



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 496 OF 2014

ANNASTACIA WANGUI WAWERU.....CLAIMANT

VERSUS

MAMBA GROUP OF HOTELS LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant filed her plaint on 26th March 2014 seeking resolution of the dispute she framed as the wrongful and unlawful termination of her services and failure of the Respondent to pay full terminal benefits to the Claimant. She averred that she was employed by the Respondent in 2011 as a cashier/accounts clerk. She averred that she earned Kshs. 16,000/- a month and served the Respondent with diligence until 27th January 2014 when she was asked to bank Kshs. 650,000/- at Transnational Bank City Hall Branch and the guard who usually would accompany such cash was withdrawn and she was shot in the head a few metres from the bank. She averred the incident was caused by the negligence on the part of the Respondent. She claimed therefore 3 months salary in lieu of notice, service for 3 years, general damages for unlawful termination equivalent to 3 years pay, underpayment for 3 years, overtime for 3 years, loss of future earnings and release of her bag and contents. She averred that after the attempted robbery she was rushed to hospital and after resuming work was demoted to waitress and was not paid the January 2014 salary.
2. The Respondent filed a Memorandum of Defence on 24th April 2014. In the defence, the Respondent averred that the Claimant was a prime suspect in the robbery and may have conspired with others to stage-manage the incident to look like a robbery. The Respondent averred that the Claimant never reported to work after discharge or make herself available to the police for investigations to continue. The Respondent averred that the Claimant had lost another 90,000/- in dubious and unexplained circumstances. The Respondent thus sought the dismissal of the claim with costs.
3. The Claimant filed a Reply to the Respondent's memorandum defence and averred that she was not a prime suspect in the robbery incident and she did not conspire with others for the incident of robbery. She averred that the Respondent withdrew the security guard. She also averred that she reported to work after her discharge from hospital and reported to duty and was assigned duties as a waitress and was not paid the January 2014 salary. She thus sought the defence be dismissed and judgment be entered on her behalf.
4. Parties opted to have the suit resolved by documentary evidence as per Rule 21 of the Industrial Court (Procedure) Rules 2010. The Respondent filed submissions on 9th July 2015 while the

Claimant filed submissions on 23rd July 2015. In her submissions she stated that it was incumbent on the Respondent to provide her with security while ferrying large sums of cash to the bank. She submitted that she survived the gunshot to her head by the grace of God. She denied she colluded with the robbers to shoot her in the head. She reported the incident to the Police and severally went to the police to assist with investigations. She denied forging the recommendation letter issued to her. She submitted that she did not abscond from duty but was sacked verbally. She thus submitted that she had satisfied the Court that the Respondent had not complied with Section 40 of the Employment Act 2007.

5. The Respondent in its submissions submitted that the facts surrounding the dispute are that the Claimant who was a cashier alleged to have been robbed on her way to the bank. The Respondent submitted that the robbers shot at Evelyn Gichuhi and the bullet hit her shoulder and consequently also hit the Claimant in the head. It was submitted that the bullet was not intended for the Claimant. The Respondent submitted that it did not sack the Claimant from her position but transferred her to a different section and that the Claimant absconded from work. The Respondent asserted that the person who had issued the recommendation letter was not employed in the Human Resource department. The Respondent submitted that there is a pending suit in the Magistrates Court being CMCC No. 1598 of 2014 over the same subject matter.
6. The Claimant was undeniably an employee of the Respondent. From the pleadings on record, documentary evidence adduced and the submissions made by the parties, the Claimant was injured in a foiled robbery attempt. The Claimant was stated to have been carrying Kshs. 650,000/- while the other employee – Evelyn was carrying Kshs. 600,000/- and the aim was to bank the cash at the Transnational Bank City Hall Way Branch. The two ladies were accosted at Ambassador Hotel bus stop area and shot. The Claimant was shot in the head and the other lady in her shoulder. The Respondent avers that the bullet that hit the Claimant was not intended for her but for her colleague and accuses the Claimant of conspiracy.
7. It is bewildering that an organization can send over 1.2 million to be banked without offering security for the persons transporting the money. It is even more shocking that the sums were being ferried on foot. This is a dubious practice that suggests the inconsiderate nature of the management of the Respondent. The fact that the 2 ladies are alive is a miracle as the thugs who shot at them actually hit them in areas of their bodies that could have easily turned fatal. The Claimant was entitled to have safety at her workplace and that included the time she was trafficking money on behalf of the Respondent. The Claimant asserts she was demoted then asked to go home hence her suit. Section 74 of the Employment Act places an obligation on an employer to keep records. No record has been availed of the Claimant's redeployment or her attendances at work to suggest that she absconded from work. The Claimant was constructively dismissed in my finding. The Respondent had the wherewithal to pursue a probe and establish if the Claimant was indeed culpable in her attack and that of her co-worker. There is no indication whatsoever that the Police found her to be a person of interest. This would have been a clear pointer of involvement but such evidence is sorely lacking. The Claimant seeks various reliefs which include the return of her bag and personal items in addition to the relief she has sought in respect of the actual dismissal.
8. The Claimant has proved her case on a balance of probability and I find that she is entitled to the following orders:-
 - a. Salary for January 2014 Kshs. 16,000/-
 - b. One month salary in lieu of notice Kshs. 16,000/-
 - c. 12 months compensation for unlawful dismissal Kshs. 192,000/-
 - d. Costs of the suit
 - e. Interest at Court rates on the sums on the sums above from date of judgment till payment in full.
 - f. Certificate of Service in terms of Section 50 of the Employment Act.

Orders accordingly.

Dated and delivered at Nairobi this 29th day of September 2015

Nzioki wa Makau

Judge