REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1508 OF 2011

TABITHA MASIBO …….....……1ST CLAIMANT

EMMY MIDEVA KAYIYA…….....….2ND CLAIMANT

VERSUS

VEGPRO (K) LIMITED…….....……..RESPONDENT

JUDGMENT

1. The claimant in this suit aver that they were employees of the respondent at a daily wage of Kshs.295 and 300 respectively. The claimants averred that they were employed in 1998 and worked until 10th February, 2009 when they were told not to report to work for 2 weeks.

2. The 2nd claimant on her part further averred that when she requested to be redeployed to a warmer area on doctor's recommendation she was instead dismissed by the Human Resource Officer.

3. The claimant's therefore seek an order for compensation from the Court being one month's pay in lieu of notice, pay in lieu of leave and service gratuity at the rate of 18 days' pay for every complete year of service.

4. The claimants' and the respondent's evidence before Court was in concurrence that the claimants were casual employees on daily wage. The 2nd claimant stated that there were occasions they would be advised to stay away from work. The respondent on the other hand stated through its witness a Mr. John Mwangi the claimants were never terminated but just failed to show up for work.

5. There being no dispute that the claimants were casual employees, ideally their contracts of service were daily and were terminable at the end of each day without notice or payment in lieu thereof. However, the claimants served the respondent as casual employees for a considerably long period hence by virtue of section 37(1) of the Employment Act, their contract of service is deemed to be one where wages are paid monthly and to which section 35(1) (c) applies. In ending their service their entitlements become similar to regular employees.

6. Concerning when they were employed, the claimants averred that they were employed in 1998. The respondent though denied this fact, did not produce any evidence to the contrary. The onus of keeping employment records lie with the employer.

7. Concerning the claim for pay in lieu of leave, the Court regards this as a continuing injury and ought to have been sued for within twelve months after cessation thereof. The claimants were terminated in February, 2009 hence their claim on account of leave should have been brought by February, 2010. This suit was filed in September 2011. The claim on account of leave is therefore statute barred and cannot be granted.

8. The claim for unfair dismissal is also disallowed as the claimants did not in their evidence in Court allege that their dismissal was done for invalid reasons and or the process of dismissal unfair.

9. In conclusion the Court will award the claimants as follows:-

Tabitha Masibo

(a) One month's pay in lieu of notice……8,850.00

(b) Service pay at the rate of 15 days' pay for

each complete year of service (1999-2008)…....48,675.00

57,525.00

Emmy Mideva

(a) One months' pay in lieu of notice……..9,000.00

(b) Service pay at the rate of 15 days' pay each

Complete year of service……...….49,500.00

58,500.00

10. The claimants shall have the costs of the suit.

11. It is so ordered.

Dated at Nairobi this 2nd day of October 2015

Abuodha J. N.

Judge

Delivered this 2nd day of October 2015

In the presence of:-

…….....…for the Claimant and

…….....……for the Respondent.

Abuodha J. N.

Judge