



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 1400 of 2010**

**REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT  
AT NAIROBI  
CAUSE NO. 1400 OF 2010**

*(Before: D.K.N. Marete)*

**MONICA N. MALUKU .....Claimant**

**Vs**

**ST. TERESA'S PARISH DISPENSARY, ARCHDIOCESE**

**OF NAIROBI.....Respondent**

**RULING**

This is a claim for judgment against the Respondent for:-

- (a) Certificate of service
- (b) Salary in lieu of notice
- (c) Unpaid salary for January and February, 2010, amounting to  $\text{Ksh.}27,456 \times 2 = \text{Ksh.}54,912/=$
- (d) Maximum compensation  $\text{Ksh.}27,456 \times 12 = \text{Ksh.}329,456$  as prayed and expressed in the memorandum of claim.

The Respondent in her Memorandum of Defence and evidence opposes a substantial amount of the claim and concedes on the lesser.

In her opening remarks, counsel for the Claimant addressed the court on the claim dated 10th November, 2010 and filed on the same date. This, she submitted is a claim for unlawful dismissal and unlawful termination of employment and cited the particulars of the claim. She called the Claimant as a witness who testified as follows:-

- (i) That she was employed by the Respondent for 12 years from January, 1998 and her salary was KShs.24,114.00.
- (ii) That the contract of employment was renewable annually.

- (iii) That her last renewal was on January 15, 2009 and this was signed before the sister in-charge.
- (iv) That she in the course of time and employment enlisted for a diploma course in nursing at the Medical Training Centre, Nairobi.
- (v) That the course cited at (iv) above was by distant learning and she communicated this to her employer who accepted the same.
- (vi) That in January, 2010 she proceeded for her annual leave and was to be called back for the signing of her employment contract.
- (vii) That after the leave, she proceeded to the MTC for her studies up to the 22nd February, 2010 when she resumed work.
- (viii) She resumed and reported to the Sister-in-Charge who incepted her into work.
- (ix) Latter, the sister-in-charge became unco-operative which matter was made worse by rumors at her work place that she had gotten employment elsewhere.
- (x) At a meeting with the sister-in-charge, the news of her termination of service disclosed whereupon she got confused and went home with her cheques and deposited the same on 26th February, 2010.
- (xi) A week later she was informed by her bank that the cheques had bounced and later these were handed back to her.
- (xii) There was never a warning letter by her employer and therefore prays for justice and compensation in the circumstances.

On cross examination, she testified that she was now an employee of the Ministry of Sanitation and worked as nurse at Isinya Health Centre. That she was paid for January and February as these were her leave and education periods both of which were permitted by the employer. She also denied working beyond 22nd February, 2010 but agreed that the handwriting on some returns made on diverse after this period was similar to hers.

The Respondent on the other hand denies the claim and called one, Sister Josefridah Matumaini as defence witness. She testified as follows:-

- (a) That she knew the case well.
- (b) That she worked at the Respondent's Clinic from January, 2006 and left in October, 2011.
- (c) That she knows the claimant thoroughly well, as she found her in employment and supervised her for three years.
- (d) That all employees were on an annual renewable contract as in sample STPD 1 of the affidavit annexed to the memorandum of defence.
- (e) Applications for renewal of the contract of employment were done by the employees at the end of every year.
- (f) This was essentially by way of completion and signing of the contract form amongst other processes.
- (g) An application for renewal of contract under annexure STDP 2 was an initiator for the signing of the contract and the Respondent's administration would ordinarily answer to this.

She further testified that the Claimant requested for leave and to her surprise stated that she was tired. The leave was started without formalization and even without a proper handing over until 7th January, 2010 when this and the study leave forms were completed by the Claimant. She was invited to her supervisor's (witness's) office and given her two cheques and also answers to her queries on renewal of contract under annexures MWM 3 and MWM 4 of the claim.

The witness also testified that the Claimant worked on 23rd February, 2010 and 24th February, 2010 when she as overall supervisor announced that those who had not returned their employment contract forms do so. The Claimant, told her she would return her contract documents but pleaded for her pay cheques on grounds of being hungry and her wishes were granted.

The Claimant later sought a meeting with me and this was granted but in this meeting she looked different. She confessed that she did not want to continue in employment. I requested for dialogue on the subject, but noted that she was rude and hostile. She later left the meeting without any conclusive end. Further attempts to contact her were fruitless as she did not answer her phone or respond to my SMSs. She called in the evening and rudely said she would even return the pay cheques if these were a big issue.

The matter of the cheques was subsequently discussed by the dispensary management and it was agreed that payment of these cheques be stopped. She (Claimant) did not show up or renew her contract. In September, 2010 her advocates issued a demand letter to her employer.

The rest, as they say, is history. So how does this court make a decision on the matter in the circumstances? This would be had through the pleadings by the parties and evidence as adduced on behalf of the parties. Both parties called a single witness each on the case of the claimant, she was her own witness.

The evidence as adduced by both parties points out to a clear and clean relationship between the Claimant and her last supervisor who is Respondent's witness. This was cordial and harmonious up to the dying moments of the Claimant's employment as was testified by the Respondent's witness.

As the witnesses closely pursued the line of their pleadings filed it court as aforecited the court can only rely on this evidence to make a decision on the matters in dispute.

The Claimant made her case clearly but was uncomfortable at both cross examination and re-examination. She denies having worked beyond 22nd February, 2010 and also denies that the clinic cards made later and adduced in evidence were in her handwriting but confesses that the handwriting looks like hers. She also testifies that she did not ask for her certificate of service at the time of departure or at all. This is a big test to the credibility of her evidence. In the cause of the proceedings, the Claimant breaks down and cries and this is not in my view an indication of grief but is feigned to portray the same. Moreover, her testimony of her conduct in the entire set up does not display a case of an employee who was willing to continue in employment.

The testimony of Sister Josefridah Matuimaini for the Respondent was faultless and to the point, she would concede on deserving matter and refuse those that she deemed not true. Her demeanor was also convincing. Her narrative of events leading to the Claimant's departure from her place of work sounds more convincing than the Claimant's. This, to me, is a truthful witness.

Additionally, I would seek answers to the following questions to be able to determine the matters in dispute:-

(i) Having worked and renewed her contract for twelve years why did the Claimant find it difficult to comply in 2010?

(ii) Did the Claimant misconduct herself in the Course of negotiations in January and February, 2010?

(iii) Is the Claimant sincere and a truthful in her testimony?, and

(iv) If this is true, who is the more convincing the two witnesses?

I find the Claimant's conduct in the penultimate three months of her employment; December, 2009 to February, 2010 unusual for a compliant and willing employee who had been in the system for twelve years. Her version of the story does not improve her position as it is not convincing. It lacks sincerity and truthfulness. I therefore find the evidence of Sister Matumaini the Respondent's witness more sustainable. She had a special place for the Claimant as an astute worker and even attempted counseling and reconciliation but this was rebuffed by the Claimant. Her testimony was not rebutted even at cross examination by the Claimant.

On the balance of probability, this matter goes in favour of the Respondent and I therefore dismiss the claim. However, the Respondent does not seem uncomfortable with one aspect of the claim; the issue of a certificate of service to the Claimant and I order that the same be issued on demand. It is also apparent that the issue of the Claimant's pay for the months of January and February, 2010 is not disputed and therefore order that this is paid to her.

My finding is that this Claimant left employment on her own volition and she has not made a convincing case for termination of employment. This is not even cited on the claim whatsoever. I therefore dismiss the claim with costs except on itself (a) and (c) of the Claim as aforesaid.

**DATED** and given at Nairobi this 4th day of October 2012.

**D.K.N. Marete**  
**JUDGE**