



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1234 of 2011

HANNAH WANJIRU MIGICHI CLAIMANT

VERSUS

ENERGY FOODS LTD..... RESPONDENT

JUDGMENT

The Claimant herein Hannah Wanjiru Migichi filed her statement of claim dated 21st July, 2011 on the 26th July, 2011. She contends that she was unfairly and unlawfully dismissed by the Respondent who also never paid her terminal benefits.

The claimant gave oral evidence before this court that she was an employee of a company called Wild Cherry as a Store Keeper from 1st September 1999. She earned a salary of 8750/= which increased gradually to Ksh.12,250/=. The said Wild Cherry was sold and changed hands to become Energy Foods Ltd on 27th July, 2007 under the same directors and all liabilities were thereafter transferred to the new company. This is as per a letter which was written to employees marked app1. The claimant avers that she served the Respondents well with loyalty and diligence until 30th July 2009 when she was wrongfully and unlawfully terminated. She now seeks her terminal dues as follows:

- 1. Salaries in lieu of notice - Ksh.12,250.00
- 2. Leave allowance for 3 years - Ksh.25,725.00
- 3. House allowance @ 15% of the basic
Salary 12,250 x 15% x 12 x 8 - Ksh.176,400.00
- 4. NSSF deduction not submitted
2005 - 400 x 11 months - Ksh.4,400.00
2006 - 400 x 12 month - Ksh.4,800.00
2007 - 400 x 12 month - Ksh.4,800.00
TOTAL - Ksh.228,375.00

The claimant also seeks compensation for wrongful termination for a maximum of 12 months wages plus costs and in her oral evidence stated that the bone of contention between her and Respondent was due to some penalties paid to the City Council in 2009 due to having expired goods in the store. The Respondent

had insisted that the claimant pays back this money which claimant said she could not as it was not her mistake that such goods were in the stores as she had informed the Respondent of their being in the store. She also told court that she sought help from the labour office but the Labour Officer offered little help. She denies that Respondent paid her for 6 months when she was not working.

In cross examination, claimant told court that she worked for Respondent since 1999 to July 2009. She also told court that she started getting a house allowance and a payslip in January 2008. She says she was paid 2 months when the company was not functioning but they used to carry goods to new premises. She seeks for her leave for 2 years before the company's name changed i.e. 2005/2006. The house allowance for 8 years – 1999 to 2007. She says NSSF was not remitted in 2005, 2006 and 7 months in 2007.

The Respondent on the other hand filed their memorandum of reply on 18th August, 2011 through the firm of Apollo Muinde Advocates. The Respondent denied that they had employed claimant as a Store Keeper earning a salary of 8750/= which was later increased to 12,250/=. The respondents also denied that the claimant is entitled to any of the moneys claimed thereof. The Respondent also denies he unlawfully and wrongfully terminated the claimant's service as stated by claimant.

The Respondent however seems to contradict what he states in his Memorandum of Reply during his evidence in chief. The Respondent's witness in his oral evidence admits that claimant worked for Wild Cherry and was finally promoted to Store Keeper. He says the company however had a down trend incurring many losses and it is then that the company was on the verge of being put under receivership. However some workers approached him and asked him to work out a way so that they work together and improve the company. These efforts finally paid off. That at the time the company was facing financial difficulties; the claimant started demanding her dues. She brought in the Trade Union. He admits NSSF was not remitted as the company was in dire financial stress. He says that he used to pay the workers on and off. He also said that claimant was never terminated and that she also went for her leave.

I have examined the evidence of both parties and their respective submissions. The issues for determination are two-fold.

1. Whether the Respondent unlawfully terminated the services of claimant.
2. If answer to 1 above is yes, what remedies is the claimant entitled to.

On the first question, it is apparent that the claimant was an employee of the Respondent. She produced evidence to this effect in form of her payslips and letters amongst other.

According to the Respondent, the claimant was not terminated but sought to leave employment given the harsh times the Respondent Company was going through. This evidence of the Respondent is a direct opposite of the Respondent's Memorandum of Reply which had indicated that Respondent had never at any time employed the claimant. That notwithstanding there is established an employment relationship between the Respondent and claimant. Given the contradictions between the Respondent's statement of Reply and the oral evidence in court, it becomes difficult to believe the RW1 when he says that the claimant absconded duty. I therefore find that the Respondent actually did unlawfully and unfairly dismiss the claimant.

Now on question 2, the claimant is entitled to some remedies. To start with, the Respondent admits he never remitted certain NSSF contribution for claimant as the company was in dire financial stress. I therefore find for claimant and enter judgment accordingly as follows:

1. 1 month salary in lieu of notice - Ksh.12,250/=
2. Leave allowance for 3 years =

$\underline{21} \times 12,250 \times 3$ - Ksh.25,750/=

30

3. House allowance at 15% of the basic salary =

$12,25 \times 0.15 \times 12 \times 8$ - Ksh.176,400/=

4. NSSF deductions not submitted - Ksh.14,000/=

TOTAL - **Ksh.228,375/=**

The Respondent will also pay costs of this suit.

Signed, dated and delivered in court at Nairobi this 7th day of December, 2012.

HELLEN WASILWA
JUDGE

Appearances:

Claimant in person for Claimant

Apollo Muinde Advocates for Respondent

Rachel Gichuki Court Clerk