



**Saleh v Pride King Services Ltd & another (Cause E078 of 2023)
[2024] KEELRC 602 (KLR) (13 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 602 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E078 OF 2023
S RADIDO, J
MARCH 13, 2024**

BETWEEN

ZUHURA ANUBII SALEH CLAIMANT

AND

PRIDE KING SERVICES LTD 1ST RESPONDENT

MAURICE OSANO 2ND RESPONDENT

JUDGMENT

1. Zuhura Anubii Saleh (the Claimant) sued Pride Kings Services Ltd and Maurice Osano (the Respondents) on 4 October 2023, alleging unfair termination of employment and breach of contract.
2. The Respondents filed a Response on 18 October 2023, and the Claimant filed an Amended Statement of Claim on 3 November 2023.
3. The parties filed Agreed Issues on 24 January 2024, and the Cause was heard on 12 February 2024.
4. The Claimant and a Human Resource Manager with the 1st Respondent testified.
5. The Claimant filed her submissions on 18 February 2024, and the Respondents on 26 February 2024.
6. The Court has considered the pleadings, evidence and submissions.

Employment relationship

7. The Claimant asserted that the Respondents employed her in 2016 as a Finance Director. The Respondents denied being in an employment relationship with the Claimant.
8. To demonstrate that she was an employee of the Respondents, the Claimant produced a copy of a letter dated 14 December 2020, informing her that her salary had been increased from Kshs 100,000/- to



Kshs 200,000/- per month and copies of bank statements for January and February 2020 and January and February 2021 showing credits into her account from the Respondents.

9. The Respondents contended that the Claimant and the 2nd Respondent were in some form of marital relationship out of which children were born, and the monies sent to the Claimant through her bank account were made at the request of the 2nd Respondent and was for the upkeep of the children.
10. Ordinarily, it is the responsibility of the employer to cause to be drawn an employment contract. Where there is no formal contract, it is open to the Court to look at secondary evidence to ascertain whether there was in existence an employment contract.
11. In the case at hand, no formal employment contract was placed before the Court. The Claimant sought to rely on secondary records to affirm an employment relationship.
12. The extracts of the Claimant's bank statements indicate that she was receiving some monies from the Respondents.
13. However, the bank transactions (credits) were not consistent on a monthly basis as one would expect of a salary. The extracts for January and February 2021 do not support nor reflect the increased salary of Kshs 200,000/-.
14. The Claimant was aware that the Respondents had denied the existence of an employment relationship. She could have done a little bit more to place before the Court records to establish an employment relationship such as income tax returns.
15. The Claimant sought to rely on a letter informing her of the increase of her salary. The increased salary was not corroborated by the bank statements. The Claimant did not reveal whether she was partly paid in cash and the bank nor did she divulge whether there was an initial written contract.
16. The Respondent's witness testified that the Claimant was not an employee of the Respondents and that she was not in the payroll. He also testified that 1st Respondent had over 2500 employees, and that the Claimant could not have been employed as a Finance Director because she did not possess the requisite qualifications. The Claimant was aware of the evidence before the taking of oral testimony but she did not attempt to disclose her qualifications.
17. In the Court's view, the salary increment letter could not support the assertion that the Claimant was an employee of the Respondents. She could have been a director by virtue of her relationship with the 2nd Respondent, but even that was not proved.
18. On the state of the record, apart from finding that the Claimant and 2nd Respondent had some sort of marital relationship on account of which payments were made from the 1st Respondent's accounts to the Claimant, the Claimant did not prove to the required standard that she was an employee of the Respondents.
19. Without prove of an employment relationship, it would be an academic exercise for the Court to venture into an examination of whether there was an unfair termination of employment.

Conclusion and Orders

20. For the above reasons, the Court finds and declares that the Claimant was not an employee of the Respondents, and the Cause is dismissed with no order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 13TH DAY OF MARCH 2024.



Radido Stephen, MCI Arb

Judge

Appearances

For Claimant C. Obiero & Associates Advocates

For Respondent Otieno & Achieng Advocates

Court Assistant Chemwolo

2| 6 Page Kisumu Cause No. E078 of 2023

