



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 76 OF 2014

AGNES WAMBUI WAMWAKI.....CLAIMANT

-VERSUS-

JOSEPH KIBE.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 24th April, 2015)

JUDGMENT

The claimant filed the statement of claim on 16.06.2014. She prayed for judgment against the respondent for:

- a. An order that the respondent pays terminal dues of Kshs. 153,000.00 being service pay for 15 days for 7 years of service Kshs. 25,500.00; leave pay for 21 days for 7 years served Kshs. 35,700.00; and house allowance for 7 years served Kshs. 91, 800.00.
- b. An order that the respondent issues a certificate of service to the claimant.
- c. Costs of the suit plus interest at court rates.
- d. Any other relief that the court would deem just and expedient.

The respondent filed the defence on 03.07.2014 through G.M. Muhoro & Company Advocates and prayed that the claimant's suit be dismissed with costs to the respondent.

By consent of the parties the suit was fixed for hearing on 7.04.2015 when the respondent and the respondent's advocate failed to attend court. The hearing proceeded and the claimant gave evidence to support her case.

The claimant testified that she was employed by the respondent on 15.08.1996 as a supervisor in a tea farm measuring about 4 acres. Her monthly pay was Kshs. 3,000.00. Her testimony was that she wished to leave employment and so she gave a 3 months' notice in October 2012 so that she would not report back at work in January 2013. The desire to leave employment was on account of ill health but the respondent retained her at work until 31.03.2014. The claimant testified that the respondent forcefully evicted her by demolishing the house provided on the farm for her accommodation. It was her evidence that throughout her employment the respondent had provided for the housing accommodation, she was not a member of the National Social Security Fund (NSSF) or other pension scheme, and she was not allowed to take her annual leave.

The **first issue** for determination is whether the claimant was in employment of the respondent. The respondent has admitted that there was employment relationship but that the terms were casual attracting daily pay and not permanent service. The claimant testified she served without a break from 15.08.1996 till termination on 31.03.2014. The letter by the respondent's advocate dated 28.05.2014 and addressed to the Chief, Mathanja Location confirms that the claimant worked for the respondent as a tea picker up to December 2012. Accordingly, the court finds that the job was of a permanent nature and taking the evidence by the claimant into account, the claimant served the respondent as an employee without a break from 15.08.1996 till termination on 31.03.2014. The court further finds that the minimum terms and conditions of service under the Employment Act, 2007 applied to the claimant's employment.

The **second issue** for determination is whether the claimant is entitled to the remedies as prayed for. The court makes findings as follows:

- a. The claimant testified that she was provided housing accommodation on the farm throughout her employment and the court finds that she is not entitled to the housing accommodation as prayed for.
- b. The claimant did not belong to the NSSF and the court finds that she is entitled to service pay for every year worked as per section 35(5) of the Employment Act, 2007. The court finds that **Kshs.25, 500.00** as prayed for is reasonable service pay for the 17 years of service.
- c. The court finds that the claimant was entitled to but was not given annual leave as provided for in section 28 of the Employment Act, 2007. Accordingly, she is awarded **Kshs. 35, 700.00** as prayed for.
- d. The claimant is entitled to a certificate of service.

The court awards the claimant the costs of the suit fixed at **Kshs. 20,000.00**.

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

1. The respondent to pay the claimant **Kshs. 81,200.00** by 01.06.2015 failing interest at court rates to be paid thereon from the date of the suit 16.06.2014 till full payment.
2. The respondent to deliver to the claimant the certificate of service by 01.06.2015.

Signed, dated and delivered in court at Nyeri this **Friday, 24th April, 2015**.

BYRAM ONGAYA

JUDGE