



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1572 OF 2014**

*(Before Hon. Justice Mathews N. Nduma)*

**EDITH WAGITHI MUNENE.....CLAIMANT**

**VERSUS**

**ACACIA MEDICAL CENTRE LIMITED.....RESPONDENT**

**J U D G M E N T**

1. By a Memorandum of Claim dated 28<sup>th</sup> August, 2014 and filed on 11<sup>th</sup> September, 2014, the Claimant prays for the equivalent of 12 months' salary in compensation for wrongful and unfair termination of employment and payment of terminal benefits set out as follows:-

- (i) One month salary in lieu of notice Kshs.25,000.
- (ii) Arrears salary for March, May & June 2014 Kshs.75,000
- (iii) Unpaid 7 months' rent for November, 2013 Kshs.175,000 and
- (iv) Salary deduction in March 2014, Kshs.2,222.

2. The Claim is opposed vide a reply to Memorandum of Claim filed on 11<sup>th</sup> November, 2014 in which particulars of employment are admitted in the capacity of a laboratory receptionist by a letter dated 8<sup>th</sup> November, 2013.

3. It is not in dispute that the Claimant was placed on six (6) months' probation.

4. The Respondent also aver in paragraph 11 of the reply that the Claimant participated in an unlawful strike in March 2014, which was a ground for summary dismissal.

**Testimony**

5. The claimant testified under oath in support of the Claim and the facts of her case may be summarized as follows:-

Claimant was employed on 1<sup>st</sup> August, 2013 by a letter of appointment produced as annex I. The Claimant was given another letter of appointment produced as Appendix '2' in the position of a receptionist at a salary of Kshs.25,000/- per month. That she was placed on 6 months' probation which period expired in April, 2014.

6. That on 3<sup>rd</sup> June, 2014 the Claimant was given letter of termination. This was after the probation period had elapsed. The letter

which was produced as Appendix '3' gave the reason for termination to be financial difficulties. The claimant was not accused of any misconduct in the letter. The Claimant was offered Kshs.67,000 as terminal benefits payable in 28 days. The claimant was not given notice before termination. The Claimant said that she was entitled to house allowance but it was not paid. The Claimant claims Kshs.2,222 deducted from her March 2014 salary.

7. The Claimant states that the termination was wrongful and unlawful. She took one year to get another job and she suffered loss and damage. She claims arrear salary for March, April, May and June.

8. Claimant prays for interest and costs.

### **Defence**

9. RW1 was Ann Muthoni Ngima. She testified that she was the General Manager of the Respondent and was aware that the Claimant was employed on six months' probation. That she was to be confirmed in writing upon expiry of six months period but the Respondent did not confirm her. That Claimant earned a gross salary of Kshs.25,000 which included house allowance.

10. RW1 accepted that they owed the Claimant arrear salary in the sum of Kshs.67,000 for March and May, 2014. That Claimant was under probation and was not entitled to notice or payment in lieu. That her employment was terminated in June, 2014.

11. RW1 stated that the termination was due to financial difficulties. RW1 admitted that redundancy procedures were not followed in terminating the employment of the Claimant and that the Claimant's employment was terminated for no fault of her own. RW1 denied that the claimant participated in any unlawful strike.

### **Determination**

12. The issues for determination are:-

(i) Whether the termination was for a valid reason and in terms of a fair procedure.

(ii) Whether the Claimant is entitled to the reliefs sought.

### **Issue i**

13. The Respondent admitted in court that the Claimant's employment was terminated for no fault on her part. That the employment was terminated due to financial difficulties. RW1 admitted that the Respondent however did not follow the mandatory procedure of declaring redundancy under section 40 of the Employment Act 2007.

14. Accordingly, from the Respondents own admission, the termination was for a valid reason but the Respondent did not follow a fair procedure in violation of section 40 & 41 of Employment Act. The court finds that the termination was unfair and a violation of sections 40, 41 and 45 of the Employment Act, 2007.

15. The Claimant is entitled to compensation in terms of section 49(1) (c) of the Act as read with sub section 49(4). In this respect, the Claimant had served only seven (7) months and had expectation to continue working. The termination was without notice and she took a year to get alternative job. She suffered loss and damage. The claimant did not contribute to the termination. Considering similar cases, the court awards the Claimant three (3) months' salary in compensation in the sum of Kshs.75,000.

### **Terminal Benefits**

#### **Arrear Salary**

16. The Respondent admitted that it owed the Claimant arrear salary for the months of March and May, 2014 in the sum of Kshs.50,000. The court awards accordingly. The court finds that the Claimant was not paid 3 days salary for the month of June in

the sum of Kshs.2,500.

**Notice**

17. The Claimant in terms of section 40(f) is entitled to payment of one month salary in lieu of notice in the sum of Kshs.25,000, which the court awards.

**Rent**

18. The Claim for rent has not been proved and it is dismissed.

19. In the final analysis Judgment is entered in favour of the Claimant as against the Respondent as follows:-

(i) Kshs.75,000 being equivalent of three (3) months salary in compensation.

(ii) Kshs.25,000 in lieu of notice.

(iii) Kshs. 152,500 being arrear salary for the month of March, May and three days in June.

Total award Kshs.152,500.

(iv) The award in (i) above is payable with interest at court rates from date of judgment till payment in full whereas the award in (ii) & (iii) is payable with interest at court rates from date of filing suit till payment in full.

(v) The Respondent to pay costs of the suit.

**Dated and Signed in Kisumu this 7th day of March, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 6th day of April, 2018**

**Maureen Onyango**

**Judge**

**Appearances**

Mr. Kamau for Respondent

Mr. Wangira for Claimant

Anne Njung'e – Court Clerk



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