



Amisi v Karsan (Cause 1936 of 2016) [2025] KEELRC 159 (KLR) (31 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 159 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1936 OF 2016
J RIKA, J
JANUARY 31, 2025**

BETWEEN

GRACE AYIEMBA AMISI CLAIMANT

AND

RAMBAI RAHADIA KARSAN RESPONDENT

JUDGMENT

Representation

Court Assistant: Bernard Kirui

Okenyo Omwansa & Associates, Advocates for the Claimant

Karanja & Partners, Advocates for the Respondent

1. The Claimant filed her Statement of Claim, on 20th September 2018.
2. She states that she was employed by the Respondent on 4th August 2014, as her Domestic Help.
3. The Respondent terminated her contract on 30th June 2016. She was not issued a warning, or given reasons justifying termination. She was not heard, and did not receive a letter of termination. She worked for 24 months. Her salary at the time of termination, was Kshs. 3,800 monthly.
4. She was not paid terminal benefits. She did not go on annual leave, public holidays, and was not compensated for excess hours worked. She was denied weekly rest days, house allowance and traveling allowance.
5. She did not belong to any pension or provident scheme, and claims service pay, under Section 35 of the [Employment Act](#).
6. She prays for: -
 - a. 1-month salary in lieu of notice at Kshs. 10,954.



- b. Annual leave pay at Kshs. 10,954.
 - c. Service pay at Kshs. 10,954.
 - d. Compensation for unfair termination equivalent of 12 months' salary at Kshs. 131,456.
 - e. Underpayment of salary from 4th August 2014 to 30th June 2016 at Kshs. 10,954 – Kshs. 3,800 = Kshs. 7,154 x 24 = Kshs. 171,712.
 - f. Fine for failure to issue a certificate of service at Kshs. 100,000.
Total... Kshs. 375,469.
 - g. Costs.
 - h. Interest.
 - i. Any other suitable relief.
7. The Respondent filed her Statement of Response, on 30th October 2019. She denies that the Claimant was her Employee. The Claimant only offered to her, laundry services. She was paid a daily rate of Kshs. 300. She started offering these services, on 4th January 2016, and ceased doing so voluntarily, on 30th June 2016.
 8. She did not wash clothes daily. She only came 4 or 5 times a week. She was not employed by the Respondent as claimed.
 9. The Respondent is not liable to the Claimant, for the statutory benefits claimed. The Respondent did not employ her, and did not therefore, terminate her contract.
 10. The Claim was dismissed for want of prosecution, on 10th May 2021, and reinstated on 29th March 2022.
 11. The Claimant gave evidence, and rested her case, on 25th July 2023. The Respondent, and her daughter Vaishnavi Karsan, gave evidence on 7th December 2023, closing the hearing. The Claim was last mentioned on 30th January 2024, when the Parties confirmed filing and exchange of their Submissions. Regrettably, the file was only forwarded to the undersigned Judge for preparation of the Judgment, after he had been transferred from the station, in November 2024.
 12. The Claimant restated that she was employed by the Respondent for 2 years. She did not recall the exact date of employment. She was abruptly told not to report to work. She worked at the Respondent's Lang'ata residence. She worked for the Respondent and her 2 daughters. She reported at around 7.00 a.m. and left at 12.00 o'clock, Monday to Saturday. She worked on all public holidays except Christmas. She restated that the Respondent terminated her contract unfairly and unlawfully, and did not pay her statutory dues.
 13. Cross-examined, she told the Court that she resided at Kibera informal settlement with her 3 children, at the time of employment. She commuted to work. She did not know where the Respondent's children schooled. She used to clean the Respondent's house. There was no letter of employment. She did not recall the exact date of dismissal. She was paid Kshs. 3,800 monthly. Her house rent was Kshs. 2,000. Transport by boda, was Kshs. 100 daily. It is true that she was paid Kshs. 3,800 monthly.
 14. Rambai told the Court that she is a housewife. She relied on her witness statement dated 28th November 2019, in her evidence-in-chief. The Claimant asked to do laundry work for the Karsans, in December 2015. She was told that there was no work. She returned after 2 days, insisting she needed some work,



- to be able to feed her family. Rambai gave her Kshs. 100, and sent her away. She returned in January 2016, and was told she could wash clothes, at Kshs. 300 daily rate. She thereafter, came 4 or 5 days a week and cleaned. She was given breakfast, washed clothes between 8.00 a.m., to 10.00 a.m. She was never employed by the Respondent.
15. On 30th June 2016, she told Rambai that she had some domestic problems she wanted to attend to, upcountry. She returned in September 2016, and served upon the Respondent the Court summons.
 16. She was not employed by the Respondent in 2014, or at all. The Respondent cleaned her own house, with her 2 daughters. The Respondent's religion, did not allow someone else, to cook for her family. Rambai did the cooking herself. The Respondent did not employ the Claimant, and was not liable to her as an Employer, under contract or law. The Respondent had a laundry machine, and gave the Claimant some clothes to wash, to assist her. She presented herself to the Respondent as a widow, who had fallen on hard times. She was an old woman, unsuited for domestic work.
 17. Cross-examined, Rambai told the Court that she met the Claimant in 2015. She went back to the Respondent's house to seek kibarua, in January 2016. The Respondent did not keep any records, because the Claimant was not an Employee. Rambai gave her some clothes to wash, because she had asked to be assisted. The Claimant told Rambai that she would come back after she sorted out her problems upcountry. She did not return. The Respondent did not pay the statutory benefits claimed, because there was no employer-employee relationship, and the obligation to pay. She was simply helping the Claimant, an elderly, widowed mama.
 18. Vaishnavi Karsan, associated herself fully with the evidence given by her mother Rambai. She is herself a housewife. She relied on her witness statement on record. At the material time, she resided at Lang'ata with her mother.
 19. She recalled the Claimant coming persistently to their house, and asking for work. There was no work. Her mother at first gave her Kshs. 100, and told her to go away. She returned in January 2016 and persisted in her request for work. Rambai assigned her laundry work, at Kshs. 300 daily. She washed clothes 3 to 5 days a week. It is true that she travelled upcountry on 30th June 2016. She returned in September 2016, with court summons. Vaishnavi confirmed that she assisted her mother with domestic work. Her mother did the cooking. The Claimant took 1 to 3 hours to wash the clothes. She was not an Employee of the Respondent.
 20. Cross-examined, Vaishnavi told the Court that the Claimant was paid Kshs. 300 daily. Vaishnavi assisted her mother with domestic chores. Redirected, Vaishnavi restated that she and her sister assisted their mother with domestic chores, and the Claimant was engaged to assist with washing clothes.
 21. The issues are whether the Claimant was an Employee of the Respondent, and if affirmative, whether the Respondent terminated her contract unfairly and unlawfully; and whether she is entitled to the prayers sought.

The Court Finds: -

22. There is no evidence given by the Claimant, to establish an employer –employee relationship, a contractual relationship, between her and the Respondent, with demonstrable, legally enforceable rights and obligations, under the *Employment Act*, or any other written law.
23. She pleads that she was employed by the Respondent on 4th August 2014. In her evidence she did not recall the exact date of employment. She was not clear on the nature of her domestic work. She generalized that she was a domestic help.



24. The Respondent and her daughter, gave persuasive evidence, to show that the Claimant was tasked with washing her family's linen. She was a mama nguo [laundry lady]. She asked the Karsans to be assisted with some work, to have income to enable her feed her family. She was a widow, with heavy family obligations, and approached the Karsans for assistance. She was given domestic work, restricted to washing clothes.
25. She did not work the full day, weekly, but for only a few hours in a day, for 3 to 5 days a week. Her own evidence was that she reported at around 7.00 a.m. and by 12.00 o'clock, she was out. She did no other work. She could not cook for the Karsans. Rambai and her daughter Vaishnavi, told the Court that their faith [Hindu?], does not allow strangers to cook for them, their meals. Rambai cooked for the family. Evidence from both parties support the view that the Claimant was a mama nguo.
26. Rambai also had a laundry machine. The Claimant was just given some clothes to wash, to enable her earn an income, in response to her persistent requests for work, put to Rambai. The Claimant did not establish that there was adequate domestic work at the Karsans' requiring the engagement of domestic help.
27. There was no written contract between her and Rambai. To establish an oral contract, she needed to bring before the Court witnesses, who could support her position that she worked for Rambai. She could provide other evidence, other than a written contract such as text messages between her and Karsan, relating to her work, or perhaps a photo taken at work. She could have called other individuals who saw her report to work, and work at the Karsans.
28. Her salary at Kshs. 3,800 monthly, was not consistent with her monthly expenditure. She told the Court that she paid rent of Kshs. 2,000 monthly. She used Kshs. 100 daily, for boda boda [motorcycle] transport, which would translate to about Kshs. 3,000 monthly. Her known monthly income of Kshs. 3,800 was not consistent with her known expenditure of approximately Kshs. 5,000. Logically, she was likely to be doing other work elsewhere, to bridge the gap. She was not a fulltime worker at the Karsans, but a mama nguo, paid Kshs. 300 for every round of washing clothes. She had the opportunity, to wash clothes for other households.
29. Oral contracts are recognized under the *Employment Act*, but are mostly, harder to prove. Domestic workers are largely on oral contracts, and their claims, tend to be their word against that of their Employers. The Court cannot presume the existence of a domestic help contract of employment, without being supplied basic evidence, to point to the existence of an oral contract. The Claimant ought to have supplied the Court with circumstantial evidence, to establish her employment contract, barring the presence of a written contract.
30. The determination of the existence of an employment relationship, is primarily based on the facts relating to the provision of work, and the remuneration of the worker. Recommendation No. 198 on the Employment Relationship [ILO 2006] espouses primacy of facts, in determination of the existence of an employment relationship. The principle calls on the trier of facts, to examine the realities of the relationship, and not to give undue regard to other elements, such as the intention of the parties.
31. It was the Claimant's obligation to establish an oral contract of employment. She was not clear on the date of her employment, what range of domestic work filled her day once employed, and the date her contract was terminated. She did not persuade the Court to make a presumption of the existence of an employment relationship, and for inversion of the burden of proof to the Respondent.
32. The ILO recommendation above, requires that remuneration paid to a worker, is the sole or main source of revenue for the worker. The Claimant was not able to show that Kshs. 3,800 she claimed she was paid monthly by the Respondent, in light of her approximate monthly expenditure, was her



sole or main source of revenue. Her work with the Karsans, and revenue earned, appears to have been supplemental. She was not an Employee. She was a mama nguo, who was probably available to wash clothes for other households, for the remainder of the day.

33. The main ILO Convention on domestic workers, is Convention No. 189 [ILO 2011], [Decent Work for Domestic Workers]. The Convention lays down the basic human rights of domestic workers. It defines domestic work as “ work performed in, or for, a household or households”. The work may include cleaning the house, cooking, washing and ironing clothes, taking care of children and the elderly, gardening and guarding the house. A domestic worker could be a live-in worker, or a ‘day scholar,’ to borrow a term commonly used in the Kenyan domestic help labour market. He or she can be employed by a single Employer, or several common Employers [as happens in housing estates]. The Convention defines a domestic worker, as “any person engaged in domestic work within an employment relationship.”
34. To have the benefit and protection of the law, the domestic worker must therefore establish, that there is an employment relationship. The Claimant has not established the existence of an employment relationship, and her Claim has no merit.

It is ordered: -

- a. The Claim is dismissed.
- b. No order on the costs.

DATED, SIGNED AND RELEASED ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTIONS 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA
JUDGE

