



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 944 OF 2011
(Before Hon. Lady Justice Hellen S. Wasilwa on 1st December, 2015)
JANET MUTHEU MARTIN.....CLAIMANT
VERSUS
FUN AN SHOP LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimant herein Janet Mutheu Martin filed her Memorandum of Claim on 14/6/2011 in person. Later on, the firm of S. K. Opiyo & Company Advocates filed their Notice of Appointment as Advocates for the Claimant.
2. The Claimant's case is that, she was employed by the Respondent on 30th March 2008 as a Cleaner and Cook. The Claimant avers that the Respondent operates its business as a Supermarket and Restaurant at Diamond Plaza in Highridge Shopping Centre. She also avers that though her appointment letter designates her as a Cleaner, she was also doing cooking.
3. It is Claimant's case that she served the Respondent faithfully but on 7/3/2011, she was verbally terminated after some items were stolen from the Supermarket.
4. On 27/2/2011, the management of Respondent had taken her and other colleagues to Parklands police Station in the theft. They were interrogated but one of them Naomi Anundo admitted to be the one who had stolen the items. The police therefore found Claimant and others innocent and they were released. They attempted to go back to work but were turned away and told to come back again on 7/3/2011.
5. She then reported the matter to her union, the Kenya Hotels and Allied Workers Union for action. Her union wrote a letter to the Respondent but no action was taken. She then filed this case in court where she seeks to be paid her terminal dues plus notice pay, leave accrued, severance pay, overtime pay, underpayment and compensation for unlawful termination.
6. The Respondent filed their Statement of defence on 19/7/2011 through the firm of Tariq Khan & Associates Advocates.
7. It is the Respondent's position that the Claimant was never terminated verbally but that she on her own volition declined to resume her duties.

8. The Respondent further avers that the Claimant is not entitled to the reliefs sought and they want the case dismissed accordingly.

9. Having considered evidence of both parties, it is apparent that the Respondent states that the Claimants was a theft suspect and was even arrested by police. Investigations were carried out but it cannot be the position that the investigations are still incomplete 4 years down the line.

10. The Respondent also avers that they asked Claimant to resume duty but she declined on her own volition. This assertion is defeated by the fact that the Claimant's union wrote to them soon after the verbal dismissal (3 days) and the Respondent never responded to this letter.

11. It is apparent that there were no valid reasons to warrant the termination and due process as envisaged under Section 41 of Employment Act was not followed.

12. I find that termination of the Claimant unfair and unjustified under Section 45 of Employment Act 2007 which states as follows:

“(1) No employer shall terminate the employment of an employee unfairly.

2. A termination of employment by an employer is unfair if the employer fails to prove:

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason:-

i. related to the employee's conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c. that the employment was terminated in accordance with fair procedure.

13. I therefore find for Claimant and award her as follows:

1. Kshs.7,478/= notice pay

2. Annual leave earned – 7,478/=

3. February 2011 salary – 7,478/=

4. 12 months salary as compensation for unlawful

termination = 7,478 x 12 = 89,736/=

TOTAL = 112,170/= plus costs and interest

The Claimant should also be issued with a Certificate of Service.

Read in open Court this 1st day of December, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Nyabena holding brief for Kadere for Claimant

No apperance for Respondent