

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

CASE NO.

EMPLOYEE  
*claimant*

RP2775/2011  
UD2163/2011  
MN2199/2011  
WT882/2011

Against

EMPLOYER *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr F. Moloney  
Mr F. Keoghan

heard this claim at Dublin on 5th April 2013

Representation:  
\_\_\_\_\_

Claimant(s):

Respondent(s): No attendance by or on behalf of the respondent.

The determination of the Tribunal was as follows:-

At the outset of the hearing the claims under the Organisation of Working Time Act, 1997 and the Redundancy Payments Acts, 1967 to 2007 were withdrawn.

**Claimant's Case**

The claimant told the Tribunal that she commenced employment with the respondent on the 22<sup>nd</sup> November 2007 as a cleaner. She signed a contract for every year of her employment. She told her employer on the 23<sup>rd</sup> May 2011 that she was pregnant. Her employer asked her to lift a heavy item and she told her employer that she could not do so as she was pregnant. Her employer contacted her on 30<sup>th</sup> May 2011 and told that the 31<sup>st</sup> May was her last day of employment. She was brought to dinner by the respondent and told that she would have to reapply for her job and attend for

interview. She was called for interview on the 10<sup>th</sup> June 2011. By letter dated the 4<sup>th</sup> July 2011 she was informed that she was not selected for the position of cultural affairs clerk/cleaner. She did not obtain alternative employment after her dismissal.

## **Determination**

The respondent was notified of the hearing by registered post on the 25<sup>th</sup> February 2013. The Tribunal is satisfied that delivery was effected and the registered letter was not returned. The Tribunal did not receive a Notice of Appearance (T2) or any response from the respondent. There was no representative or appearance by or on behalf of the respondent at the hearing.

Under the Unfair Dismissals Acts, 1977 to 2007 the onus of proof rests on the employer to either justify the dismissal or claim that the Tribunal had no jurisdiction to hear the case on the grounds of sovereign immunity. In this particular case the respondent chose to do neither. In such circumstances, it is our view that it is not only inappropriate for the Tribunal to “step into the shoes” of the Kenyan Embassy and plead sovereign immunity on its behalf but it would be grossly unfair to the claimant to do so. In any event the Tribunal considered two important cases dealing with sovereign immunity:

In *Government of Canada v Employment Appeals Tribunal (1991)* [‘the Canadian embassy case’] the Supreme Court, in an employment law claim by a dismissed embassy driver, accepted that the doctrine of absolute sovereign immunity no longer existed. However, the Court found that a restricted form of state immunity existed and applied it to the case. The driver was found to be involved in the employing government’s public business organisation and interests because of his peculiar position of trust and confidentiality.

The European Court recently affirmed that absolute sovereign immunity no longer applies. In *Ahmed Mahamdia v Peoples’ Democratic Republic of Algeria Case C-154/11*, (‘Mahamdia’) a relief driver at the Algerian Embassy contested his dismissal before the German courts. Algeria argued that as a foreign state it enjoyed immunity from jurisdiction in Germany, where the embassy in question was located. According to the Court, the case concerned a contract of employment concluded by the embassy where the functions of the employee did not fall within the exercise of public powers. In the exercise of its functions, an embassy, like any other public entity, can acquire rights and obligations of a civil nature, in particular as a result of concluding private law contracts.

The Tribunal is satisfied that the claimant’s functions as a cleaner did not fall ‘within the restricted form of state immunity’ as considered in the Canadian Embassy case nor did her position involve her “within the exercise of public powers” according to the test set out in ‘Mahamdia’

On the uncontroverted evidence of the claimant the Tribunal finds that the claimant was unfairly dismissed and awards her compensation of €44,200.00 under the Unfair Dismissals Acts, 1977 to 2007.

The claimant’s employment was terminated without notice and she is therefore

entitled to two weeks gross pay in lieu of notice in the amount of €850.00 (€425.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

As the claims under the Redundancy Payments Acts 1967 to 2007 and Organisation of Working Time Act, 1997 were withdrawn no award is being made under these Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

