



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1160 OF 2011**

(Before Hon. Justice Maureen Onyango on 26.1.2015)

DOMITILLA MBATHA MUTUKU ..... CLAIMANT

**-VERSUS-**

CAPITAL BRIDGES INVESTMENT LTD ..... RESPONDENT

**JUDGMENT**

The claimant instituted this claim through a Memorandum of Claim dated 13th July 2009 and filed on 15th July 2009. The claimant's case is that she was employed by the respondent on 23rd April 2009 and terminated on 9th June 2011. Her salary was Kshs 25,000/= gross. The reason for termination was that business volumes were low, a ground which the claimant alleges was a cover-up. According to the claimant the reason for termination of her contract of employment was that she was suspected of having advised a client to go to a lawyer after the respondent which is a Micro-Finance Company, failed to stop deductions that were wrongfully being made from the customer's salary. The claimant prayed for compensation, leave, security, amount wrongfully deducted from her salary, leave allowance not paid, 9 days worked in June 2011, notice and refund of co-operative shares deducted but not remitted, all in the total sum of Kshs 381,400. The claimant further claims general damages, costs and interest. The claim was filed through Koceyo & Co. Advocates.

The respondent filed a Memorandum of Defence on 13th February 2014. It admitted having employed the claimant but denied that the termination of her employment was unlawful. The respondent averred that the claimant was issued a letter of notice of termination on 9th June, 2011 witnessed by the Managing Director and another employee by the name David Njau. The respondent further pleaded that it offered to pay claimant's terminal benefits being notice of Kshs 25,000/=, leave allowance for 2009/2010 and 2010/2011 in the sum of Kshs 6,000/=, leave balance of 4 days at Kshs 3,330/=, security account of Kshs 8,070/= and co-operative shares of Kshs 1,500/=, all totaling to Kshs 43,900/= but the claimant refused and demanded excess and unrealistic payments.

The respondent further denied that the termination of the claimant's employment was a cover-up. The respondent prayed that the claim be dismissed with costs.

The claimant testified on 24th March 2014. The respondent was however unable to avail its witness in court and after several adjournments by the respondent to avail its witness, the respondent's counsel opted to close the respondent's case and proceed by way of written submissions. Counsel for the claimant thereafter filed her written submissions. The respondent did not file any written submission.

From the pleadings and the claimant's testimony, there is no dispute over the prayers for leave allowance, security deposit, notice and co-operative shares refund. The only issues that the court has to

determine are whether the termination was unfair and therefore if the claimant is entitled to compensation; the number of leave days outstanding and whether she worked for 9 days in June 2011 but was not paid.

In the defence, the respondent admitted having issued the claimant notice of termination on the very date that she was terminated. The reason for termination as given in the letter is low business volumes. This would constitute termination by way of redundancy. The respondent did not follow the procedure in either Section 40 of the Employment Act on redundancy or Section 41 on termination and dismissal. The claimant in her testimony stated that the reason given being low business was not true but a cover-up as the real reason was that a client by the name Joseph Nzuba Mutuku had gone to see a lawyer who sent a demand notice to the respondent. The respondent suspected that the claimant had advised the client to seek legal redress after the respondent promised but failed to stop illegal deductions from the client's salary. The respondent suspected that the claimant had advised the customer because she worked in a legal firm before joining the employment of the respondent.

The respondent having failed to submit evidence to controvert the claimant's allegations both in her claim and testimony, I have no reason to fault her. For these reasons I find that the respondent failed to prove fair procedure and valid reasons for termination of the claimant's employment. The termination was therefore unfair.

The claimant having been unfairly terminated, is entitled to compensation. The respondent failed to defend the claim for full compensation. I award the claimant 12 months salary compensation as prayed.

The only other prayer for determination is the number of leave days outstanding. The respondent again failed to controvert the evidence adduced by the claimant in respect thereof. I have no reason to doubt her evidence. I therefore award her 28 days annual leave as claimed in the sum of Kshs 23,333.30/= (at the rate of Kshs 833.30 per day).

The claimant shall also have costs and interest.

Orders accordingly.

**Dated and delivered in Nairobi this 26th day of January, 2015**

**MAUREEN ONYANGO**

**JUDGE**

*In the presence of:*

..... for claimant(s)

..... for respondent(s)