



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 166 OF 2014

ELIZABETH ZENCHER.....CLAIMANT

VERSUS

CATHOLIC ARCHDIOCESE OF NYERI.....1ST RESPONDENT

RURAL TRAINING CENTRE OF

CATHOLIC ARCHDIOCESE OF NYERI.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th December, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 16.12.2014 in person. She subsequently appointed Kiget & Company Advocates to act for in the case. The respondent prayed for judgment against the respondent for:

- a) One month pay in lieu of notice Kshs.35,000.00.
- b) Salary for 9 days worked in August 2012 Kshs.10,500.00.
- c) NSSF contributions not remitted January 2010 Kshs.1,000.00; October, November, and December 2012 Kshs.1,200.00; and January to August 2013 Kshs.1,100.00.
- d) Severance pay for 27 years of service $Kshs.35,000.00 \times 27 = Kshs. 472, 500.00$.
- e) Compensation for loss of employment Kshs.420,000.00.
- f) Any other relief the court may deem just to grant.
- g) Cost of the suit.

The respondents filed the memorandum of response on 20.03.2015 in person. The respondents subsequently appointed Kahari & Company Advocate to act for them. The reply to response was filed on 22.04.2015.

The claimant was employed by the respondent as a coordinator, project at the respondents' Rural Training

Centre, Nanyuki and effective 08.03.1987. At termination the claimant's remuneration was Kshs.35,000.00 per month. The claimant's case is that she served with a clean record up to her termination.

The demise of the claimant's husband was on 02.05.2012 and the funeral service was held on 08.05.2012. Thereafter the claimant resumed duty after a month. She continued to work and occupied the housing accommodation at her place of work. The claimant was summoned by her manager one Paul who gave a termination letter dated 09.08.2012. The letter stated that the 1st respondent had learned that the claimant had continued to disrupt the running of the Rural Training Institute. The letter conveyed that the claimant was forthwith forbidden from entering the Institute's compound. The continued entrance in the said compound would be treated as criminal trespass and the 1st respondent would not hesitate to institute legal proceedings against the claimant. The letter advised the claimant to keep off the said premises. The letter conveyed that any claims by the claimant were to be addressed through the 1st respondent's procurators' office. The letter was signed by Rev. Fr. David Mutahi, Legal Officer for 1st respondent.

The claimant testified that the lock to her house was changed. The claimant's case was that her property at the premises was destroyed including death of livestock. The claimant was given a certificate of service dated 04.12.2012 stating the claimant had worked from 1987 to July 2012. The claimant stated that she had served for 27 years and she was a good worker per the certificate of service. She prayed for service pay.

The respondent's counsel ceased to act after the claimant gave her evidence. Attempts to compromise the suit had collapsed. The respondent subsequently failed to attend the proceedings and did not bring witnesses or file final submissions.

First, the court finds that the claimant was dismissed without a hearing and notice as envisaged in section 41 of the Employment Act, 2007. The reasons for the termination have not been established by the respondent as provided and envisaged in sections 43 and 47 (5) of the Act. The court returns that the termination was unfair. Taking into account the claimant's long service and that she never contributed to her termination, she is awarded the 12 months' salaries as prayed for.

Second, is the claimant is entitled to the other remedies as prayed set out in the memorandum of claim? The court makes findings as follows:

- a) As the termination was without notice and unfair, the claimant is entitled to a month's pay in lieu of termination notice **Kshs.35, 000.00**.
- b) The claimant is entitled to the salary for 9 days worked in August 2012 **Kshs.10,500.00** and as prayed for.
- c) The claimant has established that NSSF contributions were not remitted for January 2010 **Kshs.1,000.00**; October, November, and December 2012 **Kshs.1,200.00**; and January to August 2013 **Kshs. 1,100.00**. She is awarded as prayed for as the court considers that the respondent is strictly liable to pay for breach of the statutory duty to remit the deductions and contributions.
- d) The claimant prayed for severance pay for 27 years of service $Kshs.35,000.00 \times 27 = Kshs.472,500.00$. The court that the claimant did not establish the contractual or statutory basis of the claim and the court finds that the same will fail. Even if the same were to be treated as service pay, the same would not be available as the claimant was a member of the NSSF.
- e) The court has found that the claimant is entitled to compensation for loss of employment **Kshs.420,000.00** as prayed for.
- f) The court awards the claimant the costs of the suit.

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

a) The respondent to pay the claimant **Kshs.468,800.00** by 15.01.2017 failing interest at court rates to be payable thereon from the date of this judgment till full payment.

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

Signed, dated and delivered in court at Nyeri this Friday, 9th December, 2016.

BYRAM ONGAYA

JUDGE