



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

**AT NAKURU**

**CAUSE NO. 77 OF 2013**

**JEAN CHEBET KORIR.....CLAIMANT**

**-VERSUS-**

**UNILEVER TEA KENYA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 21<sup>st</sup> March, 2014)

**JUDGMENT**

The claimant **Jean Chebet Korir** filed the memorandum of claim on 08.04.2013 through Karanja-Mbugua & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. General damages.**
- b. Terminal dues as pleaded in paragraph 15 being bus fare one way Kshs170.00; pro-rata leave Kshs.8,850.00; ordinary overtime Kshs.1,770.00; and PH overtime Kshs.2,574.00.**
- c. Interest at 14% per annum from date of default until payment in full.**
- d. Costs of the suit.**
- e. Any other relief that the honourable court may deem fit to grant.**

The respondent **Unilever Tea Kenya Limited** filed the memorandum of response on 03.05.2013 through Murimi, Ndumia, Mbago & Muchela Advocates. The respondent's memorandum of response, counterclaim and set off was filed on 01.10.2013. The respondent prayed for the claimant's claim to be dismissed with costs; judgment be entered for the respondent against the claimant for Kshs.168,000.00 plus costs and interest; and any claim found payable to the claimant be set off against the amount due and owing from the claimant to the respondent in respect of rent arrears. The claimants filed the amended memorandum of claim and reply to counterclaim and set off on 22.10.2013.

The case was heard on 17.12.2013. The claimant gave evidence to support her case. The respondent's witnesses were Godfrey Rono (**RW1**); Gradus Chacha Kagosi (**RW2**); Patrick Akwenda Omire (**RW3**) and Engineer Cyrus Muturandu (**RW4**).

The claimant was employed by the respondent since 2.06.2005 as a switchboard operator. Her duties

entailed receiving telephone calls, redirecting the calls, conveying information on telephone and handling telephone electrical problems.

The claimant worked for about 6 years. On 06.08.2011, it was a Saturday, she was serving on a night shift and it was a few minutes to mid-night. She received a telephone call from a watchman at logistics department and the watchman conveyed that Kiprono's place had been attacked. Kiprono was the respondent's assistant logistics officer. The watchman was not sure and he informed the claimant to find out.

The claimant testified that she dialled Kiprono's house but the telephone did not go through as it was not ringing at all. She tried to dial the security officer's extension but it was out of order. She testified that she failed to find the assistance for the Kipronos.

The claimant was suspected as an accomplice to the attack, arrested, not charged with a criminal offence but issued with a show cause letter for failing on her performance of duty. She was given a show-cause letter, she replied, was heard in presence of trade union representatives, found culpable of failing to report the information on the attack of the Kipronos and dismissed by the letter dated 20.08.2011. She was not paid any terminal dues.

In cross-examination, the claimant admitted that a patrol car was to be called in event of an emergency. She admitted it was her duty in such emergencies to call the security officer called Kagose (**RW2**) on his mobile phone but she did not call that mobile phone number on that fateful night. The claimant admitted that after dismissal, she continued to stay and use the respondent's allocated housing accommodation.

RW1 was the guard at the logistics department. He was on duty on the night in issue. At about 12.11 am, he received a telephone call from Richard Kirui conveying that Kiprono's house was under attack and asked RW1 to call claimant at switchboard. RW1 successfully complied and when the claimant picked the call, she told RW1 that she needed Kiprono himself to report the theft.

RW2 testified that he received a telephone call at 1:55 am reporting the attack which had taken place at about 11:30 pm. He testified that he spoke to the claimant about the theft and she said she had called Gor who was with night patrol car and she had acted after the alarm was sounded. The claimant had tried to call RW2's extension line instead of the mobile phone. His evidence was that the claimant ought to have called the van then him on mobile phone but had failed to do so on that fateful night.

RW4 testified that the claimant occupied the respondent's house as an employee under the respondent's agreement to house staff. He had not seen any receipts by which the claimant had paid rent. RW4 testified that there was no tenancy agreement.

The only issue for determination in this case is whether the parties are entitled to the remedies as prayed for. The court makes the following findings.

a. In view of the evidence on record, on the fateful night, the claimant failed to notify the officer on the patrol van and the security officer (**RW2**) about the attack and on time or at all as expected. The court finds that failure to have been sufficient ground for her dismissal. The court finds that the claimant was accorded the notice and hearing as envisaged in section 41 of the Employment Act, 2007. The respondent has also established the reason for the termination to have been genuine as envisaged in section 43 of the Act. In the circumstances of this case, the court finds that the dismissal was fair.

b. The court finds that the claimant did not provide evidence for the other remedies as prayed for. The prayers will therefore fail.

c. As for the counterclaim, the court finds that there was no tenancy agreement between the parties. The court further finds that the claimant's occupancy of the respondent's house was within the respondent's statutory duty to provide reasonable housing accommodation under

section 31 of the Act. After the dismissal, there is no evidence that the claimant was asked to vacate the house and that she failed to do so. Further, clause 16(b) of the collective agreement entitled the claimant to remain in the house until the dispute about her dismissal had been determined. The court finds that the determination of the dispute would include the determination of the ensuing suit. In the circumstances, the court finds that the counterclaim shall fail.

In conclusion, judgment is entered for the dismissal of the statement of claim and the counterclaim with orders that each party shall bear own costs of the suit.

**Signed, dated and delivered in court at Nakuru this Friday, 21<sup>st</sup> March, 2014.**

**BYRAM ONGAYA**

**JUDGE**