



**Juma v Macharia (Employment and Labour Relations Appeal
E025 of 2023) [2025] KEELRC 1915 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1915 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E025 OF 2023**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

PRISCILLA CHEPKEMOI JUMA APPELLANT

AND

JOHN IRUNGU MACHARIA RESPONDENT

JUDGMENT

1. This appeal challenges the judgment of the delivered on 16th June, 2023 wherein the learned Magistrate dismissed the Appellant's claim in its entirety. The Appellant, aggrieved by the decision, contends that the lower court erred in law and fact by failing to recognize an employer-employee relationship, disregarding evidence of unfair termination, and omitting awards for underpayment and terminal benefits. The Respondent, in opposition, maintains that the Appellant was employed by his former wife and thus no liability attaches to him.
2. The appeal raises critical issues on the interpretation of employment relationships in domestic settings, the doctrine of constructive dismissal, and the statutory obligations of employers under Kenyan labour law. This judgment will meticulously analyze the evidence, legal principles, and precedents to determine whether the lower court's decision warrants interference.
3. The Appellant alleged that she was employed by the Respondent as a house manager from March, 2012 until her constructive dismissal in September 2018. Her duties included household chores, childcare, and other domestic tasks for which she was initially paid Kshs 7,000 per month, later increased to Kshs 10,000. The Appellant testified that her salary was remitted through the Respondent's wife, who was a homemaker.
4. The employment relationship allegedly soured when the Respondent and his wife separated in September 2018. The Appellant claimed she was compelled to relocate with the wife as the Respondent ceased salary payments, rendering her continued stay untenable. She construed this as constructive



- dismissal and sought terminal dues, including unpaid wages, leave days, and service pay, totaling to Kshs.387,482.
5. The Respondent denied being the employer, asserting that his wife solely hired and supervised the Appellant. He adduced evidence that a cheque of Kshs 50,000 issued to the Appellant was for medical assistance, not salary, and called two witnesses to corroborate his testimony. The lower court accepted the Respondent's narrative, holding that the Appellant failed to prove an employment relationship with him.
 6. The Appellant's memorandum of appeal crystallizes into the following grievances;
 - i. Erroneous Finding on Employment Relationship: The Magistrate misapplied the legal tests for employment and ignored uncontroverted evidence, including the Respondent's admission of the Appellant's long service to his household.
 - ii. Unfair Termination: The court overlooked the Appellant's constructive dismissal claim despite evidence of unilateral cessation of payments and intolerable working conditions.
 - iii. Underpayment of Salary: The Magistrate disregarded statutory wage orders and the Appellant's testimony on receiving wages below the legal minimum.
 - iv. Judicial Bias: The court allegedly favored the Respondent by dismissing the Appellant's evidence and submissions without proper evaluation.
 7. The first issue for determination is the existence of an employer-employee relationship. The threshold issue is whether the Appellant was employed by the Respondent or his former wife. The lower court concluded that the wife was the sole employer, citing the Appellant's decision to relocate with her post-separation.
 8. The Appellant's case hinges on the following evidence:
 - i. Duration of Service: Uninterrupted work from 2012 to 2018 in the Respondent's household.
 - ii. Payment Structure: Salary remitted through the wife, who was financially dependent on the Respondent.
 - iii. Control Test: The Respondent and his wife jointly supervised the Appellant's duties, a hallmark of employment under Section 2 of the *Employment Act*.
 9. The Respondent's defence that his wife independently hired the Appellant strains credulity. As the sole breadwinner he indirectly funded the Appellant's wages, and his household benefited from her services. The *Employment Act* recognizes implied contracts and the Magistrate erred in requiring formal documentation for a domestic worker.
 10. In the authority of *Robai Musinzi v. Safdar Mohamed Khan* [2012] eKLR the court held that oral contracts suffice to establish employment, and employers who fail to issue written contracts bear the risk of adverse inferences. The lower court's rigid insistence on direct payment receipts ignored this principle. Moreover, the doctrine of privity of contract cited by the Respondent is inapplicable here. The Appellant served the household unit, and the Respondent's financial support to his wife created a tripartite employment nexus. The Magistrate's failure to recognize this constituted a material misdirection.
 11. The second issue for determination is constructive dismissal. The Appellant alleged that the Respondent's cessation of payments and the marital breakdown rendered her employment untenable,



- forcing her to resign. Constructive dismissal arises when an employer’s conduct makes continued employment intolerable *Coca Cola EA v. Maria Kagai Ligaga* [2015] eKLR.
12. The lower court dismissed this claim, reasoning that the Appellant’s relocation with the wife severed ties with the Respondent. This overlooks the causal link between the Respondent’s actions (non-payment) and the Appellant’s resignation. The Respondent, as the household’s financier, had a duty to ensure wage continuity. His failure to do so breached the employment contract’s essential terms.
 13. The legal test in this appeal comes out as follows;
 - i. Repudiatory Breach: Non-payment of wages is a fundamental breach under Section 17 of the *Employment Act*.
 - ii. Objective Intolerability: A reasonable employee would find it impossible to continue working without pay (*Emmanuel Mutisya v. Agility Logistics* [2011] eKLR).
 - iii. Causation: The Appellant’s resignation was a direct consequence of the Respondent’s conduct.
 14. The Magistrate’s conclusion that the wife alone was liable ignores the Respondent’s role in creating the intolerable environment.
 15. The third issue for determination is whether there was underpayment of salary. The Appellant claimed her wages fell below the statutory minimum under successive Labour Ministry Wage Orders. The lower court made no finding on this issue despite evidence adduced. Section 48 of the *Labour Institutions Act* mandates compliance with minimum wage orders. Legal Notices No. 71/2012, 197/2013, and 111/2017 prescribed minimum wages for domestic workers.
 16. The Appellant’s monthly salary of Kshs 10,000 in 2018 was below the stipulated minimum (Kshs 12,573 for Nairobi). The court’s silence on this violated Section 3 of the *Employment Act*, which obligates courts to enforce fair remuneration.
 17. In *Kathra Hussein Noor v. Kaderdina Hajee Essak Ltd* [2016] eKLR, the court held that underpayment claims must be adjudicated based on wage orders, irrespective of contractual terms.
 18. The lower court’s judgment was premised on a misapprehension of the employment relationship and a selective evaluation of evidence. The Appellant discharged her burden of proof while the Respondent’s defence was inconsistent and unsupported by credible evidence. For these reasons, the appeal succeeds on all grounds.
 19. I am therefore inclined to allow the appeal and award relief as follows;
 - i. A declaration be and is hereby issued that the termination of the employment of the Appellant by the Respondent was wrongful, unfair and unlawful and therefore null and void.
 - ii. 10 months’ salary as compensation for unfair termination: Kshs.12,573.00 x 10Kshs 125,730.00
 - iii. Underpayment differential (2012–2018): Kshs.2,573 x 12 x 6 ½Kshs. 200,694.00
 - iv. Service pay (Kshs. 12,573 x 15/30 x 6:Kshs 37,719.00
 - v. Unpaid leave (21/30 x 12,573 x 6 ½: Kshs 57, 207.15
 - Total of claim.....Kshs 421,350.15
 - vi. The Respondent shall issue a certificate of service to the Appellant of Service within 30 days.



vii. This award shall accrue interest at court rates from today's date till payment in full.

viii. The costs of this Appeal and the Claim at the lower court shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Maina Karanja instructed by Eliud Maina Karanja Advocates for the Appellant.

Maina Samuel instructed by Kithu Mbutia Advocates for the Respondent.

