



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1917 OF 2013

JACKLINE LUKAMIKI MUCHI.....CLAIMANT

VERSUS

MOHAMMED TAHIR..... RESPONDENT

Mr Makori for Claimant

Mr Solonka for Respondent

JUDGEMENT

1. The Claimant seeks compensation for unlawful and unfair termination of employment and payment of the following terminal benefits;
 - a. 1 months' salary in lieu of notice in the sum of Kshs 13,280.95
 - b. Prorata leave for 11 months at Kshs 8,521
 - c. Underpayment from December 2012 to April 2013 in the sum of Kshs 15,399
 - d. Underpayment for the period May to October 2013 in the sum of Kshs 25,685
 - e. House allowance for 11 months in the sum of Kshs 38,500

Claimant's Case

2. The Claimant was employed by the Respondent as a house servant in December 2012 at a monthly salary of Kshs 5,500. Her work included washing clothes and cooking. She was not housed by the Respondent and she worked from 8 a.m. to 5 p.m., six days a week. She rested on Sundays. She worked for 11 months until October 2013.
3. The Claimant asked for a salary raise in the month of October 2013 and the Respondent told her to look for a government job. The Claimant had no contract of employment.
4. The following day the claimant did not come to work and the Respondent told her that there was no more work for her. The Claimant was not given a letter of termination. The Claimant states that she was dismissed from work unlawfully.
5. The Claimant states that she was under paid for the period December 2012 to April 2013 in the sum of Kshs 15,399 and for the period May to October 2013 kshs 25,685. She also told this court that she did not go on leave in the 11 months period she worked for the Respondent.
6. The Claimant also claims house allowance at the rate of Kshs 3,500 per month which she ought to have been paid at 15% of the basic salary.

Response

7. The Respondent filed a statement of reply on 3rd February 2014 in which he states that the Claimant and the Respondent agreed that the Claimant would serve for six (6) hours a day from 8:30a.m. to 3:30 p.m. The Claimant also agreed to be paid Kshs 5,500 per month.
8. The Respondent further states that the Claimant absconded from duty for two (2) days without the Respondent's authority and or permission necessitating the Respondent to engage another employee to take care of the Respondent's mother who was and is still ill.
9. That despite absconding duty the Respondent paid the Claimant;
 - a. Salary for 16 days worked in December, 2013
 - b. 12 days service pay in the sum of 2,220 and
 - c. 14 days leave in the sum of Kshs 2,590

Total 7,770

10. Mr Mohammed Tahir, the Respondent testified in support of his case and said that as a matter of fact, the claimant worked for 4 - 5 hours a day between 8:30 a.m. and 1 p.m. after which she would go home early. The Claimant did not work on weekends and public holidays. She therefore worked from Monday to Friday. That she started by earning Kshs 5,000 per month which was later increased to Kshs 5,500.
11. On 20th October 2013 the Claimant did not come to work. The Respondent telephoned her the third day and informed her that he had employed someone else. The Respondent paid her for days worked in lieu of leave and ex-gratia payment totaling kshs 7,700.
12. The Respondent added that the Claimant worked for 9 months and not 11 months as she claims between December 2012 and October 2013.

Determination

13. The Court is satisfied that the Claimant worked for the Respondent for about 9 months between the month of December 2012 and October 2013. Neither of the parties could remember the dates she started work. The Claimant did not have a written contract of service.
14. The Court is also satisfied that the Claimant worked from 8:30 a.m. to 1 o'clock in the evening for five (5) days a week. The Claimant did not work during the weekends and public holidays.
15. It is not in dispute that the Claimant received Kshs 5,500 per month for the services rendered to the Respondent. For the number of hours the Claimant worked per day the salary of Kshs 5,500 cannot be said to be an underpayment since the minimum wage for a domestic worker during the period 2012 -2013 was Kshs 9,866.77 inclusive of house allowance calculated at 15 % of the basic pay.
16. The Claimant was however entitled to a house allowance calculated at 15% of the wage paid to her in the sum of Kshs 825 per month making a total of (825 x 9) Kshs 7,425. The Claimant was paid in lieu of prorata leave for the period served and the claim has no merit.
17. The payment for service gratuity at the rate of half months' salary for the 9 months served catered for the non-registration of the claim with and non-contribution to the National Social Security Fund by the Respondent on behalf of the Claimant.
18. The Court is further satisfied that the Claimant was not dismissed from employment but the Claimant failed to report to work on 20th October 2013 necessitating the Respondent to find a

replacement. The Claim for compensation for alleged unlawful and unfair dismissal has no merit and the same is dismissed.

19. In the final analysis the claim by the Claimant is dismissed except payment of Kshs 7,700 in respect of unpaid house allowance for 9 months served.

20. The Claimant is partly successful and is entitled to costs of the suit. The award of Kshs 7,700 to be paid with interest at court rates from the date of filing this suit till payment in full.

Dated and Delivered at Nairobi this 31st day of July, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE