



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1888 OF 2013

(Before Hon. Lady Justice Hellen S. Wasilwa on 21st October, 2015)

JENNIFER WAITHIRA MWANGI.....CLAIMANT

VERSUS

GIKURU KAZIBWE & COMPANY.....1ST RESPONDENT

NELSON GIKURU2ND RESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Jennifer Waithira Mwangi filed her Memorandum of Claim on 26/11/2013 in person. She claimed wrongful and unfair termination of her services and failure by the Respondents to pay her terminal benefits.
2. Her evidence was that she was employed by the Respondent in March 2006 as an Office Administration at a salary of 14,000/= per month. She avers that she carried out her duties with utmost loyalty and diligence until June 2013 when she was terminated by the Respondents without notice.
3. She claims payment of her terminal dues as enumerated in her claim. She stated that she was not given any appointment letter and asked court to take judicial notice to the fact that many employers don't give their employees appointment letters.
4. The Respondents filed their defence on 9/1/2014 through the firm of Wambugu Kariuki & Associates Advocates. They aver that the Claimant is 1st Cousin of 2nd Defendant and it is this trust that caused Respondents not to give her and appointment letter.
5. They however aver that on 16th June 2013, the Claimant came to work and indicated that she was no longer interested to work for the 2nd Respondent as she had gotten another better job and so left.
6. On 13/9/2013, the Claimant was paid her June dues amounting to 8,400/= which she acknowledged. The Respondent denies terminating Claimant's services.
7. After consideration of all evidence and submissions, the issue was whether:

1. ***The Claimant was terminated by the Respondents or she absconded duty.***
2. ***If she was terminated whether due process was followed.***

8. On 1st issue, the issue of Claimant being terminated, the Claimant avers that she was just told to go away. The Respondent on his part contends that the Claimant absconded duty.

9. It is apparent that claimant was an employee of the Respondent. It is also apparent that she worked for Respondent for several years since 2006 to June 2013 – a period of 7 years. She was never issued with any appointment letter and therefore terms of the engagement remains unclear. The only semblance of the engagement is the salary voucher for September 23013 showing that he Claimant was paid 8,400/= which she acknowledged as her salary for June 2013.

10. The Respondent had a duty and obligation to issue Claimant with a letter of appointment as provided for under Section 9(1) and (2) of Employment Act which states as follows:

“(1) A contract of service:

- a. ***for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or***
- b. ***which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.***

(2) An employer who is a party to a written contract of

service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3).”

11. In absence of a letter of appointment spelling out the terms of the contract when there is a dispute then Section 10(7) of the Employment Act applies:

“If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.”

12. The burden of proving or disproving the terms of employment now rests on the Respondent. The Claimant avers that her salary was 14,000/= but Respondent states otherwise. However, relying on salary voucher adduced I will take it as being the position that the Claimant’s salary was 8,400/=.

13. The manner of disengagement or separation would also be clear in the presence of an appointment letter. It is my finding that, the Claimant’s position holds sway and it is the Respondent to disapproved and prove it.

14. I therefore find for the Claimant that she was unfairly terminated without notice or hearing as provided under Section 41 of Employment act.

15. It is my determination that the termination was unfair and unjustified in terms of Section 45 of Employment Act and I therefore award her as follows:

1. ***1 months salary in lieu of notice = 8,400/=***
2. ***12 months salary as damage for unlawful termination***

$$=8,400 \times 12 = 100,800/=$$

3. ***Service pay for 7 years being 15 days salary for each***

$$\text{year worked} = 4,200 \times 7 = 29,400/=$$

TOTAL = 138,600/=

Plus costs and interest.

Read in open Court this 21st day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wara holding brief for Wambugu Kariuki for Respondent

Claimant in person