



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1042 of 2011

TERESIAH WANJIRU MATHANGA.....CLAIMANT

-VERSUS-

PAYLES CAR HIRE & TOURS LIMITED.....RESPONDENT

JUDGEMENT

The facts of this case are not in dispute. The Claimant **TERESIAH WANJIRU MATHANGA** was employed by the Respondent Payless Car Hire & Tours Limited on 18th August 2009 by a fixed term contract dated the same day for a period of 11 months. The contract was to expire on 17th July 2010. She was terminated on 30th September 2009 by letter dated 1st October 2009. The reason for the termination was poor performance. For the whole of the period she worked for the Respondent she was undergoing training.

The case was heard on 23rd March 2012 by Hon. Justice Mukunya and by myself 27th November 2012. The Claimant testified on her own behalf while Mr. Vincent Odhiambo Awino, a Licensing Officer for the Respondent testified on behalf of the Respondent.

The Claimant claims Kshs.10,000 being salary for September 2012 and 1 months' salary in lieu of notice. She further claims compensation equivalent to 12 months' salary.

The contract signed by the Claimant does not provide for termination. It however provides at the paragraph under the heading "Warning Procedure" as follows:-

"If your work or conduct is found to be unsatisfactory or commits a default which in the opinion of the company does not warrant, you will be warned in writing. The number of warnings leading to summary dismissal will be two warning letters and on commissioning of the third offence within 3 months from the date of the second warning letter you are liable to be summarily dismissed".

The Claimant was never given any warning as provided for in the contract. I therefore find that the termination of her employment was unfair for failure by the Respondent to comply with the terms of the contract.

The Claimant seeks salary for the month of September 2009. The Respondent's witness did not deny the claim by the Claimant for payment of salary for September 2009. I award her the same as it is not denied by the Respondent. She is therefore entitled to Kshs.10,000 being salary for September 2009.

She further seeks one month's salary in lieu of notice. She is entitled to the same as she was never given notice or pay in lieu thereof as provided in Section 35 as read together with Section 36 of the

Employment Act as well as in Section 49(1)(a) as read together with Section 50 of the Employment Act.

The Claimant has further claimed compensation for unfair termination. I find that the period she worked of only 42 days and the fact that during the whole of that period she was undergoing training to be too short for her to have become entitled to 12 months compensation as she was not yet settled in and had in fact not started working. However, since the Respondent breached its own contract by failing to give notice to the Claimant, I will grant her compensation of 1 months' salary.

I therefore give judgement against the Respondent in the total sum of Kshs.30,000 made up as follows:-

- **Salary for September 2009** - **kshs.10,000.00**
- **One month's salary in lieu of notice** - **Kshs.10,000.00**
- **One month's salary as compensation-** **Kshs.10,000.00**

Orders accordingly.

Judgement read in open Court and signed on 19th day of February 2013.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the Presence of:- _____ Claimant

_____ Respondent