



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1675 of 2011

ANNE WANGARI NJUGUNACLAIMANT

VERSUS

TITY MASTERS LIMITEDRESPONDENT

JUDGEMENT

This is a claim dated 19th September 2011 by the claimant Anne Wangari Njuguna against the respondent Tidy Masters Limited for unlawful termination of employment and seeking the following prayers:

Terminal dues including;

- 1. 1 month salary in lieu of notice at kshs.22,000.00;***
- 2. Unpaid salaries for April, may, June and July 2011 all amounting to Kshs.88,000.00;***
- 3. Allowances for April, May, June and July 2011 all amounting to kshs.9,000.00***
- 4. 12 months Compensation for unfair termination at Kshs.264,000.00***

All totalling to Kshs.483, 000.00

Despite the respondent being served with summons to enter appurtenance and attend this court for directions, there was no appearance or defence filed herein. This Court notes that vide return of service dated 17th November 2011 and returns filed by Benjamin Mutua, the Managing Director of Respondent Company Ms Hilda Nduta was served with this Courts summons. That father on 17th August 2012, the same party was served with a Hearing Notice for hearing on 14th November 2012.

Having confirmed that both parties were aware of the Hearing dates, the court proceeded with the party present the claimant.

That the claimant was employed by the respondent company on 20th September 2010 as a house-keeper and a contract of employment issued and dated 27th November 2009. The salary was agreed at Kshs.20, 000.00 which increased to 22,000.00 together with an allowance of Kshs.3, 000.00 which money would be deposited in the claimant's account on a monthly basis.

However in July 2011, the respondent verbally asked the claimant to proceed on annual leave and to await further communication from the company. That since then, the claimant never received her salary or called back to work. That after 3 months of non-communication and seeking the respondent without recall, she deemed this action as termination of her employment.

In her evidence in Court the claimant stated that she served the respondent diligently until April 2011 when she was advised by the respondent Director one Hilda Nduta that business was not doing well and hence her salary was not remitted. That the claimant being the housekeeper and manager she was also collecting payments from various clients and hence the issue of non-payment of her salary should not have been a problem. That this non-payment persisted until she could not afford her bus fare to her place of work. That at the end of July she was asked to proceed on annual leave without pay.

I have carefully considered the claimant's memorandum of claim and her submissions in evidence before court. It is not in dispute that the claimant was a housekeeper with respondent vide exhibit employment contract submitted in evidence and that the sum of Kshs.22,000.00 and Kshs.3,000.00 would be remitted and deposited to her account from the respondent in monthly payments for her salary and allowances respectively.

That she was forced to go on leave without due cause and or payment of her salary which in essence terminated her employment without a reasonable cause or grounds which she deemed to be unfair termination.

This court notes that for every dismissal, an employee is entitled to moneys, allowances and benefits earned while in employment, these being salary, accrued leave payments, retirement benefits, and any other legal dues. Dismissed employees are entitled also to certificates of service. Upon dismissal, the employer should make a written report to the district labor office explaining the circumstances leading to, and reasons for, the dismissal as well as giving other specified details of the employee's terms of employment.

This clarity is enshrined under section 43(2) of the Employment Act thus;

In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

An unfair termination is thus outlined as that termination that has no valid reasons, did not follow fair procedure that in the circumstance the employer did not act in accordance with justice and equity in terminating the employment of the employee.

In the case of the claimant, she gave evidence that she has served the respondent from 2009 to 2011, a period of 2 years. The non-payment of her terminal dues upon termination was wrong, was unfair and contrary Section 35 of the Employment Act.

A Certificate of Service is a legal right for all employees at the end of every employment.

In the circumstances I am persuaded that the claimant is entitled to the claims set out in the claim save that since she is now employed, compensation for the unfair termination will be for an amount equivalent to her one month pay and benefits all being Kshs25,000.00. She is also entitled to one month pay in lieu of notice, unpaid salary for April, May and June together with attendant allowances.

For the above reasons the court enters judgement for the claimant as follows:

a) That the termination was unfair.

b) The respondent is directed to pay the claimant the following final dues

1. One month salary in lieu of notice at Kshs. 22,000.00;

2. Unpaid salary for April, May, June and July 2011 amounting to Kshs.88,000.00;
3. Allowances for April, May and June 2011 amounting to 9,000.00;
4. One month's salary as compensation for unfair termination all amounting to Kshs. 25,000.00

Total Kshs. 144,000.00

c) That the claimant be given a Certificate of Service

d) Costs of the suit granted to the claimant.

Dated and delivered at Nairobi this 16th day of November 2012

M. W. Mbaru
JUDGE
INDUSTRIAL COURT OF KENYA

In the presence of:

Court clerk.....

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