



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 356 OF 2013

BETWEEN

JANE MAUREEN MBUYA OKEDI CLAIMANT

VERSUS

UNITED (EA) WARE HOUSE LIMITED RESPONDENT

Rika J.

Court Assistant: Mr. Kombe

Ms. Omolo Advocate, instructed by Lamanya Katee & Company Advocates for the Claimant

Ms. Fwaya Advocate, instructed by Cootow & Associates, Advocates for the Respondent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

(Rule 27(1) (a) of the Industrial Court (Procedure) Rules 2010)

1. The Claimant filed her initial Statement of Claim on 28th October 2013. This was subsequently amended in a Statement filed on 27th May 2014.
2. The Respondent filed its Statement of Response on 18th December 2013.
3. The Claimant seeks, terminal benefits and compensation for unfair termination. She worked for the Respondent as a Clerk, between October 2003 and 29th June 2012. She was summarily dismissed on alleged involvement in theft which took place at the Respondent's Warehouse.
4. She was heard on 30th June 2014. The Respondent testified through its Human Resource Manager Susan Namachi on the 8th December 2014, and through its Security Officer Kennedy Wekesa Wanjala on 13th February 2015 when hearing closed. Parties confirmed the filing of their Closing Submissions in Court on the 10th March 2015.
5. Prior to coming to Court, the Claimant made a formal complaint to the County Labour Office Mombasa. She complained she was unfairly and unlawfully dismissed.
6. The Labour Officer convened a meeting between the Claimant Employee and the Respondent Employer on 10th August 2012. The meeting was reconvened on 30th August 2012. It was concluded

the Claimant be paid:-

- (a) March, April, May and June 2012 salaries.
- (b) Pro-rata leave due.

7. In total, she was paid Kshs 59,266 and signed a Payment Agreement Certificate dated 6th September 2012. She signed Clearance Form on 5th September 2012 acknowledging payment. She discharged the Company from further Claims. The Claimant conceded in her evidence on 30th June 2014, that settlement was reached on conciliation, along these lines.

The Court Finds:-

8. The Claim before the Court is in abuse of the Labour dispute settlement process.

9. In the ***Industrial Court of Kenya Cause Number 392 of 2014 between Nuru Mukwanja Wawire v. Total Security Surveillance Limited***, the court ruled:

- (a) Section 47 of the Employment Act 2007 allows Employees who have been summarily dismissed, or whose contracts of employment have otherwise been unfairly terminated to present a complaint to the Labour Office.
- (b) The right is in addition to the right the Employee has to complain to the Industrial Court on the same issue, and on any other infringement of his statutory right, under Section 47 (3) and 47 (4) of the Employment Act 2007.
- (c) The principle of estoppel has no application under these provisions.
- (d) Even when the Court has jurisdiction, it does not have to exercise jurisdiction.
- (e) Article 159(1) (2) (c) of the Constitution of Kenya recognizes alternative forms of dispute resolution. Where parties have exercised their choice of forum, the Court can only assist them in giving effect to the outcome of the non-adjudicatory mechanism.
- (f) The Labour Office is a legitimate dispute resolution forum.

10. The Parties submitted themselves to conciliation. They recorded an Agreement. The Claimant was paid what was agreed. She was issued the Certificate of Service. She said nothing of conciliation and settlement, in her pleadings

IT IS ORDERED:-

- (a) The Claim is struck out.***
- (b) If the Claimant has further Claims outside the Agreement made before the Labour Officer, she can go back to the Labour Officer and make her fresh claims known.***
- (c) No order on the costs.***

Dated and Delivered at Mombasa this 29th day of May 2015.

James Rika

Judge