



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAKURU**

**CAUSE NO. 354 OF 2013**

**EVA MUTHONI MAINA.....CLAIMANT**

**-VERSUS-**

**RIFT VALLEY GLAZIERS LIMITED.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 28<sup>th</sup> March, 2014)**

**JUDGMENT**

The claimant **Eva Muthoni Maina** filed the memorandum of claim on 17.10.2013 through Nyende & Company Advocates. The claimant prayed for judgment against the respondent for:

**a) A declaration that the termination of the claimant's contract of employment was unfair, unlawful and bad labour practice.**

**b) The respondent to pay the claimant her terminal dues including:**

- i. 1 month pay in lieu of termination notice being Kshs.14,519.00.**
- ii. Salary for July, 2013 being Kshs.14,519.00.**
- iii. Annual leave for 2013 being Kshs.14,519.00.**
- iv. 12 months pay for compensation for unlawful dismissal being Kshs.174,228.00.**
- v. Gratuity pay of Kshs.72,595.00.**
- vi. Salary underpayment**
- vii. Total claim of Kshs.246,823.00.**

**c) Interest and costs.**

The respondent filed the memorandum of response on 03.12.2013 through Wamaasa, Masese,

Nyamwange & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The case was heard on 26.03.2014. The claimant gave evidence to support her case. The respondent's witness was Sebastian Mwachovi.

By close of the hearing, it was established and the claimant agreed that she was entitled to Kshs.25,995.00; 15 due leave days pay of Kshs.12,185.00; and as computed by the respondent making **Kshs.38,180.00**. It was also established that the claimant was entitled to 6 days worked in July, 2013 making **Kshs.2,903.80**. The court finds that the claimant is entitled to a sum of **Kshs.41,083.80** as established. The claimant did not specifically state the amount of underpayment claimed, no evidence was provided and the court finds that the claim was misconceived and abandoned.

The issues that remain for determination are whether the claimant was unfairly terminated; and whether the claimant is entitled to the 12 months compensation and a month's pay in lieu of the termination notice.

For the 1<sup>st</sup> issue, the claimant testified that she reported at her work place at the respondent's offices on Kijabe Avenue in Nakuru on 6.07.2010. She requested for permission to take leave from work at 10.00 am to 11.00 am. The respondent's director called Kuseva granted her the oral permission. She left and came back at 11.00 am and the director conveyed to her that she would no longer remain in employment. She asked for reasons and the director told her to go and see the other respondent's director called Murtaza at the respondent's head office at Industrial Area in Nakuru. She proceeded accordingly.

The claimant testified that she met Murtaza at his office who told her to go home. She inquired about her terminal dues and Murtaza asked her to write a resignation letter as a precondition to her being paid the terminal dues. She authored the resignation letter filed in court in view of her then prevailing financial pressure but refused to sign it because as it turned out, she was not paid the terminal dues by Murtaza as had been discussed. She testified that she did not resign but that she was dismissed verbally without notice and any valid reason. The account given by the claimant was not rebutted by the respondent and RW testified that he did not know the circumstances under which the resignation letter was written. The court therefore finds that the account of the termination by the claimant to be the true account.

The respondent's case was that the claimant's termination was on account of resignation. The court finds that the claimant did not resign because she had not signed the purported resignation letter. Thus, the court finds that the reason for the termination namely resignation was not valid and the termination was unfair under section 43 of the Employment Act, 2007.

The court further finds that the claimant was verbally terminated without any notice and without a valid reason; and the court further finds that the claimant was not accorded due process. The termination was unfair in substance and procedure invoked.

The court has considered that the claimant had served for over 4 years, she had a legitimate expectation to remain in employment for a long time and up to attaining 55 years of age, she did not in any manner contribute to her termination, and the termination process invoked intimidation and degrading tactics on the part of the respondent. In the circumstances, the claimant is awarded the maximum 12 gross monthly pay under section 49(1) (c) of the Act for the unfair termination as prayed for being **Kshs.174,228.00**. The court further finds that the claimant is entitled to one month pay in lieu of the termination notice being **Kshs.14,519.00** as prayed for.

In conclusion, judgment is entered for the claimant against the respondent for:

1. A declaration that the termination of the claimant's employment by the respondent was unfair. The respondent to pay the claimant **Kshs.229,830.80** by 1.05.2014 and in default, interest to be payable from the date of the judgment till full payment.

2. The respondent to pay costs of the suit.

**Signed, dated and delivered** in court at **Nakuru** this **Friday, 28<sup>th</sup> March, 2014**.

**BYRAM ONGAYA**

**JUDGE**