



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

AT MOMBASA

ELRC CAUSE NO. 102 OF 2015

CATHERINE CHEPKASIS.....CLAIMANT

VERSUS

ONEWAY CLEANING SERVICES LTD..... RESPONDENT

J U D G M E N T

INTRODUCTION

1. The Claimant has brought this suit claim kshs.311,941.00 being terminal dues plus compensation for unfair termination of his employment by the Respondent on 31.9.2014. It is the Claimant's case that he was unlawfully and unfairly laid off after the Respondent engaged a contractor to out source labour.
2. The Respondent never filed any defence and the suit proceeded *ex parte*. The Claimant was heard on 18.6.2015 when he testified as Cw1. Thereafter her counsel filed written submissions.

EVIDENCE

3. Cw1 was employed by the Respondent as a Cleaner on 1.11.2007 and worked continuously until 30.9.2014. Her contract was verbal but she was getting payslips which she produced as exhibit 1. She also produced a letter dated 15.2.20213 (Exh.2) written by the Respondent to confirming that she was a Permanent employee of the Respondent. She also produced letter of assignment dated 27/9/2010 as exhibit 3. Her salary was kshs.8800 per month and her working hours were at 6 am to 4 pm.
4. On 30.9.2014, Cw1 attended work as usual when the Respondent's Manager visited the Claimant and her colleagues at Pali House where where they were assigned duty and then that the Respondents contract at Pali House had lapsed. He further explained that the only other place they could work was at Kahamas Hotel at Shanzu but it was not suitable for a lady because it was a night shift. He also told Cw1 that she was a Standard 7 graduate who could not speak English well and as such she could not work in the hotel where the Patrons were Whites. He therefore told Cw1 that her employment was over. The termination was verbal and it was without a prior notice. She was also not paid her dues plus refund of her welfare contributions.
5. She therefore prayed for her dues including accrued leave for the whole period of 7 years service because she never took any leave. She also prayed for one month salary in *lieu* of notice, service pay for 7 years, and accrued House Allowance for the same period at the rate of 15% of the basic

pay of kshs.8800. She further prayed for refund of Welfare contribution at the rate of kshs.50 per month for 7 years of service. Lastly she prayed for compensation for unfair termination. According to her the termination was wrong and unfair because she was not heard and without any wrong doing.

ANALYSIS & DETERMINATION

6. After considering the pleadings, evidence and submissions, the court is satisfied that the Claimant was employed by the Claimant as pleaded. It is also clear that the employment contract was terminated by the Respondent on 30.9.2014. The issue for determination are whether the termination was unfair and unjust and whether the Claimant is entitled to the reliefs sought.
7. The undisputed evidence by the Claimant is that her employment was terminated by the Respondent after the contract between the Respondent and Pali house expired. That the only other place where Cw1 could work was night shift at Kahamas hotel at Shanzu but the Respondent disqualified her from working there on gender basis and also because she lacked academic qualifications.
8. The termination was therefore not for any wrong doing on the part of the Claimant and was therefore amounting to a redundancy. **Section 2** of the Employment Act (E.A.) defines redundancy as

“...loss of employment through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous...”

9. The said redundancy was obviously unlawfully because it was not done according to the procedure provided for under **Section 40** of the E.A. The said provision, among other things, requires that before any termination of employment through redundancy, an employer must serve at least one month notice in writing to the employee and the labour office. In this case no such notice was served and that default alone rendered the redundancy unfair and wrongful.

RELIEFS

10. In view of the foregoing finding, the termination of the Claimant's employment is declared unfair and unjust. Under **Section 49** of the E.A. the Claimant is entitled to one month salary in lieu of notice, accrues benefits plus compensation for unjust and unfair termination. She will therefore get kshs.8400 for salary in lieu of notice as prayed, leave for 2 years as prayed being kshs.12,320 plus kshs.52,800 being 6 months for unfair and unjust termination of employment. The Claimant is also granted house allowance for 3 years at the rate of 15% the basic salary as per the payslip produced as exhibit being ksh.8800. The reason for limiting the award to 3 years is because of the time bar established under **Section 90** of the E.A. The sum awarded under the heading is kshs.47,520.
11. The claims for refund of Welfare Contribution and Public holidays worked are dismissed for lack of evidence. Likewise the claim for service pay is dismissed for the reason that Cw1 was a member of the NSSF according to the payslip she produced as exhibit. She is therefore disqualified from claiming service pay under **Section 35 (6)** of the E.A.

DISPOSITION

12. For the reasons and findings above stated, the Judgment is entered for the Claimant declaring termination of her employment unfair and unjust and awarding her kshs.121,040 plus costs and interest.

It is so ordered.

Dated signed and delivered at Mombasa this 31st day of July 2015.

O. N Makau

JUDGE