



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 1502 OF 2013

EVERLINE A. GIDA.....CLAIMANT

VS

TRIVEDI MAULIK.....RESPONDENT

AWARD

Introduction

1. The Claimant's claim brought by way of Statement of Claim filed on 17th September 2013 seeks relief for unfair termination of employment. The Respondent did not file any reply and the matter proceeded *ex parte* on 9th July and 30th July 2014. The Claimant testified on her own behalf and then called Truphena Ajwande Kombo.

The Claimant's Case

2. According to the Claimant she was employed by the Respondent as a house help effective 15th February 2009. Her employment was terminated on 10th January 2013 without lawful cause and without notice. The Claimant reported a labour dispute at the District Labour Office, Industrial Area. The District Labour Officer wrote to the Respondent who did not respond prompting the Claimant to file this claim.

3. The Claimant's claim is itemised as follows:

a). A declaration that the termination of her employment was wrongful and unfair

b). 12 months' salary in compensation for unfair

Termination.....Kshs. 102,948.00

c). One month's pay in lieu of notice.....Kshs. 8,579.80

d). Salary for 10 days worked in January 2013.....Kshs. 2,860.00

d). Accrued leave for 3 years.....Kshs. 18,018.00

e). Service pay for 3 years.....Kshs. 12,948.00

f). Costs and interest

Findings and Determination

4. This claim is undefended and therefore the first task before the Court is to determine whether the Claimant has established an employment relationship between herself and the Respondent. The Claimant pleads that the Respondent failed to document her employment as required under Section 9 of the Employment Act, 2007.

5. Granted that the law places the responsibility of drawing employment contracts on the employer, a claimant who comes to court must demonstrate that an employment relationship upon which a claim is made actually existed. In cases where employment is by oral agreement, the Claimant is expected to call corroborative evidence to confirm the existence of an employment relationship between them and the Respondent.

6. Towards this end, the Claimant called one Truphena Ajwande Kombo who told the Court that she was a house help in the neighbourhood where the Claimant worked. Kombo could not however tell the name of the Claimant's employer and the Court found her evidence to be of no probative value. In light of this, the Court finds that the Claimant failed to establish the existence of an employment relationship upon which she can lay a claim.

7. The result is that the Claimant's case is dismissed with no order for costs.

Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF NOVEMBER 2014

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF NOVEMBER, 2014

MAUREEN ONYANGO

JUDGE

Appearance:

Mr. Omondi for the Claimant

No appearance for the Respondent