contest the following reliefs, and the court finds that the same have been proved on a balance of probability by the claimant;

- c. salary arrears for eight (8) days served in February 2013 Kshs.4,000;
- d. twenty one (21) days untaken leave Kshs.8,400;
- e. overtime in respect of four hundred forty (440) hours Kshs. 148.30;
- f. payment in respect of five (5) public holidays worked Kshs.11,844.74.

In the final analysis the court enters judgment in favour of the claimant in the sum of Kshs.119,993.04 as outlined above.

The award to be paid with interest at court rates from date of filing suit till payment in full.

The respondent to pay costs of the suit.

Dated and delivered at Nairobi this 20th day of December, 2016

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE