



REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT AT NAIROBI  
CAUSE NUMBER 1673 OF 2012

**BETWEEN**

M M.....CLAIMANT

**VERSUS**

DR. C.K.K.....RESPONDENT

*Rika J*

*CC. Leah Muthaka*

*Carol Kinya Mburugu Advocate instructed by Kituo Cha Sheria, Advocates for the Claimant*

*Mr. Oyiembo instructed by Oyiembo & Company Advocates for the Respondent*

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ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. The Claimant states she was employed by the Respondent Doctor as a House Help, in the year 2000. Her contract of employment was ended without reason or notice by the Respondent, in July 2011. She seeks to be paid service pay at Kshs. 22,000; annual leave entitlement at Kshs. 30,800; and compensation the equivalent of 12 months' salary at Kshs. 48,000 for unfair termination. She prays for costs, interest and any other suitable reliefs.
2. Mary testified and closed her case on 13<sup>th</sup> November 2012. The Respondent failed to attend Court on 19<sup>th</sup> June 2013 when the dispute was slated for the hearing of his case. The Court marked the proceedings as closed and advised the Claimant Award would be delivered on notice.
3. The Claimant testified she earned Kshs. 4,000 per month. She was called by a daughter to the Respondent and advised her father had instructed that Mary ceases to work. The Respondent molested her and had sexual intercourse with her. She suspected it was after she refused to continue having sex with Dr. K that he decided to use his children to unfairly terminate her contract of employment. He promised he would call her, but never did, prompting Mary to approach Kituo Cha Sheria for legal assistance.

4. Cross-examined, Mary stated she was recruited to serve the Koskey residence by his daughter I. This was in 2000. She was recruited from a group of women who used to converge at one particular place, waiting for any person who was in need of their labour. She was initially paid Kshs. 300 daily, then Kshs. 4000 per month. She denied that she ever served in the neighbouring houses. She served Koskeys exclusively. The Doctor had 5 children most of them in boarding schools. They stayed at the residence during school vacation. It was not true that Mary only worked on Saturdays. She did not live with the Koskeys at their house. A child of Koskey told Mary she had been sacked. The Claimant has not spoken to Dr. Koskey after that. She did not state in her pleadings that the Doctor sexually accosted her.

5. The Respondent's position is that the Claimant did not work for him from 2000 to 2011 as alleged. She is not entitled to the prayers sought. She worked for Koskey occasionally as she did for other houses, and was paid a daily rate. The Respondent filed a witness statement from one J N, one of the neighbours whom the Claimant worked for. The Claim has no merit, and the Respondent urges the Court to dismiss the Claim with costs to the Respondent.

*The Court Finds and Awards:-*

6. The evidence and pleadings on record persuades the Court Mary was not a full time Domestic Worker in the service of Dr. Koskey. She was more of a freelance Domestic Worker, moving from one family to the other, cleaning for them as and when required. She admits she cleaned even though just once, for one J N. She states in her Reply to the Statement of Reply, that she worked for Dr. Koskey 3 times in a week, and served other families for the other 4 days. It is difficult to see how she would then claim service pay, annual leave pay, house rent allowance, and compensation for unfair termination from Dr. Koskey, and not from her other employers for whom she worked for the better part of the week.

7. There was nothing in her Statement of Claim, or Reply to the Statement of Reply, to suggest she was sexually violated by Dr. Koskey. She did not mention anything of the sort in her pleadings. She only came up with the sexual allegations in Court, and even then, appeared to suggest she had been involved in a sexual relationship with the Doctor for some time, and it was only after she decided to terminate the sexual relationship, that the Doctor used his children to terminate her contract of employment. This evidence points to a consensual sexual liaison between two grown-ups, and is not an aspect of the employment relationship that has any bearing on the remedies sought in this Court. In the end, the Court Orders:-

***[a] The Claim is dismissed with no order on the costs.***

Dated and delivered at Nairobi this 23<sup>rd</sup> day of January 2014

James Rika

Judge