



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1905 OF 2014

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 8TH JULY, 2015)

PILISILA IMINZA AKOYO.....CLAIMANT

VERSUS

FARZANA ZAHIRRESPONDENT

JUDGMENT OF THE COURT

1. This case proceeded for formal proof on 28/5/2015 when the Respondents who had been served failed to turn up for hearing. They had also been previously served with Memorandum of Claim and summons and had not filed any appearance or defence.
2. The Claimant's case is that she was employed by the Respondent on 28/2/2013 as a house girl. She was earning Kshs.11,000/= per month. She worked well and was staying at the Respondent's residence and worked from 6 am to 2 am. She stated that they were 2 house helps but the aya taking care of the baby was a day –back. She averred that the Respondents are of Muslim faith and during Ramadhani period, she was kept awake all night as they ate.
3. It is her case that on 14/9/2014, she was unwell and the floor was slippery so she fell and hurt herself. She went for treatment but was not fully healed when Respondent summoned her back to work. She worked only that day and then at 10 pm, the Respondent called her and informed her that her services were no longer needed. The Respondent gave her 5,000/= and asked her to leave. She left the following morning.
4. It is the Claimant's case that she worked without leave and worked beyond hours and was never paid overtime. She seeks payment of Kshs.231,000/= as enumerated in her claim – paragraph 5.
5. The Respondent never filed any response to this claim but given the communication between the Claimant's Counsel and the Respondent, the Respondent admitted having employed the Claimant upto 14/9/2014 when she left on her own volition. In the said letter, the Respondent also indicated that she had paid all the Claimant's dues including 6 months pay, leave accrued and service pay at the end of 2013.
6. No evidence of this payments made was adduced before the court. The contract terms between the Claimant and Respondent were also not available as there was no appointment letter issued. Under Section 10(7) of Employment Act:

“if in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in sub-section (1), the burden of proving or disapproving an alleged term

of employment stipulated in the contract shall be on the employer”.

7. The terms that are contested here are hours of work, duration of contract, mode of payment etc.
8. Given that there is no evidence from the employer to show that the hours of work by the Claimant and how salary was paid, I would take the Claimant’s position as adduced in evidence.

I award her as follows:

1. **1 month salary in lieu of notice = 11,000/=**
2. **Service pay for 2 years = 15 days salary for each year worked = 11,000 x 15/30 x 2 = 11,000/=**
3. **Leave allowance for 2 years = 11,000 x 2 = 22,000/=**
4. **General damages for unlawful termination equivalent to 6 months salary = 11,000 x 6 = 66,000/=**

TOTAL DUE = 110,000/=

5. **The Claimant should also be given a Certificate of Service.**
6. **Respondent to pay costs of this suit.**

It is so ordered.

Read in open Court this 8th day of July, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent