



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 433 of 2012

WANJIRU THIMBA.....CLAIMANT

VERSUS

PLACID VIEW PROPERTIES LTD.....RESPONDENT

Rika J

CC. Elizabeth Anyango

Mr. Olewe instructed by Mbugua Mureithi & Co. Advocates for the Claimant

Respondent absent

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

AWARD

1. Wanjiru Thimba was employed as the Deputy General Manager of Ole Sereni Hotel, owned by the Respondent Company, on 1st October 2008. She was head-hunted, having previously worked for the Holiday Inn as the Sales and Duty Manager. The Respondent terminated her services in a letter dated 27th April 2009. She felt termination was unfair, instituting the claim against the Respondent in a Statement received in Court on 16th March 2012. She prays for:-

- (a) A declaration that termination was unfair;
- (b) Compensation at 12 months' salary, totalled Kshs.2,400,000;
- (c) Arrears of salary and allowances comprising-
 - (i) Balance of February 2009 salary at Kshs.100,000;
 - (ii) Balance of March 2009 salary at Kshs.100,000;
 - (iii) Salary for April 2009 at Kshs.200,000;
 - (iv) Telephone allowance for April 2009 at Kshs.12,000.
 - (v) Club Membership at Kshs.150,000.

- (vi) Grooming allowance at Kshs.20,000.
- (vii) Car allowances at Kshs.25,000.
- (viii) Meal allowances for January to April at Kshs.3000 per month, added at Kshs.12,000.
- (ix) 1 month salary in lieu of notice at Kshs.200,000.
- (x) 7 days' pay in lieu of leave earned but not taken at Kshs.53,846.15

TOTAL Kshs.872,846.15

- (d) Costs of this claim;
- (e) Interest on (b) to (d) above; and,
- (f) Any other relief the Court may deem fit to grant

2. Thimba supported this claim in her oral evidence given in Court on 21st February 2013. She relied on the letter of appointment dated 30th May 2008. Her salary was reviewed in December 2008. The Respondent advised it was experiencing cash flow problems. Employees were asked to take paid leave. Thimba took this leave in January 2009, but was recalled after only two days. In February 2009, she was told 50% of the basic salary for February, March and April 2009 would be deferred until the commencement of trading at the hotel, expected on 1st June 2009. The balance of 50% would be paid effective from 1st June 2009. In case employment was terminated by either party, the full outstanding arrears would be paid as part of the final dues. This was communicated in a letter signed by Directors M.S. Jandu and Nazir Noordin.

3. Management of the Hotel was taken over by a company domiciled in India in March 2009. The termination letter issued on 27th April 2009, before the Hotel resumed operations on 1st June 2009. The letter alleged the Claimant spoke in derogatory and disrespectful manner against the Directors. Her attendance to duty in the past three months was alleged to be extremely poor. She was still reporting to her first CEO Michael Bertano, but the termination letter came from the Directors. Termination was on the spot. The attendance sheets, in the Statement of Reply did not have the name of the Claimant or the Hotel, and were all unsigned. Thimba explained that whenever she was not at the Hotel, she was always away on duty, with the knowledge of the Respondent, representing the Respondent at such places as the Kenya Hoteliers's Association meetings. The Claimant denied ever being disrespectful to her superiors. The Respondent with-held her dues and her certificate of service. Her employability, in the close-knit Hotel Industry, has suffered. She has sought employment with Crowne Plaza Hotel and Hotel Intercontinental, but they are reluctant to engage her, suspecting inappropriate causes for her exit from Ole Sereni. Thimba urges the Court to grant the claim.

4. The hearing date was taken in Court in the presence of Mr. Olewe for the Claimant, and Mr. Kimamo for the Respondent. The Respondent and its Advocates however, boycotted the hearing, without any communication to the Court or to Mr. Olewe.

5. The Respondent nonetheless filed a Statement of Reply on 24th September 2012. It conceded employing the Claimant in the capacity given in her claim. Her monthly salary was Kshs.200,000 inclusive of house allowance. Other benefits were at the discretion of the Respondent. She failed to perform her contract properly. She was persistently absent from work. Her claims are exaggerated. The Respondent prays for the dismissal of the claim.

The Court Finds and Awards:-

6. The Court is persuaded by the unchallenged evidence of Wanjiru Thimba. The Respondent sought

and secured her services, on clear terms and conditions of employment. The Respondent appears to have experienced a financial meltdown even before it became fully operational, and went about cost saving by deferring payment of salaries, slushing salaries and importing a management company. Nothing seems to have worked, and the Respondent therefore created employment offences and tagged them on the Claimant, to justify termination of her contract of employment. The Respondent could not even submit itself to the process of a judicial trial, to attempt a legal justification in terms of section 41, 43 and 45 of the Employment Act 2007, of its termination decision. Ultimately the Court finds termination was unfair. It was carried out without regard to the minimum statutory termination procedure. The Claimant is entitled to compensation. Her claims under paragraph C of the Statement of Claim are merited, and well founded in the contract of employment. There was nothing given by the Respondent that would suggest any payment was at the discretion of the Respondent. In the end, the Court **ORDERS:-**

- (a) Termination was unfair;**
- (b) The Respondent shall pay to the Claimant the arrears of salary allowances, notice and leave as detailed in paragraph C of the Statement of Claim, amounting to Kshs.872,846.15;**
- (c) Compensation for unfair termination is granted at 6 months' salary, totaling Kshs.1,299,000;**
- (d) The Total amount of Kshs.2,072,846.15 shall be paid by the Respondent to the Claimant within 30 days of the delivery of this Award;**
- (e) The Respondent shall release the certificate of service to the Claimant forthwith; and**
- (f) No order on the costs and interest.**

Dated and delivered at Nairobi this 19th day of March 2013

James Rika

Judge