Mayaka v Gleem & another (Cause E017 of 2025)
[2025] KEELRC 2974 (KLR) (30 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2974 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE E017 OF 2025

M MBARŨ, J

OCTOBER 30, 2025

BETWEEN

JARED MAYAKA ..... CLAIMANT

AND

PETER GLEEM ..... 1ST RESPONDENT

MARGARET ATIENO ..... 2ND RESPONDENT

JUDGMENT

1. The clamant filed the claim against the respondents on th basis that he was employed as a watchment (security guard), caretaker, gardener and houseboy (housekeeper) from august 2008. His wage graduated from Ksh. 3,000 to Ksh. 20,000 per month but was not issued with a written cotnract or pay alip.

2. The claim si that o 28 septmeber 2023, the claimant's employment was ufnarly terminated through summary dismissal. He was not issued with notice or paid hs temanl dues having worked for the respondnets for 15 years. His claim was that he was not allowed off days, annual leave or his statutry dues remittd to the NSSF and NHIF.

   The claamtn is seeking the following dues:

   a. 12 months compensation Ksh. 23,000 x 12 = 276,000.

   b. One month notice pay Ksh. 23,000.

   c. Leave days for 15 years ksh. 341,500.

   d. Refund of NHIF Ksh. 90,000.

   e. Refund of NSSF Ksh. 72,000.

f. Service pay for 15 years ksh. 172,500.

g. Unpaid rest days Ksh. 512,154.

h. Public holidays Ksh. 239,760.

i. Certificate of servce.

j. Csts of the suit.

3. The claiamtn testified that he has worked fro the respondents for 15 years as a caretaker and security guard without a written cotnract or beign issued with an work records. Initially he was working for Margaret Gleem neighbor and would oversee the prmseis when they travelled abroad until he was formerly recruited by Mary, a sister-in-law to the respondents. He started as a security guard and was added other duties. He would also collect rent and was allowed to retain Ksh. 20,000 as hs payments. His wage would be paid from the rent collected from various tenants.

4. The claimant testified that he was gardening outside the respondents' premises and selling flowers. The respondents would be away abroad for most to the year.

5. In 2023, the respondents came bck to kenya for two months. He found another employee had replaced him. He was never paid a house allwaonce, was not allowed to take rest days and annual eave and durig all public holidays, he remained at work. He only went ot charch on Saturday and resumed his duties.

   His claims are justified and should be paid with costs.

6. In reply, the respondents made mere denials in reply and that they never employed the claimant. there is no evidnce of his employment as alleged and hs claims should be dismissed with costs.

7. Mararet Ateno testified that she knew the claimant for many years when he was working for heer neighbor s a gardeer. He resigned in 2013 and started doing casual kjobs in the neighbourhood.

8. Atieno testified that she had Mary taking care of her premsies whenever she travelled abroad. Mary would source fr casuals whever she required cleaning, gardening and other menial jobs. Each would be pad upon completion f the task. Her daughter, who was at the university, would also secure casual labourers and pay them upon completion of a job. She never hired the claimant as a guard since she did not require one. He had his flower business that he was running near the premises. She had construction work ongoing and asked the claimant to leave the gardnign area which resulted in the current claim.

9. Atieno testified that she allowed the claiamtn to collect rent whenever Mary and her daughter were not avaible. She allowed him to retain a portion in payment. This was not for employment but fr the serive rendered. For any othr casual jobs done, the claiamtn would be paid at the end.

10. Th respodetns also called Mary Nyambura formerly the house help who testified that she would hire the claimant on a need basis for odd and casual jobs at the respodnets' premsies. He ws not the security guard or caretaker as alleged.

11. Lorraine Adhiambo testified that she is the daughter to Maraget Atieno and would reside at th subject prmeises. The claiamtn as not an employee and was running his gardening and floer bueisess adjacent to the presmises. She wuld manage the property when Mary left. Whenever the claiamtn assited, he was padi for work done.

12. Cosmas Kioko testified that she was the driver to the respodnents whenever they wre in the coutry. He would pick them at the airport and drop them at the subject premsies. There was no security guard

at the premises. The claimant would not be I charge as a caretaker as alleged. He never found hs doig any work or employment whenever he would pick and the respondnets. He would see him attending to his flower business adjuscet to the prmsies. He knew Mary as the employee of the respondnets. She would take care of the premises.

At the close fo the hearing, both parties filed written submissions.

13. Th issues which emerge for determaintion are whether there was an employment relationship between the aprtis and whether the reliefs sought should issue.

14. To support his case, the claiamtn ahd filed various records including phone text messages between him and the respondnets. He also filed photos of hm and the respondnets. He has filed M-Pesa money transactions between him and the respondents and Lorine Adhiambo.

15. The M-Pesa money transactions give a history of money paid to the claimant from 2017. The only discernible payment is frol Lorie Adhiambo and not the respondents.

16. The paymets have no gien pattern t sugest a constituent payment of a given sum of Ksh. 3,000 or Ksh. 20,000 alleged to be the mnthly wage paid by the respondnets. The claim that there was employment is lost in the records filed by the claimant and corroborated by the respondnts that there was no employment and whenever the claiamtn was sourced for any given task, he was paid at the end.

17. Indeed, under section 2 of the *Employment Act*, a casual employee is defined as one who is sourced for causal employment and is paid at the end of day.

18. Section 18 of the *Employment Act* also allows for piece-rate employment at th end of which the agreed pay is remitted.

19. In this case, the claimant was cross-examined at length and admitted that the neighbour of the respondents employed him. He was also asked to do gardening for them. He was paid for work done.

20. The nature of the employment relationship between the parties was for given tasks which were paid for at the end. this explains whey the claimant did othign to seucre his rights, if any, for the alleged 15 years of service,

21. The court appreciates current labour dynamics. A person is allowed to do multiple jobs on the go and is paid by different people. A good example is the claimant. he did gardnign for the respondnets, the neighbours while he attended to his flower busess. Eh was accommodated near the premsies fro his private bsuenss and he rendered various services to th good neighbours.

22. The context is thus given of a person rendering a service. Available fr service and not employment as defined under the *Employment Act* as held in Christine Adot Lopeyio v Wycliffe Mwathi Pere [2013] KEELRC 244 (KLR) that;

> Under Section 2 of the *Employment Act*, 2007, 'contract of service' is a necessary ingredient in the definition of 'employer'. As the court's jurisdiction is open to employees and employers, its jurisdiction is available in both instances of contracts of service and contract for service. In this case, based on this definition and the outlined tests above I note the claimant was not sorely under the control of the respondent as a Care Taker and or agent of his business in rent collection, cleaning of his premises or security.

23. In this case, the claim of employment and th necessary controlling ingredients are lacking. The claiamtn does nto deny that he was running his private bsueiss outside the respondnet's prmeises. He took the oppuntity to make extra money by collecting rent and retaining ksh. 20,000 whenever the chance arose.

24. The court fids no employment relationship. There is no jurisdiction to hear and determaine the matter.

25. Even where the claims were to be addressed, accrued leave days, rest days and work during public holdisyas are defined as continuing injuries which should be addressed within employment and as continuing injures, 12 months form the date of cessation as held in See Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another [2016] KECA 213 (KLR) and the case of The German School Society & another v Ohany & another [2023] KECA 894 (KLR) that benefits such as allowances in housing, overtime and work hours accrue daily, weekly or monthly and must be addressed within the meaning of a continuing injury under section 90 of the Act.

26. The claim is that the alleged employment was terminated in September 2023. The claim was filed on 19 February 2025. The lapse in addressing the continuous injury within the provisions of section 90 of the Act renders such claims time-barred.

27. A certificate of service can only be issued from an employer-employee relationship.

28. Without proof of an employment relationship, the claim is without merit and is hereby dismissed with costs to the respondents.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30TH DAY OF OCTOBER 2025.

M. MBARŨ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and .....