



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 606 of 2012**

**MRS. GRACE MILEHANE KAVULAVU.....CLAIMANT**

**VERSUS**

**MR. & MRS. WILFRED NG'ANG'A..... RESPONDENT**

**JUDGMENT**

The claimant is Grace Milehane Kavulani appearing in person. Mwangi Wahome and Company Advocates appear for the Respondent. At the commencement of the hearing the Respondents' counsel raised a preliminary issue on the parties to the suit. The court directed that the issue would be addressed in this judgment.

The evidence on record shows that the claimant was employed by Mr. Wilfred Ng'ang'a Kamiri and his wife one Mrs. Ng'ang'a. The court finds that the parties to this suit are the claimant Grace Milehane Kavulavu against the Respondent Wilfred Ng'ang'a Kamiri and the decision of this court will be construed accordingly.

The facts of the case are as follows:

1. The respondent employed the claimant at a monthly wage of Ksh.3,000/=. The employment was with effect from August, 1997.
2. The claimant worked diligently until some time when Mr. Wilfred Ng'ang'a Kamiri separated with his wife Mary Wanja Ng'ang'a. They were blessed with five issues who the claimant identified as Elizabeth Mukami, Kepha Kameri, Susan, Jane Waceke and John Muchiri. The Respondent Wilfred Ng'ang'a testified that he separated with his wife in 2009 but the claimant remained in his employment till 24<sup>th</sup> December, 2011. He paid her salary throughout the period she served.
3. The claimant was employed as a house servant performing the duties such as the work of a cook, cleaning the house and clothes. She performed household chores.
4. On 24<sup>th</sup> December 2012 the claimant stated that the Respondent Wilfred Ng'ang'a Kameri sacked her without notice and any reason. She was not paid her terminal dues. She also claimed her leave dues as she had gone for a compassionate leave only once for about five days when her child died. She worked on public holidays. The Respondent in his evidence claimed that she proceeded on Christmas vacation and deserted duty. The court finds that the Respondent's position is a mere after thought because it was not pleaded as such and the Respondent in the memorandum of Defence had denied ever

employing the claimant. The court finds that on a balance of probability, taking the oral evidence and the pleadings of the parties into account, the claimant was dismissed by Mr. Wilfred Ng'ang'a Kamiri without any notice and a hearing.

The court makes the following findings:

1. The Respondent unfairly terminated the services of the claimant there having existed a contract of service between the parties and no reason for the dismissal existed.
2. The under payment is not denied by the Respondent and the court finds that the claimant was entitled to Ksh.8,723.90 per month as claimed.
3. In view of Section 90 of the Employment Act, the difference in payment of the wages being Ksh.5,723.90/= would be permissible only for 3 years and the claimant is awarded Ksh.206,060.65 for 36 months.
4. The claimant is awarded Ksh.8,723.90/= being one month pay in lieu of notice.
5. The claimant is awarded Ksh.104,686.80 being 12 months compensation for unfair dismissal.
6. As this was not a case for redundancy, the claimant is not entitled to severance pay as claimed.
7. Annual leave due but not taken has been proved but particulars of days due have not been proved. On that claim the court awards the claimant Ksh.20,000/= for the Respondent's strict liability for breach of statutory provisions under Section 28 of Employment Act, 2007 that entitled the claimant to annual leave.

Accordingly judgment is entered for the claimant against the Respondent for-

- (a) a declaration that the termination was unfair;
- (b) the Respondent Wilfred Ng'ang'a Kamiri to pay the claimant Ksh.339,471.35/= plus interest at court rates from the date of the judgment till full payment; and
- (c) respondent to pay costs of the case.

Signed, dated and delivered at Nairobi this 23<sup>rd</sup> day of November, 2012.

**Byram Ongaya**

**JUDGE**