



Karani v Parpia (Cause 574 of 2018) [2025] KEELRC 1360 (KLR) (8 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1360 (KLR)

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

CAUSE 574 OF 2018

K OCHARO, J

MAY 8, 2025

BETWEEN

BEATRICE KARANI CLAIMANT

AND

ABDULRAHIM PARPIA RESPONDENT

JUDGMENT

1. Asserting that at all material times she was an employee of the Respondent as a House Help, whose employment the latter terminated unfairly. And charging that the termination was unfair, the Claimant sued the Respondent seeking declaratory and compensatory reliefs.
2. Upon being served with summons to enter appearance, the Respondent did, and subsequently filed a response to the Claimant's statement of claim, denying the Claimant's cause of action against him and her entitlement to the reliefs sought.
3. Upon cross of pleadings, this matter destined for hearing inter partes on merit. The Court eventually heard the parties on their respective cases and directed that they file their written submissions after hearing them. They obeyed the direction.

The Claimant's Case.

4. The Claimant asserted that she and the Respondent entered into a verbal employment agreement on May 15, 2012. She was to serve as a house servant with an initial salary of Kshs. 5,000. However, this salary gradually increased as she continued her service. At the time of termination, the Claimant was earning Kshs. 10,000.
5. Her employment was terminated on 28 February 2017 without notice or reason, having worked for 4 years and 10 months. The termination was unfair, unlawful, and illegal.
6. She contended that she is entitled to the following reliefs;



- I. Salary for January/February as per current wages order of 2015 10954.70x2 monthskshs. 21,909.40
- II. One month's salary in lieu of notice as per current wages of 2015.....kshs. 10,954.70
- III. House allowances as per current wages order of 2015 10954.70/100x15x60 monthskshs. 98,592.20
- IV. Salary under payment as per current General Order of 2015 from 5th August 2014 – 14th November 201610954.70-6,0004954.70x60 monthskshs. 297,282.00
- V. Unpaid public holidays as per current wages order of 2015 18x527.10.....kshs. 9,487.80
- VI. Long working hours which attracted extra 2 ½ hours worked on daily basis X hourly rate X 26 days worked per month X 60 months period worked as per current wages order of 2015kshs. 2 ½ X97.90 X 26 X 60.....kshs. 381.810
- VII. Annual leave as per current wages order of 2015 10954.70/30 x21 x60/12.....kshs. 38,341.40
- VIII. Ungranted at least one day after a period of seven days as current wages order of 2015 4 X 60 X527.10kshs. 126,504.00
- IX. Compensation for unfair dismissal as current wages order of 2015 10954.70 x 12.....kshs. 131,456.40
- X. Service pay as per current wages order of 2015 10954.70/30 x 15 x60/12kshs. 27,386.70
- XI. Holidays worked unpaid 9 x 5 x 527.10.....kshs. 23,719.50
- Total.....kshs. 1,167,441,10

- 7. Cross-examined by Counsel for the Respondent, the Claimant testified that she was employed on 15 May 2012 without any written agreement. Her starting salary was KShs. 5000. In 2016, the salary was increased to Kshs. 8000, and in 2017, to KShs. 10,000.
- 8. At the termination of her employment, the Respondent did not pay her terminal dues, including notice pay, service pay, and her January and February 2017 salary.
- 9. She admitted signing the waiver of claim document dated 28th February 2017.
- 10. Initially, she worked until 5:00 p.m., but as time passed, her responsibilities increased, and she started working beyond the hour, working up to 6:00 pm.
- 11. The Respondent didn't accommodate her within his premises or at all.
- 12. Re-examined by her Counsel, the Claimant stated that she was instructed to sign the waiver document as a pre-condition for her receiving her salary. When she was signing the paper was blank.

The Respondent's case.

- 13. The Respondent admitted that he employed the Claimant as a House Help at all material times.
- 14. The Respondent asserted that the Claimant received all her terminal dues, and her claim herein is misconceived. The Respondent further contended that payment was made to the Claimant, which was acknowledged by signing a "waiver of claim" dated 28th February 2017 and a second waiver dated 30th June 2016. The Respondent, in his documents, seeks to have the claim dismissed.



15. Cross-examined by counsel for the Claimant, the Respondent testified that the Claimant began working for him in 2012. She could report to work between 9:00 and 9:30 am.
16. Her monthly salary was Kshs. 10,000. However, he had not provided any documentation demonstrating that he used to pay the 10,000.
17. He further testified that he explained the reasons for terminating her employment to the Claimant and gave her verbal termination notice.
18. Before she signed the voucher, he explained the effect of the document she was signing. No witness executed the document.
19. The second discharge voucher was signed on June 30, 2016, and her employment ended on February 28, 2017. She signed the document to confirm that all her dues had been settled by that date.
20. The Claimant was entitled to an annual leave of 24 days. She was allowed to utilise her leave days as and when they were due.
21. He never made any remittances to the National Social Security Fund on behalf of the Claimant at any time.
22. He admitted that he didn't give her a certificate of service.
23. Under his evidence during re-examination, the Respondent asserted that the Claimant's employment was terminated due to her poor hygiene. Furthermore, she developed a habit of arriving late to work.
24. The first payment voucher covered her dues up to February 2017, while the second was for all terminal dues for the period ending June 2016.
25. He asserted that he offered the Claimant accommodation, but she declined, citing that she wanted to stay with his family at Kibera.

Analysis and Determination.

26. I have carefully considered the parties' pleadings, their respective evidence and submissions by their Counsels, and the following issues emerge for determination, thus;
 - I. Was the Claimant's employment unfairly terminated?
 - II. Is the Claimant entitled to the reliefs sought in his pleadings?

Was the Claimant's termination unfair?

27. It was a common cause, the employer-employee relationship between the Claimant and the Respondent, which relationship commenced on May 15, 2012, and was terminated on February 28, 2017. The Claimant's case was that the Respondent unfairly verbally terminated her employment. This Court notes that though the Respondent didn't mention in his pleadings and witness statement [turned evidence in chief], how he effected the termination, in his evidence under cross-examination, he testified that he verbally terminated the Claimant's employment. Thus, fortifying the Claimant's position.
28. Section 43 of the *Employment Act*, 2007, places a legal burden on the employer to, in a dispute regarding the termination of an employee's employment, prove the reason[s] for the termination; in the defaulting, the termination shall be deemed unfair by dint of the provisions of section 45 of the Act. See also Pius Machafu Isindu vs- Lavington Security Guards Limited [2017] eKLR.



29. It is trite law that parties are bound by their pleadings, and that any evidence led by any party which does not support the averments in the pleadings goes to no issue and must be disregarded. See *Adetoun Oladeji [NIG] v Nigeria Breweries PLC SC 91/2002*, cited in *Independent Electoral and Boundaries Commission & Another v -Stephen Mutinda Mule & 3 others [2014] eKLR*.
30. I have carefully considered the pleadings by the Respondent, and his witness statement [turned evidence in chief], and note that they both immensely concentrated on the settlement of the Claimant's dues, without mentioning why he terminated the Claimant's employment. The Respondent purported to give the reasons for the first time in the proceedings under his evidence under re-examination. Going by the golden principle I have mentioned above; this Court must disregard this evidence as it is totally unconnected to the Respondent's pleadings.
31. In the case of *Raila Amollo Odinga & Another vs -IEBC & 2 Others [2017] eKLR*, cited by Counsel for the Respondent, the Court held;
- “In the absence of pleadings, evidence, if any, produced by the parties, cannot be considered. It is also a settled legal preposition that no party should be permitted to travel beyond its pleadings, and parties are bound to plead all necessary material facts in support of the case set up by them. Pleadings ensure that each side is fully alive of the questions that are likely to be raised, and they may have an opportunity of placing relevant evidence before the Court for its consideration. The issues arise only where a material preposition of fact or law is affirmed by one party and denied by the other. Therefore, it is neither desirable nor permissible for a Court to frame an issue not arising on the pleadings.”
32. As a result, I hold that the Respondent did not demonstrate the reason[s] for the termination of the Claimant's employment. He failed to discharge the legal burden under section 43 of the *Employment Act*, and therefore, the termination was unfair by dint of section 45 of the Act.
33. This Court is cognizant of the further legal burden bestowed on the employer under section 45[2] of the *Employment Act* to prove that the reason for the termination was valid and fair. The Court can only venture into considering whether or not this burden was discharged, only in situations where the employer has surpassed the first hurdle, satisfying the burden under section 43. As the Respondent didn't, I can only hold that the burden under section 45[2] of the Act was not equally discharged.
34. This leads this Court to an inescapable conclusion that the Claimant's version is convincing, her employment was terminated without any justifiable and valid reason.
35. Section 41 of the *Employment Act*, 2007 dictates that any employer contemplating an employee's employment on grounds of misconduct, poor performance, or physical incapacity shall, before terminating the employment, inform the employee of the reasons for which he is considering the termination, accord him an opportunity to make representation on the reasons, and conjoined with this right to make representation, is the right of accompaniment by another employee or a shop floor union representative of his choice, and consider the representation before taking a final decision.
36. As indicated hereinabove, the Respondent, though belatedly, alluded to the unsatisfactory work performance of the Claimant as the reason why he terminated the Claimant's employment. In such a situation, compliance with the dictates of the forestate provision of the law was a must. There was no evidence that there was. Indeed, in his evidence under cross-examination, the Respondent admitted that there wasn't. As such, the termination of the Claimant's employment was procedurally unfair.
37. The Respondent asserted that the Claimant was paid all her salary and allowances for all the days worked up to the date of termination and that she acknowledged it by executing a waiver of claim. It



- further argued that having executed the document, it became a binding agreement, and the Claimant was estopped from pursuing any claim against it. To support these submissions, reliance was placed on the case of *Ronald Kipngeno Bii v Unilever Kenya Limited* [2022] eKLR.
38. The Claimant contended, and her Counsel submitted that although it appears she signed the document, she signed a blank sheet of paper; it did not contain the contents that are now being asserted as binding upon her. Furthermore, she signed the blank paper because the Respondent had made this a precondition to pay her outstanding dues. As a result, it cannot be argued that the document had a contractual effect. To support this, Counsel placed reliance on the cases in *Nichola Mwangangi Waua v Samax Limited* [2021] and *Trinity Prime Investment Limited v Lion of Kenya Insurance Company Limited* [2015] eKLR.
39. A discharge voucher or any document executed by the parties or a party expressed to discharge one of them or the other from liability can have a contractual effect, binding the parties to the terms of that executed document. Whether the document will have this effect depends on the circumstances surrounding its execution and the wording.
40. I have meticulously analysed the Respondent's assertion in his pleadings and witness statement. In my assessment, the Respondent merely formulated a generalised claim concerning the alleged waiver of any entitlement without delineating specific details. Furthermore, the document dated 28th February 2017 does not specify any distinct amounts or the purposes for those payments. In my view, the document, which is disputed in any event, is not unambiguous to have a contractual effect.
41. 1. The Respondent submitted another document dated 30th June 2016, similar in content to the one dated 28th February 2017. This document also refers to terminal documents, raising the question of whether a termination occurred on or about this date [30.06.2016], and if so, how she subsequently returned to the employment of the Respondent, only to be terminated again on the latter date. Without any fear of contradiction, I note that the Respondent was unclear in explaining the two documents. This heightened the Court's belief in the Claimant's version.
42. The Claimant's employment was terminable by 28 days' notice under section 35 of the *Employment Act*. The Respondent didn't dislodge the Claimant's assertion that no notice was issued, and thus, she is entitled to notice pay under section 36 of the Act. The relief sought under this head is granted to her.
43. Under section 35 of the *Employment Act*, service pay is a statutory benefit to an employee whose employment has been terminated or is terminable by notice under the provision, unless the employee belongs to a class of those identified under subsection 5, thereof. No doubt, the Claimant wasn't shown to be falling under any of the categories. I have no reason to deny her the statutory benefit.
44. Under section 28 of the *Employment Act*, 2007, annual leave is a statutory right. Corollary to this right is the employer's duty to allow enjoyment of the same. The Claimant asserted that throughout her employment with the Respondent, she was not allowed to proceed with her statutory leave. I think blurred with the position it took and the documents that I have found hereinabove as of no contractual effect, the Respondent didn't put forth evidence to demonstrate either that the Claimant utilized her earned leave days or that she was compensated in lieu. The relief is entitled to.
45. The Claimant sought unpaid house allowance, underpayments, and overtime, which are reliefs that, in my view, fall under those causes of action that section 90 of the *Employment Act* refers to as continuing injury. See the *German School Society v Ohany* [2023] KECA 894 [KLR]. Claims based on continuing injury are time-barred 12 months after the cessation of the injury. For purposes of this matter, the cessation, in my view, occurred at the termination of the Claimant's employment on 28th February



2017. The suit herein was filed on 19th April 2018, and as such, the reliefs were sought outside the statutory period. I decline to interrogate their merit, but dismiss them for want of jurisdiction.

46. By reason of the foregoing premises, Judgment is hereby entered for the Claimant in the following terms;
- I. A declaration that the termination of her employment was procedurally and substantively unfair.
 - II. Compensation pursuant to the provisions of section 49[1][c] of the *Employment Act*, 2007, six months' gross salary, KShs. 60,000.
 - III. One month's salary in lieu of notice, KShs. 10,000.
 - IV. Service pay, $15/30 \times 10,000 \times 5 = 25,000$.
 - V. Compensation for earned but unutilized leave days, $21/30 \times 5 \times 5 = 35,000$.
 - VI. Costs of the suit.
 - VII. Interest at court rates from the date of this judgment till full payment.

READ, SIGNED AND DELIVERED THIS 8TH DAY OF MAY 2025.

OCHARO KEBIRA

JUDGE

