



REPUBLIC OF KENYA



Kungu v Mbugua (Cause 1950 of 2017) [2024] KEELRC 743 (KLR) (9 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 743 (KLR)

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

CAUSE 1950 OF 2017

JK GAKERI, J

APRIL 9, 2024

BETWEEN

MARGARET WANJIKU KUNGU CLAIMANT

AND

FLORENCE WAIRIMU MBUGUA RESPONDENT

JUDGMENT

1. The Claimant commenced the instant suit by a Memorandum of Claim filed on 29th September, 2014 alleging unlawful and unfair termination and non-payment of terminal benefits and accrued dues.
2. It is the Claimant's case that she was employed by the Respondent as a general worker on or about 2004 and was summarily dismissed in unclear circumstances without notice on 20th September, 2014 after having worked for the Respondent faithfully for 10 years and efforts to recover dues had fallen through.
3. The Claimant prays for:
 - i. This court be pleased to find that termination of employment by the Respondent was unjustified, unlawful, unfair, wrongful and illegal.
 - ii. Kshs.8,485/= for every month not paid from the date of dismissal till determination of the suit.
 - iii. Costs of this suit.
 - iv. Interest on (ii), (iii) and (iv) at court rate from date of dismissal until payment in full.
 - v. Any other or further relief that this court may deem fit to grant.

Respondent's case

4. In its response dated 5th June, 2022, the Respondent denies having employed nor dismissed the Claimant.



5. It is the Respondent's case that the 64 acre farm in Limuru was solely owned by her husband, the late Mr. Joseph Kiarie Mbugua who managed it until his demise on 22nd December, 2006 and was administered as such until 6th July, 2015 when the Respondent was apportioned 11.5% of the farm about 7.36 acres and the other family was awarded 50% of the farm.
6. It is the Respondent's case that she could not have employed the Claimant in 2004 and there was no record of the Claimant having worked on the farm as an employee of Mr. Joseph Kiarie Mbugua or under Mr. Peter Ndungu, the Manager from 2006 to 2015.
7. The Respondent denies that the Claimant's salary was Kshs.8,485.00 or was employed on permanent terms and prays for dismissal of the suit with costs.

Claimant's evidence

8. CWI, the Claimant confirmed on cross-examination that she was employed at Karirana in 2004 by the Respondent having gone to the office at her piece of land and her supervisor was Mr. James Njenga and she was a tea picker and the Respondent owned the land.
9. The Claimant confirmed that salary was paid in cash and she had no evidence to prove the fact of payment or employment.
10. That she visited the Labour Office which wrote to the Respondent on the issue and the letters were addressed to Mbugua Farm.
11. It was her testimony that the Respondent used to pay her in 2004 and was the main contact.
12. That she worked for 10 years and although tea was not picked every day, she performed other duties which she did not identify, was paid monthly and committed to the work place. That she knew and had seen the Respondent many times and the Respondent knew her as well.
13. CWII, Risphah Nyaboke confirmed on cross-examination, that she wrote a statement in July 2022.
14. It was her testimony that she was employed in 2008 by the Respondent at Kshs.6,000/= per month depending on the quantity of tea picked and her supervisors were Mr. Zablon and Mr. Daudi and was residing at the camp and did not know Mr. Peter Ndungu.
15. It was her testimony that the farm had about 60 tea pickers and she left in 2012 and was paid all her dues.
16. Finally, CWII confirmed that the Claimant was her colleague and she found her working at the farm.

Respondent's evidence

17. RWI, Mr. Peter Ndung'u confirmed that he was the Manager/Administrator of the Respondent's tea farm and there was no evidence of the Claimant having worked at the farm and had not provided evidence of the person who dismissed her from employment.
18. RWI testified that the Respondent had no link with the farm until she acquired an interest in 2015.

Submissions

19. By 13th February 2024, none of the parties had filed submissions and counsel for the Claimant proposed that judgement be rendered without the parties filing submissions and the court gave a judgment date.



Findings and determination

20. The issues for determination are:
- i. Whether the Claimant's suit is statute barred; and Depending on the answer to (i) above
 - ii. Whether the Claimant was an employee of the Respondent. Depending on the answer to (ii) above;
 - iii. Whether the Claimant's employment was unfairly or unlawfully terminated.
 - iv. Whether the Claimant is entitled to the reliefs sought.
21. Concerning the 1st issue, it is trite that it raise a jurisdictional issue which is a threshold question and may be raised at any stage, including by the court suo motu.
22. Both the Memorandum of Claim dated 17th July, 2017 and the Claimant's written statement of even date are unambiguous that the Claimant was summarily dismissed from employment by the Respondent on 20th September, 2014 having served the Respondent faithfully for 10 years.
23. Similarly, it is common ground that the memorandum of claim herein was filed on 29th September, 2017.
24. Section 90 of the *Employment Act*, 2007 provides that;
- “Notwithstanding the provisions of Section 4(1) of the *Limitation of Actions Act* (Cap 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act or default complained or in the case of continuing injury or damage within 12 months next after the cessation thereof.”
25. Under the law of limitations, a cause of action accrues at a specific time which signifies the commencement of the running of time.
26. In this case, the Claimant's cause of action against the Respondent accrued on 20th September, 2014 and time started running on 21st September, 2014 and the 3 years lapsed on 21st September, 2017, about 8 days prior to the institution of the instant suit.
27. This position is reinforced by the sentiments of Waki JA in *Attorney General & another V Andrew Maina Githinji & another* (2016) eKLR as follows:
- “... The Respondents had a clear cause of action against the employer when they received their letters of dismissal on 2nd October, 2010. . . Having found that the cause of action arose on 2nd October, 2010 and that the claim was filed on 16th June, 2014, it follows by simple arithmetic that the limitation period of 3 years was surpassed by a long margin. The claim was time barred as at 1st October, 2013 and I so hold.”
28. The fact that the Claimant reported the dispute to the Lands Officer at Kiambu sometime in 2014 and the Labour Officer wrote and talked to the Respondent, does not mean that the running of time was postponed.



29. As held by the Court of Appeal in *G4S Security Services (K) Ltd V Joseph Kamau & 468 others* (2018) eKLR;

“Time does not stop running on the commencement of reconciliation or other alternative dispute resolution mechanism provided for under *the Constitution* or any other law. This was fortified by the decision of the court in the case of *Rift Valley Railways (Kenya) Ltd V Hawkins Wagunza Musonye & another* (2016) eKLR which held as follows . . . The claim went stale three years from the date of termination of the Respondent’s contract of service.”

30. From the foregoing analysis, it is evident that the Claimant’s claim is stale and the court has no jurisdiction to entertain it and it is accordingly dismissed for having been filed out of time.

31. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 9TH DAY OF APRIL 2024

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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