



**REPUBLIC OF KENYA**

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

**CAUSE NO. 947 OF 2014**

**ANNE KASOMBO.....CLAIMANT**

**- VERSUS -**

**PACE POWER AFRICA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 29<sup>th</sup> June, 2018)

**JUDGMENT**

The statement of claim was filed on 06.06.2014 through J.W. Wanjohi & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the summary dismissal was wrongful, unfair and discriminatory.
- b) 2 months notice in lieu of termination notice Kshs. 416, 646.00.
- c) Severance pay for one complete year of service Kshs. 208, 323.00.
- d) Compensation for 12 months' salaries under section 49 of the Employment Act 2007 Kshs. 2, 499, 876.00.
- e) Certificate of service under section 51 of the Act.
- f) Pay for 22 leave days Kshs. 152, 770.00.
- g) Unpaid salary for 20 days in January 2014 Kshs. 138, 882.00.

The respondent filed the statement of defence on 08.07.2014 through Mohamed Madhani & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

There is no dispute that the claimant was employed by the respondent as a human resource and administration manager. The letter of offer of employment was dated 21.08.2012. The gross pay per month was agreed at Kshs. 200, 000.00.

The claimant was in charge of 18 African countries where the respondent operated. She worked from morning and left work any time after 8.00pm. She handled personnel files for all staff including personal files except her own file which was in the custody of the respondent's chief executive officer.

The claimant testified that on 20.01.2014 her former boss one Yegap Sethu walked to the claimant's desk and told the claimant to hand in the official laptop and company phone as well as cabinet keys. She was not given any reason and she then received the termination letter of 20.01.2014. The reasons stated were that she had misplaced crucial documents being the claimant's personal file but which the claimant testified was in the custody of her said boss. The email of 13.01.2014 referred to audit of human resource records and the claimant's signed document of offer letter and employment agreement - a copy of which the claimant forwarded by her reply of 14.01.2014 as contract she had received from Mr. Kubera and that she had nothing else in her possession. She handed over prior to the termination letter being delivered to her. It was the claimant's case that earlier on 20.01.2014 her boss had asked her to resign. When she declined, the boss issued the letter of termination dated 20.01.2014 addressed to the claimant by the respondent's head of Africa operations Y. Sethu thus, "**In reference to the mail communication regards to missing documents & confidential info missing from the records of books, we gave you an opportunity to return & acknowledge the lapses. We did not receive the documents back from you; under such circumstances it forces us to take this step of terminating your services. The notice period and the accrued leave days will be accounted & paid after accounting all the consumption & expenses.**"

The respondent was served but did not attend the hearing.

The **1<sup>st</sup> issue** for determination is whether the termination was unfair. It is clear from the claimant's evidence that she was not in custody of her personal file and documents alleged to be missing were not disclosed. It was her case that the reason for termination was not genuine. The Court finds that the respondent failed to establish the reason for termination as provided for in section 43 and 47 (5) of the Employment Act, 2007. The respondent has failed to justify the alleged reason for termination. Accordingly, the termination was unfair.

The **2<sup>nd</sup> issue** for determination is whether the claimant is entitled to the remedies as prayed for. The Court makes findings as follows:

- a) The claimant is entitled to a declaration that the summary dismissal was wrongful and unfair.
- b) The parties agreed upon 2 months notice in lieu of termination notice but which was not given and the claimant is awarded **Kshs. 416, 646.00** as prayed for.
- c) The basis for severance pay for one year completed service Kshs. 208, 323.00 was not provided. The prayer will therefore fail.
- d) The claimant had served for one year. She did not contribute to her predicament. In view of term served, she is awarded compensation for 6 months' salaries under section 49 of the Employment Act 2007 at last gross pay of Kshs.208, 323.00 per month making **Kshs. 1, 249, 938.00**.
- e) The claimant is entitled to a certificate of service under section 51 of the Act.
- f) The claimant is entitled to pay for 22 leave days **Kshs. 152, 770.00** as claimed.
- g) The claimant is entitled to unpaid salary for 20 days in January 2014 making **Kshs. 138, 882.00**.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a) The declaration that the termination of the claimant's contract of employment by the respondent was wrongful and unfair.
- b) The respondent to pay the claimant a sum of **Kshs.1, 958, 236.00** by 01.08.2018 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- c) The respondent to deliver to the claimant a certificate of service by 01.08.2018.

d) The respondent to pay costs of the suit.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 29<sup>th</sup> June, 2018**.

**BYRAM ONGAYA**

**JUDGE**



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