



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 77 of 2013

RHODA INGASIANI CLAIMANT

=VERSUS=

CHAIRMAN BOG JOYLAND

SPECIAL SCHOOL & ANOTHER RESPONDENTS

JUDGMENT

The claimant herein Rhoda Ingasiani filed her Statement of Claim against the respondents herein the Chairman BOG Joyland Special School and another on 01.10.2012. The issues in dispute is the unlawful termination of the claimant and payment of her terminal dues.

According to the return of service filed in court on 30.10.2012, the respondents were served with the notice of summon and memorandum of claim on 1.10.2012. The respondents never filed any memorandum of appearance nor any reply to the claim. A mention notice was issued to the parties to appear in court on 20.1.2013. The respondents also failed to appear. A hearing date was eventually given in court and the matter proceeded *ex parte*.

The claimant's case is that she was employed by the respondents' School Joyland Special School on 1.1.2004 as a house keeper. She was being paid a salary of Kshs 3,000/= per month. Her appointment letter dated 2.1.2009 was attached to her list of documents.

She indicated that during all the time she worked for the respondents, she was never given leave and worked overtime when the work demanded and she was never compensated for the hours worked. She also told court that she was never paid any house allowance for the entire period that she worked for the respondent. Including Sundays and Public holidays.

She told court that on 6.5.2005 the head teacher sacked her summarily. She avers that this termination was unlawful, unprocedural and ill-motivated as there was no ground or justification for the same. She consulted her Union for intervention who summoned the respondents for a discussion but the respondents failed to attend. She further sought help from the labour office and the labour officer summoned the respondents and they also failed to turn up. She sought help from the Education Co-ordinator of Schools and they wrote her a letter on 23.6.2006 telling her to seek redress from the School Board. She wrote to the Board which also took no action. She indicated that she was never paid any dues and she seeks court's intervention in payments she had tabulated as follows:-

a) Prorated leave	= Ksh 2,100/=
b) 1 month salary in lieu of notice	= Ksh 3,000/=
c) Underpayment of wages for 3 months i.e Feb, March & April, 2004 as per Legal Notice No. 48/2003	= Ksh 4,473/=
d) Underpayment of wages from May 2004 to April 2005 as per Legal Notice No. 36/2004	= Ksh 23,820/=
e) Overtime worked for 15 months for 4 hours daily	= Ksh 22,500/=
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TOTAL = KSH 55,893.00	
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She also seeks for damages for breach of employment and wrongful dismissal, exemplary damages and costs and interest on the amounts.

I have considered evidence of claimant submitted both orally and according to her pleadings. The issues for determination are:-

1. Whether the claimant's dismissal by the respondents was unlawful and therefore unfair.
2. Whether the claimant is entitled to any of the remedies sought.

On the 1st question the claimant produced her appointment letter dated 2.1.2005. The letter shows that the claimant was hired on 3 month's contract w.e.f 2.1.2005. The 3 months was therefore to terminate on 2.4.2005. On 6.5.2005, it appears, she was still working and that is why she indicated that she was fired on this day apparently a month after the expiry of her 3 month contract. Her termination letter was however not exhibited as evidence of the said action

What is apparent is that her 3 months contract expired on 2.4.2005 and she did not produce any evidence to the contrary. There is therefore no evidence that she was ever dismissed and therefore the action of the respondents cannot be considered unlawful or unfair.

The claimant had also indicated that she had worked for the respondents since 1.1.2004. This evidence is also lacking as she did not show any proof that she actually was engaged by the respondents. The contract however does not indicate how much she was being paid.

The claimant told court that she was being paid Ksh 3,000/= per month. Given that there is no evidence from the respondents to counter this claim, I take it that she was earning the Ksh 3,000/= she told court. According to Legal Notice No. 36 of 2004, the minimum wage for the workers in claimant's category was Ksh 4,335/= per month. From this period the claimant was therefore underpaid by Ksh 1,335/= per month for 3 months = Ksh 4,005/=. This amount excludes housing allowance calculated at 15% of salary which should have been 15% of 4,335 = 650.25 and for the three months, this is equivalent to 1,950,75/=.

The claimant indicated that she worked overtime for the period she worked. This would require proof of the master roll or any schedule of work as she clocked in and out. This was not availed to court and is therefore uncertainable.

In the presence I find that some of the claim by the claimant cannot be awarded but I do find for her and I award her as follows:-

1. Underpayment of wages for 3 months = 4,005/=
2. House allowance for 3 months = 1,950.75/=

3. Leave for the 3 month

= 1 ½ days per month X 3

= 4 ½ days salary

= 4 ½ X 208.50

= **938.25/=**

4. 4 days service pay for the 3 months served = 208.50 X 4 =

= **835/=**

TOTAL = **7,728/=**

She should also be given her certificate of service and costs of this suit.

HELLEN WASILWA

JUDGE

23/04/2013

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Appearances:-

N/A for claimant

CC. Sammy Wamache