



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 828 of 2012

JOYCE NDULU.....CLAIMANT

VERSUS

BARAKA HOTEL.....RESPONDENT

Mariaria for Claimant

AWARD

The Claimant was employed by the Respondent Baraka Hotel as a house keeper on 1st June 2005. She worked continuously for the Respondent until 30th January 2012, when she was summarily dismissed from employment.

At the time of dismissal she earned a salary of Kshs.9,000. She was initially earning a monthly salary of Kshs.7,500, which sum was revised downwards after two months of service to Kshs.6,500. The salary was later in 2007 increased to Kshs.9,000

She states that she was never granted annual leave throughout her employment and did not receive house and medical allowances.

That sometimes in December 2011, she was diagnosed with pheunemonia and the doctor recommended 7 days off-duty but was refused by the Respondent. The doctor’s note dated 21st December, 2011 is attached to the Memorandum of Claim.

That at all material times her pay was below the statutory minimum and when she requested for a raise she was accused of inciting her colleagues. She was then in January 2012 summarily dismissed for no good reason at all and was not paid any terminal benefits. On the last month she was paid Kshs.8,150 instead of Kshs. 9000. She states that any employee who questioned the terms of service offered by the Respondent was summarily dismissed.

On 13th December 2012, the claimant was given a Certificate of Service attached to the statement of claim which reads that during her tenure, she *performed her duties in an exemplary manner. That she was honest and had good public relations and communications skills with customers and colleagues as well.* She was recommended to prospective employers accordingly.

The Claimant seeks;

1. Salary arrears for the month of January 2012.

2. 1 month salary in lieu of notice.
3. Salary underpayments from 20th June 2005 to the date of dismissal; and
4. Compensation for unlawful dismissal and/or be reinstated to her previous employment.

On 23/10/2012, the court directed the claimant to serve the statement of claim as the record did not show that service had been affected.

The statement of claim dated 20th April, 2012 and a hearing notice for 29th November, 2012 were served on the Respondent on 5th November 2012. The return of service was filed on 20th November 2012. The Assistant Manager at the hotel had declined to acknowledge receipt of the Court process.

On 29th November, 2012, the Respondent failed to enter appearance and this matter proceeded in the absence of the Respondent's Representative.

The matter proceeded by way of written submissions in support of the pleadings and oral evidence was dispensed with.

The pleadings as filed are uncontroverted and therefore the claimant has established on a balance probability that;

She was summarily dismissed on 30th January 2010 for demanding payment of minimum wage applicable in the sector. She did not receive payments in lieu of Notice nor was she paid in lieu of Leave not taken for the years 2005 to 2010. At the time of dismissal she earned a monthly salary of Kshs.9,000. She did not produce a pay slip to show whether this amount included a house allowance component and/or to show what statutory deductions were made on her salary.

The claimant made bare allegations of underpayments without indicating what amounts she was entitled to from 2005 to 2012 when she was dismissed. He/she who alleges must prove his/her claim. The Claimant has failed to prove on preponderance of evidence that she was entitled to more payment than she was paid at the time. However the Court finds that the Claimant is entitled to payment of;

(1)Kshs.9,000 being one month salary in lieu of Notice.

(2)Kshs. 850 being the unpaid Salary arrears for the month of January 2012.

She has in addition shown that she was dismissed for asserting her right to better terms of service which does not constitute a lawful reason to terminate employment of an employee.

The court finds that, the employer having defaulted to file a response to the claim has failed to present a valid reason to dismiss the Claimant and the evidence which is not contraverted shows that the Claimant was not allowed to state her case before she was summarily dismissed.

The Certificate of Service shows that she was a good worker with unblemished record of service.

Accordingly the court awards her 8 months' salary as compensation for the unfair dismissal in the sum of Kshs.72,000

Total award to the Claimant is therefore Kshs.81,850.

The Claimant is entitled to costs of this suit.

It is so ordered.

Dated and Delivered in Nairobi this 9th day of May, 2013.

Mathews N. Nduma

PRINCIPAL JUDGE – INDUSTRIAL COURT