



Pariyo v Mc Builders Limited (Employment and Labour Relations Petition E091 of 2022) [2024] KEELRC 2244 (KLR) (19 September 2024) (Judgment)

Neutral citation: [2024] KEELRC 2244 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E091 OF 2022
BOM MANANI, J
SEPTEMBER 19, 2024**

BETWEEN

WILLIAM PARIYO PETITIONER

AND

MC BUILDERS LIMITED RESPONDENT

JUDGMENT

Background

1. The Petitioner is a Ugandan national. He has filed the instant proceedings seeking compensation for violation of his constitutional rights. He contends that sometime in August 2018, the Respondent's director, one Kalsi Singh approached him with a job offer from the Respondent in its carpentry outlet in Nairobi.
2. The Petitioner asserts that the Respondent offered to pay him monthly salary of Ksh. 40,000.00 in addition to other allowances such as house, transport and food allowance. He further contends that the Respondent undertook to process his work permit.
3. It is the Petitioner's case that based on this understanding, the Respondent's director facilitated his travel from Uganda to Kenya. The Petitioner contends that the said director took his (the Petitioner's) travel and identification documents purportedly for purposes of procuring a work permit for him. Meanwhile, arrangements were made for him to secure residential accommodation through a Kenyan employee of the Respondent.
4. The Petitioner avers that the Respondent's director subsequently informed him that he had secured a work permit for him. As such, he was asked to start work.



5. The Petitioner contends that although the Respondent assured him that it had secured a work permit for him, it did not furnish him with a copy of the permit despite several requests. Further, he contends that the Respondent's director refused to return to him his travel and identification documents.
6. The Petitioner avers that because of these developments, he was unable to secure a telephone number in his name. As such, he was forced to register for mobile money services in the name of a Kenyan workmate. The Petitioner also contends that he could not travel around the country or back to Uganda because of absence of his travel and identification documents.
7. The Petitioner avers that sometime in November 2021, the Respondent unilaterally reduced his salary from Ksh. 40,300.00 to Ksh. 26,000.00. Further, he contends that the Respondent used to pay the salary quite inconsistently thus exposing him to extreme financial anxiety. He contends that as at the time his employment was terminated, the Respondent owed him approximately Ksh. 482,000.00 in salary arrears.
8. The Petitioner contends that the Respondent accused him of low productivity because of an injury that he sustained whilst on duty. As a result, it (the Respondent) reduced his salary by half. It is his case that the decision to reduce his salary on account of the disability he had suffered as a result of the injury at work was discriminatory contrary to article 27 of *the Constitution*.
9. The Petitioner also contends that by the Respondent failing to pay him his salary as and when it fell due, the latter forced him to work without reward. In his view, this subjected him to forced labour and servitude contrary to article 30 of *the Constitution*.
10. The Petitioner further contends that the Respondent's decision to confiscate his travel and identification documents constrained his ability to move around freely. As such, his right to freedom of movement was violated contrary to article 39 of *the Constitution*.
11. The Petitioner contends that the Respondent's failure to consistently remunerate him subjected him to mental anguish as he was unable to meet his financial obligations as and when they fell due. In his view, this subjected him to inhuman and degrading treatment contrary to article 28 of *the Constitution*. He further contends that the Respondent's failure to provide him with a copy of the work permit and to pay his salary consistently violated his right to fair labour practice contrary to article 41 of *the Constitution*.
12. The Petitioner contends that on 17th November 2021, the Respondent's management threw him out of its premises with instructions that he should not be allowed back. As a result, he lost his employment in a manner that is contrary to the law on employment.
13. Despite being served with the court processes, the Respondent did not file a response. As such the matter was heard in its absence. Therefore, the action is deemed as undefended.

Issues for Determination

14. After evaluating the evidence on record, I am of the view that the following are the issues for determination:-
 - a. Whether the parties had a valid employment relation.
 - b. Whether the relation was unfairly terminated.
 - c. Whether the Respondent's conduct violated the Petitioner's constitutional rights as alleged.
 - d. Whether the Petitioner is entitled to the reliefs that he seeks through the Petition.



Analysis

15. The Petitioner avers that he is a Ugandan national. He contends that the Respondent approached him whilst in Uganda and offered him employment in Kenya.
16. According to the Petitioner, the Respondent was to process his work permit. Indeed, he contends that the Respondent's management took his travel and identification documents in order to facilitate the process.
17. Although the Respondent's management allegedly confirmed to the Petitioner that it had secured the work permit for him, this was not produced in evidence. As such, there is no proof that the work permit was indeed procured.
18. Section 45 of the *Kenya Citizenship and Immigration Act* forbids employers from employing foreign nationals without work permits. Further, the section places the obligation of procuring a work permit for a foreign national on the employer. Therefore, it was the Respondent's duty to apply for and obtain a work permit for the Petitioner prior to asking him to commence work in the country.
19. The Petitioner alleges that the Respondent confirmed having complied with this legal requirement. However, it (the Respondent) refused to furnish him with a copy of the work permit.
20. In the absence of a copy of the work permit, it is not possible to establish whether the Respondent procured the permit. As such, it is impossible to determine whether the Respondent complied with the requirements of section 45 of the *Kenya Citizenship and Immigration Act*.
21. As such and in the absence of this document, the court returns a finding that the Petitioner was not entitled to work in Kenya. Consequently, it is apparent that the parties did not have a valid employment relation.
22. The employment relation between the parties having been illegitimate for want of a work permit, the question whether the said relation was unlawfully terminated does not arise. As a consequence, neither of the parties to the contract are entitled to enforce any purported contractual rights that attach to it.
23. The aforesaid notwithstanding, it is apparent from the evidence on record that the Respondent took advantage of the Petitioner by utilizing his labour services without first obtaining a work permit for him. The Respondent knew or ought to have known that the obligation to secure a work permit for the Petitioner lay with it. Further, the Respondent knew or ought to have known that it was illegal to ask the Petitioner to start working for it without complying with the law on work permits. Yet, the Respondent went ahead to cause the Petitioner to work without evidence of having procured a work permit for him.
24. As such, it is evident that the Respondent's actions violated the Petitioner's right to fair labour practice contrary to article 41 of *the Constitution*. By allowing the Petitioner to work without a valid work permit, the Respondent knew that it was illegitimately exploiting his labour and that the Petitioner would not be able to enforce his right to remuneration.
25. There is also evidence that despite exploiting the Petitioner's labour in a manner that was unlawful, the Respondent withheld pay for the Petitioner's efforts. The Respondent's actions in this regard constituted slavery and forced labour against the Petitioner in contravention of article 30 of *the Constitution*.



- 26. The Petitioner has also asserted that the Respondent’s management confiscated his travel and identification documents rendering it impossible for him to move around freely. This assertion appears to be corroborated by the Petitioner’s witness.
- 27. It is the Petitioner’s case that because of the foregoing, he was unable to move freely because of the risk of arrest and deportation. I agree with this contention. The Respondent’s actions in this respect contravened the Petitioner’s right to freedom of movement contrary to article 39 of *the Constitution*.

Determination

- 28. The upshot is that I find that the Petitioner has demonstrated that the Respondent’s actions violated his various constitutional rights as set out in the Petition.
- 29. In the premises, I award the Petitioner the sum of Ksh. 2,000,000.00 as compensation for violation of his rights.
- 30. This award attracts interest at court rates from the date of this decision.
- 31. I award the Petitioner costs of the case.

DATED, SIGNED AND DELIVERED ON THE 19TH DAY OF SEPTEMBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Petitioner

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

