



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 55 of 2013**

**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**

**CAUSE NO. 55 OF 2013**

**(formerly Nai 677 of 2009)**

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f) Gratuity.

In respect of prayers (a) and (c) and f consent has already been entered into between the parties save for prayers for gratuity and salary in lieu of notice which have been abandoned. That leaves out only the issue of loss of salary for remainder period of the contract (prayer (d) above) which the parties agreed should be considered by the court upon the parties filing their respective submissions.

The claimant filed her submissions on 8/4/2013. The issue is whether the claimant is entitled to payment of salary for the remainder period of the contract.

Briefly, the claimant had been employed by the respondents herein on 1st September, 2007 as water and Sanitation Manager at a salary of 45,000/= per month. The contract was for 2 years with effect from 1.8.2007 and was to end on 31.8.2009 unless extended by written agreement by 31st July, 2009 at the latest. However, on 26.7.2009 the respondents terminated the claimant's contract for various reasons. Having terminated, this contract, the respondents were willing to pay some dues to the claimant save for the one under contention.

The claimants have submitted that the claimant's right to salary for the remainder period of her contract is envisaged by dint of Section 49 (1) of the Employment Act 2007 which deals with summary dismissal. That the Law stipulates that where summary dismissal or termination of a contract is unjustified, then the claimant is entitled to be paid the equivalent of a number of months wages not exceeding 12 months based on gross pay. The claimant's contention is that since the claimant's termination was unjustified, she is entitled to be paid as envisaged under S. 49(1) (c) of the Employment Act.

The submission of the claimant relate to the unfairness meted on the claimant and therefore why she ought to be awarded as prayed on prayer (d). I believe the issue of the claimant's unfair dismissal has already been settled after the parties recorded consents on other prayer above.

In this court's view, the issue of prayer (d) is now a matter of Law and not fact. The issue is whether an employee unfairly terminated is entitled to payment of salary for the remainder of the contract period. The Industrial Court has jurisdiction to grant orders including orders for compensation. However granting orders for a contract period not served is tantamount to granting orders for services not rendered.

Where compensation would adequately compensate the claimant, that would be the best option. In the circumstances, I will grant the claimant compensation equivalent to 4 months salary for wrongful termination which is equivalent to  $45,000 \times 4 = 180,000/=$ .

The claimant should be issued with a certificate of service. These will be the orders of this court.

**HELLEN WASILWA**

**JUDGE**

**30/04/2013**

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**Appearances:-**

Gaya h/b K'Odiwuor for claimant

Otieno Yogo for respondents

CC. Sammy Wamache