



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 103 OF 2013

JANE WAMBUI WAHOME.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF LAIKIPIA.....RESPONDENT

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

JUDGMENT

The memorandum of claim was filed on 17.09.2013 by the claimant in person. The response to the memorandum of claim was filed on 18.12.2014 through J.M. Mwangi & Company Advocates. The claimant filed an amended memorandum of claim on 21.06.2016 through Kimunya & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) The declaration that the termination of the claimant's employment was unlawful, illegal and wrongful and the respondent to reinstate the claimant to her job unconditionally without loss of benefits or seniority or alternatively pay maximum compensation of 12 months' salary at Kshs.10, 684.00 per month making Kshs.128, 208.00 for termination by medical superintendent and for loss of employment.
- b) Payment of Kshs. 10, 684.00 in lieu of the termination notice; pay for annual leave for 2012 Kshs.10, 684.00; and underpayment of Kshs.239, 106.00 for 2011and 2012.
- c) For earlier termination by medical officer of health payment of 12 months' salary compensation for loss of employment at Kshs. 9, 450.00 per month making Kshs.113, 400.00.
- d) Payment for underpayment in 2006, 2009, 2010 and 2011 Kshs. 300, 822.00; house allowance for December 2005, 2006 and 2007 Kshs.14, 550.00; leave allowance for 5 years Kshs.35, 449.00; and pay in lieu of termination notice Kshs.9, 450.00.
- e) Total prayer Kshs.721, 404.00.
- f) The respondent to pay the costs of the suit.
- g) Any other relief the court may deem just to grant.

The respondent filed the amended memorandum of response on 30.06.2016 and prayed for the dismissal of the claimant's claim with costs.

The claimant testified that she was employed by the medical officer of health, Laikipia East, on 31.11.2005 as a copy typist at Kshs. 3, 500.00 which increased to Kshs.5, 000.00 per month. She remained in employment until February 2011 when she took maternity leave. Upon resuming duty in June 2011 the medical officer for health had engaged another copy typist. Thus, the medical superintendent engaged the claimant in the same capacity of copy typist at the same pay of Kshs.5, 000.00 per month.

The claimant wrote the letter dated 22.10.2012 to the medical officer of health, Laikipia East, complaining about underpayment and the medical officer of health replied by his letter dated 19.12.2012 stating that his office was consulting with the relevant authority and once the issue was concluded he would communicate to the claimant. The claimant's case was that she has not received the communication about the underpayment.

The claimant further testified that she worked at the office of the medical superintendent until 31.03.2013 when she was unlawfully terminated from employment and at the time she was earning Kshs.7, 000.00 per month – a pay below the statutory minimum wage. The claimant testified that 31.03.2013 was a Monday and she reported at work as usual. Her office had been locked with a new padlock so that she had been locked out. She sought explanation from the hospital administrator who advised her to see the medical superintendent. The medical superintendent informed her that he contract had lapsed and it would not be renewed. The claimant's case was that she was not shown the contract that was said to have lapsed and it was her case that the termination was unfair.

While in the service of the medical superintendent, the claimant testified that she was deducted Kshs.400.00 for NSSF, Kshs.120.00 for NHIF and Kshs.800.00 for house rent because she had been housed by the hospital.

The respondent's case was that the claimant served on three months' fixed term and renewable contracts. By the letter dated 02.04.2013 to the labour officer, the claimant stated that her job had ceased on 31.03.2013 after the end of 3 months contract which was renewable. She had further stated that she had reapplied for renewal of the contract in usual manner but she had not got a feedback but instead she had been locked out of the office. The respondent's witness (RW) Dr. Kilonzo Sammy, the medical superintendent, testified that the claimant was employed on fixed term contracts of 3 months and renewable at the hospital's option. Further, the claimant's last day at work was 31.03.2013 when her last 3 months' contract lapsed; and her contract was not renewed due to reasons RW did not know and there was no duty upon the hospital management to renew the contract.

The **1st issue** for determination is whether the termination of the claimant's employment was unfair. The evidence on record is clear. The claimant in making a complaint to the labour officer about the termination confirmed in writing that her 3 months contract had lapsed on 31.03.2013 as it had not been renewed. The claimant's testimony was that her last day at work was on the said 31.03.2013. RW confirmed that the 3 months' contract lapsed on 31.03.2013 and the hospital had no duty to renew the same. The claimant has not established that the hospital had a duty to renew the contract. In the circumstances, the court returns that the claimant's contract of employment came to an end upon effluxion of the contractual term of 3 months, no contractual term on renewal was breached on the part of the hospital management, and the termination was not unfair.

The **2nd issue** for determination is whether the claimant is entitled to the remedies as prayed for. As the termination was not unfair, the prayer for 12 months' compensation will fail as well as pay in lieu of termination notice. Needless to state, the prayers for underpayment for 2006 to February 2011 were time barred under section 90 of the Employment Act, 2007. In absence of any bar on record, the claimant is entitled to underpayment from September 2011 to March 2013 making Kshs. 89, 530.00 plus pay in lieu of leave for 2012 Kshs.10, 684.00 making a sum of **Kshs.100, 214.00**.

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

- a) The respondent to pay the claimant Kshs.100, 214.00 by 01.02.2017 failing interest to be payable thereon from the date of termination 31.03.2013 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