



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 101 OF 2012

MARY NAFULA INGATI..... CLAIMANT

VERSUS

RUTH HANKEL MARTHA.....1ST RESPONDENT

HARDEEP SINGH REHSI.....2ND RESPONDENT

Mr. Nyende for Claimants

Mr. Matuli for Respondent

JUDGMENT

1. The Claimant in cause No.101 of 2012 is Mrs. Mary Nafula Ingati whereas the Claimant in cause No.102 of 2012 is Lizz Namarome Muchanga who is her daughter.

The two suits were consolidated as they are founded on similar facts and the Respondents are the same. Both Claimants worked for the Respondents in the capacity of domestic workers.

For the purpose of this judgment, Mary Nafula Ingati is referred to as the 1st Claimant whereas Lizz Namarome Muchanga is the 2nd Claimant.

2. Facts of the case

The 1st Claimant was employed by the 1st and 2nd Respondents who are husband and wife in 1986 as a domestic house help at their Karen residence. Her duties included basic household chores such as laundry, housekeeping, cooking and included opening the main gate to the premises.

She worked continuously for a period of 24 years until May, 2011 when the Respondent verbally summarily dismissed the Claimant from the employment.

3. The 1st Claimant contends that her employment was unlawful and unfair and was in violation of the Employment Act and the contract of employment.

The Claimant was not paid any terminal benefits upon termination which includes;

- i. Severance pay at the rate of 18 days salary for the 24 years served in the sum of kshs.172,800/=.
- ii. Untaken annual leave for 24 years in the sum of Ksh.288,000/=.
- iii. One month salary in lieu of notice in the sum of Kshs.12,000/=.

- iv. Annual salary for the month of May, 2010 in the sum of Kshs.12,000/=.
- v. Payment in lieu of weekly rest days for 24 years at double rate in the sum of KSHS.921,000/=.
- vi. Payment in lieu of unpaid public holidays at a double rate in the sum of Kshs.96,000/=
- vii.NSSF contribution for 24 years in the sum of Kshs.14,400/=.

4. That the 1st Claimant demanded payment but this was not heeded. The 1st Claimant also seeks 12 months salary being compensation for the unlawful and unfair termination.

5. 2nd Claimant

The 2nd Claimant was employed as a domestic servant by the Respondent in June 2000. She did not have a written contract just like the 1st Claimant her mother. She earned a monthly salary of Kshs.12,000/= per month. She worked continuously until November, 2011 when she was summarily dismissed verbally. She was not paid any terminal benefits upon dismissal. She states that the summary dismissal was unlawful and unfair and in violation of the **Employment Act** and her contract of employment.

She seeks compensation for the unlawful and unfair dismissal and in addition payment of terminal benefits as follows:-

- 6. i) Severance pay for 10 years' service calculated at 18 days salary for each completed year of service in the sum of Kshs.72,000/=.
- ii) Payment in lieu of annual leave for 10 years in the sum of kshs.120,000/=.
- iii) Payment in lieu of one month notice in the sum of Kshs.12,000/=.
- iv. Arrears salary for the month of November, 2010 in the sum of Kshs.12,000/=.
- v. Payment in lieu of weekly rest days for 10 years at double ratio in the sum of Kshs.460,800/=.
- vi. Payment in lieu of public holidays worked at double rate in the sum of Kshs.48,000/=.
- vii.NSSF contribution for 10 years in the sum of Kshs.72,000/=.

Total 940,800/=

She made a demand note which was not heeded and claims as above.

7. Statement of Response

The 1st and 2nd Respondents filed a statement of response in both suits dated 2nd July 2012. With respect to 1st Claimant, the Respondents admit that they employed the Claimant for a period of 23 years (and not 24) as a domestic house help and all the other duties that she performed were related or incidental to her employment as a domestic house help.

They admit that her contract of employment was oral.

8. The Respondents aver;

- a. That the Claimant was granted leave with full pay including bonuses every time she went on annual leave as she is a Ugandan national. Alternatively she was paid in lieu of leave upon her own request.
- b. That the Claimant was granted one day off every week or was paid in lieu thereof at her own request.
- c. That the Claimant was granted a day off on Public and National Holidays or was paid in lieu thereof.
- d. The Claimant did not have a Kenya National Identity card to enable her register with NSSF. The Claimant is therefore estopped from claiming for non-contribution thereof.

- e. That the Claimant unconstitutionally deserted her employment after her suspension was lifted hence she was not issued with a certificate of service.

9. That 1st Claimant was suspended upon the loss of huge sum of money in the Respondents residence, the 1st Claimant as a result felt offended and took off with her daughter the 2nd Claimant who had been employed as a baby sitter. They both deserted their employment.

That the Respondents had reasonable suspicion that the 1st Claimant was involved in the said loss of money and herself and the 2nd Claimant were the only 3rd parties in the residence.

10. The Respondents aver that on 3rd December, 2011 they paid the 1st Claimant Kshs.400,000/= comprised of;

1. Service pay for 23 years in the sum of Kshs.148,016/= It is admitted that she earned Kshs.12,000/= per month.
2. One month salary in lieu of notice in the sum of Kshs.12,000/=.
3. Payment in lieu of leave for the year 2011 in the sum of Kshs.12,000/=.
4. Bonus of Kshs.12,000/=

Total Kshs.400,000/=

11. Respondents have attached a typed document signed by both parties indicating payment of kshs.400,000/= on 3rd December, 2011.

The Respondents deny this claim in it's entirety. The Respondents aver that at all material times they treated the 1st Claimant well and helped her with loans to purchase her own land and also paid her hospital bills.

They urge the court to dismiss the claim.

12. 2nd Claimant

The Respondents admit that the 2nd claimant earned Kshs.12,000/= per month and that she worked for nine years but not 10 years.

The Respondents deny that they summarily dismissed her and aver that the 2nd Claimant left with her mother upon the mother's suspension from employment.

13. The Respondent admits not paying the claimant the following terminal benefits.

- i. Severance pay for nine years at the rate of 15 days salary to each completed year of service in the sum of Kshs.64,800/=.
- ii. Payment in lieu of leave for the year 2011 in the sum of kshs.12,000/=.
- iii. Payment for November salary in the sum of Kshs.12,000/=.

Less one month's salary deduction for failure to give the Respondent notice in the sum of Kshs.12,000/=.

Total due Kshs.76,800.00

14. The 2nd Claimant testified in support of the 1st and 2nd Claimant's case. She told the court that she was introduced to the Respondents by her mother and worked as described above until when her employment was terminated through an "sms" message. That the 1st Respondent told her that she was a thief. At the time, the 1st Respondent had already dismissed her mother in May, 2011.

15. The 2nd Claimant denies that herself or her mother stole from the Respondents. Upon getting the “sms” she did not return to work.

That she and her mother met the 1st respondent who offered to pay them kshs.86,000/= each to settle the matter but they declined.

The 2nd Claimant told the court that she had a good record as a baby sitter and had no bad record. That this was the case with regard to her mother.

16. She said that she never went on leave for 10 years and it was also the case with respect to her mother.

They both worked from 8.00am to 5.00pm from Monday to Saturday. They did not live with the Respondent.

They both had no payslip and were not registered with NSSF or NHIF. They went home on public holidays including Christmas time on 25th and 26th.

17. She seeks payment for her and her mother as claimed including severance pay calculated at 18 days salary for each year completed. 21 days leave for each year. One month salary in lieu of notice and compensation for unlawful and unfair dismissal.

She admitted that they were given Sunday off and therefore dropped the claims for weekly rest days. She also admitted that they did not work during public holidays and dropped the claims accordingly.

They also withdrew the claims for NSSF contribution as they are claiming severance pay instead.

The mother claims for 23 years whereas she claims for 10 years.

18. The Respondents did not call any witness in support of their case. No documentary evidence was produced also in rebuttal to the claims made by the 1st and 2nd Claimants.

Other than the part of the claims by the 1st and 2nd Claimants withdrawn by the 2nd Claimant during her testimony and part of the claim that is time barred as it exceeds the six years time limit within which period the Claimants ought to have filed the claims, the rest of the claims as set out in the respective statement of claim have been proved on a balance of probability.

19. The 1st Claimant worked for 23 years whereas the 2nd Claimant worked for 9 years. They were not registered with NSSF and were not paid severance pay upon termination. The Court finds that they both are entitled to the gratuity as claimed for 23 and 9 years respectively at 15 days salary for each completed year of service.

The Court finds that the two went on leave regularly but are entitled to one month salary being payment in lieu of leave for the year 2011.

20. The Claimants have also established that they were dismissed without notice and therefore are entitled to one month salary in lieu of notice.

21. The Mother and daughter worked diligently for the Respondents for 23 years and 9 years respectively and the Court does not believe that they had become thieves all of a sudden. The Respondent dismissed them on mere suspicion and for ulterior motive of denying them 10 year service gratuity even though the Respondents did not invest in any pension scheme for them nor did the Respondent register them with NSSF.

22. The Court finds that the Claimant have both established that their summary dismissal was not for a valid reason and that no due procedure was observed whatsoever in this dismissal. The dismissal was

therefore procedurally unfair.

23. The conduct of the Respondents is in violation of **Section 43** as read with **Section 45(1) and 2(a) and (e)** of the **Employment Act**. Therefore the 1st and 2nd Claimant are entitled to compensation in terms of **Section 49(1)(c)** of the **Employment Act**.

24. The 1st claimant had served for a much longer period than the 2nd Claimant who was her daughter. The Respondent did not increase their salary for the entire period of their employment. The Respondents did not also invest in any pension scheme for them nor did the Respondents register or contribute on their behalf to the NSSF.

25. The conduct by the Respondents was detrimental to the welfare of the Claimants. The situation was not helped by the summary dismissal on mere suspicion without notice. For these reasons, this court awards the 1st and 2nd Claimants 10 months' salary each for the unlawful and unfair summary dismissal in spite of the good service they both had provided the 1st and 2nd Respondents for considerable long time.

In the final analysis, the court awards the Claimant as follows:

26. 1st Claimant

- i. Gratuity/severance pay – 138,000 (23 x 15 days salary) for each year served.
- ii. One month salary in lieu of leave – 12,000/=
- iii. One month salary in lieu of notice – 12,000/=
- iv. Ten (10) months salary compensation – 120,000/=
- v. Salary for May, 2011 kshs.12,000/=.

Total award Kshs.294,000/=.

27. 2nd Claimant

- i. Gratuity/severance pay- 54,000 (15 days salary for each completed year x 10).
- ii. One month salary in lieu of leave 12,000/=
- iii. One month salary in lieu of notice 12,000/=
- iv. 10 months salary compensation 120,000/=
- v. Salary for November 12,000.00

Total award Kshs.210,000/=

28. The claims for payment of untaken rest days, Public holidays and NSSF contribution are dismissed.

The 1st and 2nd Respondents are jointly and severally to pay the respective awards with interest at court rates from date of the dismissal i.e May 2010 with respect to the 1st Claimant and November, 2010 with respect to the 2nd Claimant until payment in full.

The Respondents to pay the costs of this suit and provide certificates of service to the 1st and 2nd Claimants.

Dated and signed at Nairobi this 11th day of August, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE

Read and delivered in open court by this 11th day of August, 2014