



**Mugutha v Gitau alias Veronica Wairimu Van Helden; Helden (Interested Party)
(Cause 1001 of 2018) [2024] KEELRC 1523 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1523 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1001 OF 2018**

J RIKA, J

JUNE 14, 2024

BETWEEN

GEOFFREY KINYANJUI MUGUTHA CLAIMANT

AND

**VERONICA WAIRIMU GITAU ALIAS VERONICA WAIRIMU VAN
HELDEN RESPONDENT**

AND

TEUNIS ARIE VAN HELDEN INTERESTED PARTY

RULING

1. The Claimant was engaged by the Respondent and the Interested Party, as their Domestic Worker way back in 1982.
2. The Respondent and the Interested Party were married.
3. Some years later the couple relocated to the Netherlands, leaving their home in Kenya under the care of the Claimant.
4. He alleges through his Claim that he has not been paid salaries by the Respondent, from the year 2005, which forms the bulk of his Claim.
5. The Respondent filed a Notice of Preliminary Objection, dated 20th November 2023. She states that the Claim is time-barred; the cause of action arose in 2005; and the Claim was filed in 2018, contrary to the limit of 3 years from the date of accrual, prescribed under Section 90 of the [Employment Act](#).
6. The Claimant states that he is still an Employee of the Respondent, and his Claim for arrears of salary, has not expired.



7. Parties agreed to have the Objection considered on the strength of their Pleadings, Documents, and Submissions. They confirmed filing and exchange of Submissions, on 25th January 2024.

The Court Finds: -

8. The Claimant states that he is still an Employee of the Respondent. His Claim is based on an active contract of employment, with ongoing mutuality of obligations.
9. The Claimant appears to be caught between the Respondent and the Interested Party, whose family relationship broke down. The Interested Party, who is a resident of Netherlands, has made a long Witness Statement, indicating that the Claimant is still taking care of the couple's property in Kenya. He supports the evidence by the Claimant, that the Claimant is still working for the couple, though it is not clear, in exactly what capacity the Claimant is working.
10. The Respondent pleads that she was married to the Interested Party, and did not employ the Claimant; he was employed by her ex-husband, the Interested Party. She confirms that the Claimant occupies the couple's property in Kenya, and has leased out some stalls to strangers, and has been receiving rent.
11. The Court does not think that the Claim, which in the nature breach of contractual employment obligations, is affected by Section 90 of the Employment Act, as alleged by the Respondent. Every month the Respondent and the Interested Party fail to pay the Claimant his salary, the cause of action is renewed.
12. There are triable issues in this dispute, including whether there was an employer-employee relationship between the Claimant and the Respondent; whether such relationship subsists; or whether the Claimant is simply an entrepreneur, a caretaker who is deriving benefit from the breakdown in the Respondent's and the Interested Party's relationship, a businessman who has leased out property whose care he was entrusted, and who is earning rental income, while claiming arrears of salary. If he was employed by the Interested Party, the Respondent ought not to pre-empt proof of such employment, and the obligation of the Interested Party, in satisfying the demands for arrears of salary made by the Claimant.
13. These are triable issues which call for a full trial. The facts, including the date of accrual of the cause of action are disputed. The Claim cannot be determined preliminarily.

It Is Ordered: -

- a. Preliminary Objection by the Respondent is declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

