



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 1909 OF 2013

GRACE MBAISI MUNANDI.....CLAIMANT

VERSUS

SMART VILLAGE RESTAURANTRESPONDENT

JUDGMENT

The Claimant herein Grace Mbaisi Munandi filed suit against the Respondent Smart village Restaurant seeking the following orders:-

1. 1 months' salary in lieu of notice.
2. Leave for 3 years.
3. Public holidays for 3 years.
4. Compensation for wrongful termination of employment.
5. Costs and interest.

The Respondent was served with summons and hearing notices which were received by a person who signed as "Jacinta" but did not enter appearance, file defence to the claim or attend Court for hearing.

The case came up for hearing on 10th July 2014. The Claimant was present in person but the Respondent was absent. After ascertaining from the court record that the Respondent was properly served with both summons and hearing notice I allowed the Claimant to proceed with her case in the absence of the Respondent.

The Claimant testified that she was employed by the Respondent which operates as an Ethiopian Restaurant along Elgeyo Marakwet Road Nairobi on 4th March 2009 as a waiter. Her salary was Shs. 9000 per month. She was never issued with an employment contract or payslips. She reported to work at 9.00 am up to 1.00 am when the restaurant closed. She was not given a place to sleep and had to go home at that late hour. She worked from Monday to Sunday and was not given any off days. She also worked on public holidays. Whenever she did not go to work even when she was sick Shs. 500/- was deducted from her salary. She was never paid overtime. She never took annual leave for the period she worked for the Respondent.

On 15th March 2013 at 9.00 pm she was stopped from working by Jenipher Kiri, the Restaurant

Manager and the owner whose name is Abeba. They told her to go home and wait until they call her to go back to work. The following day she called but was told to wait until she is called back. She was also told that long serving employees should not go back to work. She testified that she had not been involved in any misconduct.

She asked the court to order the respondent to pay her notice, overtime, service, leave, public holidays and house allowance.

I have considered the Memorandum of Claim and the oral testimony of the Claimant.

Although the Respondent was served with the claim, it did not respond. I will therefore presume that the Respondent does not contest that the Claimant was its employee. The issues for my consideration are therefore whether the Claimant was unfairly terminated and if she is entitled to the prayers in the Memorandum of Claim.

The Claimant testified that she was called and told to go home and wait until she was called back to work. She was later informed that long serving employees should not go back to work. She was never given reasons for termination of her employment or asked to defend herself. The Respondent failed to comply with both Section 41 and 43 of the Employment Act in respect of procedure for termination and proof of reasons for termination.

I find that the termination of the Claimant's employment by the Respondent was unfair.

On whether the Claimant is entitled to her prayers, I will consider only the prayers in her memorandum of Claim and not what she prayed for orally at the hearing of the case.

1. Notice

The Claimant is entitled to one months' notice or pay in lieu as provided in Section 49 (1) (b) as read together with Section 35 (1) and 36 of the Employment Act. I award her Shs 9000 being one months' salary in lieu of notice.

2. Leave

The Claimant testified that she did not take leave for the entire period she worked for the Respondent from 4th March 2009 to 15th March 2013, a period of 4 years. She is entitled to payment in lieu of the leave in accordance with Section 28(1) of the Employment Act. At the rate of 21 days per year worked the Claimant is entitled to 84 days leave which would be $9000 / 30 \times 84 = 25,200$

I award the Claimant Shs. 25,200 being pay in lieu of annual leave for 4 years.

3. Public Holidays

The Claimant testified that she worked on all days including Public Holidays. She did not pray for off-days. There were 11 public holidays in 2009/2010 and 10 Public Holidays for 2011, 2012 and 2013. In 2009 the Claimant was entitled to 10 days from March to December. In 2010 she was entitled to 11 days. In 2011 and 2012 she was entitled to 10 days each year and in 2013 when she was terminated in March she only worked on 1 public holiday. These all add up to 42 days. Based on a salary of Shs. 9000/- her daily rate of pay ($9000 / 30$) was Shs. 300/-. For 42 days she is entitled to (42×300) Kshs. 12,600/-.

I award her the said Shs. 12,600 for Public Holidays.

4. Compensation

Having been unfairly terminated from employment the Claimant is entitled to compensation as provided under Section 49 (1) (c) of the Employment Act. She had worked for 4 years and in the absence of any defence by the Respondent, it is my opinion that compensation of 6 months' salary would be reasonable taking into account the Claimant's length of service, manner in which she was terminated and all other relevant factors. I therefore award her compensation of 6 months' salary being Shs. 54,000/- .

5. Costs and Interest

The Claimant was not represented by an advocate in this Claim. I will therefore not grant her any costs.

The decretal sum will earn interest at court rates from date of judgment.

Summary of award

In summary judgment is entered in favour of the Claimant against the Respondent as follows:

1. Notice	Kshs. 9,000
2. Leave	Kshs.25,000
3. Public Holidays	Kshs.12,600
4. Compensation	Kshs54,000

5. Interest at court rates from date of judgment.

Orders accordingly.

Dated and delivered at Nairobi this 17th day of September 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Grace Mbaisi Munandi Claimant present in person

No appearance for Respondent



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