



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1193 OF 2012

JEMIMAH WANGUI KIHARACLAIMANT

AND

TANA FINANCE LIMITEDRESPONDENT

Mr. Kitheka for claimant

JUDGMENT

The claim was brought by way of a Memorandum of Claim dated 10th July, 2012 seeking payment of terminal benefits to wit;

- a. *payment in lieu of 40 days leave in the sum of Kshs.107,000/=;*
- b. *salary arrears for the month of April and May 2012 in the sum of Kshs.160,000/=;*
- c. *salary in lieu of notice in the sum of Kshs.80,000/=;*
- d. *fuel allowance for April and May 2012 in the sum of Kshs.20,000/=.*

The Respondent filed a reply to the Statement of Claim dated 22nd January, 2013.

The facts of the case may be summarised as follows;

The Claimant was employed by the Respondent on 5th January, 2011 as a General Manager for a period of six months. The contract was to end on 31st June, 2011.

She was placed on a three (3) months probation period and would be confirmed subject to satisfactory performance. Her monthly salary was Kshs.80,000/= and a fuel allowance of Kshs.20,000/=.

In terms of the written letter of appointment annexed to the Statement of Claim, termination of service was by one month notice or payment in lieu thereof. The reasons for which summary dismissal may be effected are articulated in the document.

She was entitled to 21 days annual leave after 12 months service. Other terms of service are contained in the letter of appointment.

On 22nd May, 2012 the Claimant was summarily dismissed verbally. Upon termination, she was not paid salary for the months of April and May. She was also not paid fuel allowance.

At the time she had not taken annual leave and was not paid in lieu thereof. She had served a period of one year and five months and seeks payment in lieu of 40 days leave days.

She was not given any reason for the termination and did not receive a termination letter.

The claimant seeks benefits in the sum of Kshs.360,000/= plus costs of the suit.

The Claimant did not seek compensation for the wrongful and unfair dismissal.

The Respondent makes bare denial of the claim made by the Claimant without any specificities and did not attend the hearing of the suit in spite of service of the hearing notice by the Claimant on the Respondent on 20th August, 2013 at 10.00 a.m. at the office of the Respondent situated at Upper Hill, along Matumbuto Road, House, No. 30 .

The Notice dated 17th June, 2013, clearly indicates the date of hearing to be the 25th September, 2013 when the matter proceeded. A return of service dated 20th September, 2013 was filed by the Advocates for the Claimant on 24th September, 2013.

The facts presented by the Claimant remain wholly uncontroverted. The court has evaluated the entire facts of the case and the prayers sought by the Claimant and finds that the Claimant has on a balance of probabilities established that he was summarily dismissed by the Respondent and was not paid the amounts claimed in this suit.

The court finds that the Respondent owes the Claimant all the amounts claimed as outlined herein before and awards the Claimant a sum of Kshs.360,000/= being terminal benefits due and owing to her from the Respondent. The amount is to be paid with interest at court rates from 5th May, 2011 till payment in full.

The Respondent has caused the Claimant to incur unnecessary costs in bringing this suit and the court condemns the Respondent to pay the costs of the suit.

Dated and delivered at Nairobi this 25th day of October, 2013.

MATHEWS N. NDUMA

PRINCIPAL JUDGE