



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

**AT NAIROBI**

**CAUSE NO. 926 OF 2014**

**EUNICE AKINYI AIRO.....CLAIMANT**

**VERSUS**

**AVTECH SYSTEMS LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant in this suit averred that she was employed by the respondent on 30<sup>th</sup> January, 2011 as an accountant at monthly salary of Kshs.25,000/= per month to be increased annually. Letter of appointment was produced in Court as exhibit 1.
2. She further averred that on 13<sup>th</sup> January, 2014 she was due for maternity leave which she applied for, approved and she proceeded on leave. She was to report back to work after 90 days which was on 14<sup>th</sup> April 2014 but upon resuming the respondent unfairly and unlawfully terminated her services without notice and further failed to pay her terminal dues. It was her contention that her termination had to do with her going on maternity leave.
3. The respondent in its memorandum of reply admitted that the claimant was its employee but stated that she absconded duty and never informed the respondent she was proceeding on maternity leave. On her entitlements, the respondent averred that the claimant was advised of her entitlements but failed or refused to collect the same. The respondent further admitted willingness to pay the claimant but not the sums pleaded by her.
4. When this matter came up for hearing on 3<sup>rd</sup> June, 2015 only the claimant and her counsel appeared despite the fact that the hearing date was taken by consent. No reason was given for respondent's absence. The matter therefore proceeded exparte.
5. In her evidence before the Court the claimant repeated the averments in her memorandum of claim and produced as exhibit 1, her letter of appointment, exhibit 2, her letter of confirmation and leave application form as exhibit 3. Her termination letter was produced as exhibit 4.
6. The respondent did not attach any statement or document to their memo of response to vouch for the averments therein. The claimant's documents as well as testimony in Court therefore remained uncontroverted.
7. Although the respondent averred that the claimant absconded duty, their own letter to the claimant terminating her services did not state that the termination was being done on account of

absconding duty.

8. Her termination was due to reorganization of operations which led to the claimant's position being merged and or eliminated making it necessary to terminate her services immediately. Besides the leave application form produced by the claimant and approved by the respondent clearly stated that she was proceeding on maternity leave for 90 days and resuming work on 14<sup>th</sup> April, 2014, the same day she got terminated.

9. This is a clear case of unfair and wrongful termination of services. If the respondent intended to terminate the claimant's services on account of restructuring, leading to her being rendered redundant, section 40 of the Employment Act is clear on the procedure to be followed which was not the case here. The Court therefore concurs with the claimant that her termination had something to do with her going on maternity leave.

10. Termination on account of maternity is one of the reasons declared by section 45 of the Employment Act not to constitute a fair reason for dismissal and the Court so finds and awards the claimant as follows:-

- (a) salary for February, March, and April  
one month's .....129,930.00
- (b) salary in lieu of notice of termination.....43,310.00
- (c) Twelve months' salary as compensation for  
Unfair dismissal.....519,720.00  
692,960.00
- (d) costs of the suit
- (e) the respondent shall issue the claimant with a certificate of service.

11. It is so ordered.

Dated at Nairobi this 10<sup>th</sup> day of July 2015

Abuodha J. N.

Judge

Delivered this 10<sup>th</sup> day of July 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge