



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 964 OF 2013

GRACE WAIRIMU NJOROGECLAIMANT

VERSUS

NITI COMPUTERS RESPONDENT

JUSDGEMENT

The issue in dispute is unlawful and or wrongful termination of employment

The claim herein was filed on 25th June 2013. The respondent entered appearance but did not file a defence. Upon invitation by the claimant, both parties appeared at the registry on 14th February 2014 and took hearing dates by consent for the 15th December 2014. On the material date set for hearing, the respondent was absent together with the advocate. Noting that the hearing dates were taken by consent, the court heard the claimant's case.

The claimant, Grace Wairimu Njoroje was employed by the respondent as a Sales Representative from February 2010 at a salary of Kshs.24, 575. The claimant was issued with a letter of appointment. In October 2012 the claimant applied for maternity leave which was granted through an online application and was to resume work in December 2013. When she returned to work, the respondent informed the claimant that there was no enough work and they would call her. The claimant was later terminated without any justification which was unprocedural and unfair. She was not paid her dues. The claimant is therefore seeking compensation for unlawful termination, salary arrears from October to December 2010, notice pay, severance pay and unremitted deductions to NSSF, NHIF and PAYE.

In evidence, the claimant testified that upon employment by the respondent she earned a salary of kshs.24, 575.00 per month and continued to work diligently until October 2012 when she applied for maternity leave and was to resume work in January 2013. However when she returned she was told that there was no vacancy. She called severally to know if she could resume but was told to remain at home until there was a vacancy. After 4 months the respondent told her that there was no more work for her and her contract of employment was terminated. She tried to negotiate for her terminal dues; the respondent promised to make the payments but never remitted. This was unfair termination as there was no issue that was put to the claimant, there was no allegation of misconduct or performance and thus seek the prayers as outlined in the claim that of;

- a. Damages for unlawful termination;
- b. Salary arrears for October to December 2012;
- c. Salary in lieu of notice
- d. Severance pay for years worked
- e. Unremitted deductions to NSSF, NHIF and PAYE.

In the absence of a defence and in view that hearing dates were taken by both parties by consent, it makes a mockery of justice for the respondent to fail to file their defence or appear in court on the appointed date to defend the claim. The absence of the respondent has no justification at all. However despite the fact that the suit is undefended, the same must be analysed on its own merits.

The claimant has attached annexure "GWN1" noting that this is her letter of appointment. However a close look at this annexure it reveals that the same is a schedule of targets for year 2012 setting incentives for the business. This is issued to the claimant as the Tele Sales Executive. To the claim and attached are pay slips for the claimant for the months of June to September 2012. The pay slips are outlined as;

June 2012, gross pay is Kshs.25, 200.00;

July 2012, gross pay is kshs.35, 000.00;

August 2012, gross pay is Kshs.35, 000.00

September 2012. Gross pay is Kshs.35, 000.00.

Of interest is the pay slip for September 2012 which notes;

*... Refund of excess NSSF deducted in August 2012; deduction of 1.5 days for late coming of 18 days. The pay heads marked * are for display only. They are not added. This is a system generated payslip, does not require any signature and/or company seal.*

Was the claimant therefore absent from work on various occasions and therefore the non-payment of some dues? What was the claimant earning on a monthly basis? Why would the respondent fail to defend such a suit? This court will never find out. Without a defence or attendance at the hearing of the case, the only available explanation is the evidence of the claimant. She stated that she worked diligently for the respondent until October 2012 when she took her maternity leave. Her salary was Kshs.24, 575.00 per month despite the fact that the payslips have higher amounts from which various deductions were effected.

Where an employee is terminated without notice, without written reasons for the same and without being taken through a hearing process, the same becomes procedurally and substantively unfair. There can be no justification in law or in fact where an employer without any cause terminates the employment of a causal employee or otherwise without due process. In this case where the claimant was on her maternity leave with the knowledge of the respondent and when she resumed she found she had no job without any just reason or notice, this is unfair.

Where a termination has no justification the affected employee can be compensated. In this case the court awards 6 months' pay at Kshs.24, 575.00;

The claimant is also entitled to her pay while she was on maternity leave until she was due to resume work. This is from October 2012 to December 2012 all being Kshs.24, 575.00 x 3 = Kshs.73, 725.00. This is awarded to the claimant.

Severance pay is due in a case of redundancy. This did not stand out as one such case. The claim is declined.

The claim for unremitted dues to NSSF, NHIF and PAYE, these are statutory dues owed to the NSSF, NHIF and Kenya revenue Authority. These sums cannot be awarded to the claimant. However where there is evidence that the employer has not made such statutory remittances as required under the NSSF, the NHIF and KRA Act, service pay is due at 15 days for each year worked. The claimant commenced work with the respondent on 10th February 2010 and was terminated in December 2012. There was one (1) completed year and she is awarded kshs.12, 285.50.

Judgement is entered for the claimant as against the respondent in the following terms;

- a. **The termination was unfair;**
- b. **Compensation at Kshs.147,450.00;**
- c. **Unpaid salary at Kshs.73,750.00;**
- d. **Service pay at Kshs.12,285.50; and**
- e. **Each party will bear their own costs.**

Delivered in open court this 19th day of December 2014.

M. Mbaru

JUDGE

in the presence:

Lilian Njenga: Court Assistant

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