



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1864 OF 2013

RUTH NYABO MBUGUA.....1ST CLAIMANT

GRACE WANJIKU WARITHO.....2ND CLAIMANT

VS

ROBERT PHILIP ASHWORTH.....RESPONDENT

AWARD

Introduction

1. The Claimants worked for the Respondent for diverse periods up to 15th October 2013 when their employment was terminated. They therefore brought a claim seeking their terminal dues. The Respondent filed a Defence on 17th January 2014 and the matter proceeded on 5th November 2014 with the Claimants testifying on their own behalf. The Respondent and his wife, *Susan Ashworth* also testified.

The Claimants' Case

2. The 1st Claimant was employed in May 1991 and the 2nd Claimant in March 1994. The two Claimants state that their employment was terminated on 15th October 2013 without justifiable cause and without notice. According to them, they were locked out by the Respondent's security guards when they reported for work on 15th October 2013. The Claimants plead that the Respondent did not remit all their National Social Security Fund (NSSF) dues. They state that their inquiries on this issue led to souring of their relationship with the Respondent.

3. The Claimants claim the following:

- a. Salary for October 2013;
- b. 3 months' salary in lieu of notice;
- c. Service pay
- d. Leave (1st Claimant);
- e. Costs.

The Respondent's Case

4. In his Defence, the Respondent admits having employed the Claimants as house helps. He however denies dismissing them stating that it was the Claimants who absconded duty and chose not to resume even after being requested to do so leading to their eventual termination.

5. The Respondent denies that his relationship with the Claimants broke down when the Claimants began to demand accounts of NSSF remittances and states that the reason for the sour relationship was caused by the Claimants habitual lateness for work.

Findings and Determination

6. The issues for determination in this case are as follows:
- a) Whether the Claimants absconded duty or were terminated;
 - b) Whether the Claimants are entitled to the reliefs sought.

Mode of Termination

7. The Claimants state that they were locked out of the Respondent's premises and subsequently terminated from employment. They told the Court that their termination was actuated by their demand for update on their NSSF accounts as well as issuance of letters of appointment. The Respondent on the other hand states that the Claimants deserted duty after being cautioned on habitual lateness for work and declined to report back to work in spite of several pleas to do so. This inevitably led to their termination.

8. Whatever the reason behind the separation, it is not in contest that the Claimants did not work for the Respondent after 15th October 2013. From the evidence on record, it would appear that several attempts were made towards resolution of the dispute between the parties. Indeed, the Claimants told the Court that the Respondent asked them to report back to work with an offer for salary raise but they declined because according to them the issues leading to the disagreement had not been resolved.

9. Having looked at the facts of this case, the Court was unable to understand why the Claimants failed to avail themselves of the internal grievance handling mechanism presented by the Respondent. In particular, the Court could not comprehend why the Claimants declined to resume duty or even to collect their terminal dues as offered by the Respondent.

10. In my view, the only logical conclusion is that the Claimants are engaged in a scheme to hold their employer at ransom while refusing to subject themselves to internal grievance handling mechanisms. Such schemes have no place in this Court. At any rate, the Claimants did not make a claim for unfair termination and the dues they seek from the Court were offered by the Respondent in his letters dated 6th December 2013. The additional claim for house allowance which was made in the Claimants' final submissions was neither pleaded nor presented during the hearing. It cannot therefore be entertained at this stage.

Final Orders

11. In the circumstances, the only order I will make is that the Respondent updates the Claimants' NSSF accounts within the next 30 days from the date of this award.

12. Each party will bear their own costs.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT NAIROBI THIS 11TH DAY OF FEBRUARY 2015

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JUDGE

Appearance:

Ruth Nyabo Mbugua (1st Claimant in person)

Grace Wanjiku Waritho (2nd Claimant in person)

Mr. Rombo for the Respondent