



**Soreh v Imai (Petition E243 of 2023)
[2024] KEELRC 13568 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E243 OF 2023**

B ONGAYA, J

DECEMBER 19, 2024

**N THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLES
21, 22(1), 23(1) & 3, 27, 28, 41, 43, 47 AND 258(1) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES
27, 28, 43 AND 47 THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF SECTION 5(2), 5(3), 26, 27, 28, 30, 35, 36, 41,44,45
AND 87 OF THE EMPLOYMENT ACT 2007 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF SECTION 3 AND 12 OF THE
EMPLOYMENT AND LABOUR RELATIONS COURT ACT 2011**

AND

**IN THE MATTER OF RULE 4(1) AND 10(1) OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES 2013**

AND

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACT

BETWEEN

PAMELLAH KHAGHAI SOREH PETITIONER

AND

FIDELIA IMAI RESPONDENT



JUDGMENT

1. The petitioner filed the petition on 20.12.2023 through M/S WNK Advocates LLP. The petitioner prayed for:
 - a. A declaration that the respondent violated the petitioner's constitutional rights under Articles 27,28,41, 43 and 47 of *the Constitution* of Kenya.
 - b. A declaration that the petitioner's termination from employment was unfair and unlawful.
 - c. An order that the respondent pays the petitioner general damages for violating the petitioner's right to housing under article 43(1)(b) of *the constitution* of Kenya.
 - d. An order that the respondent pays general damages for subjecting the petitioner to discrimination based on the petitioner's health status.
 - e. An order that the respondent pays aggravated damages for subjecting the petitioner to distress and intolerable anxiety.
 - f. An order that the respondent pays the petitioner her terminal benefits in the form of
 - i. Twelve (12) months' salary as compensation for unlawful termination.....Kshs 240,000/=
 - ii. Service pay.....Kshs 40,000/=
 - iii. Unutilized leave days.....Kshs 56,000/=TOTALKshs 337,000/=
 - g. An order directing the respondent to issue the petitioner with a certificate of service.
 - h. The costs of this petition
 - i. The amounts awarded to attract interests at court rates from the date of filing this petition until payment in full.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and Further affidavit sworn on 26.02.2024. The petitioner's case is as follows:
 - a. She was employed by the respondent as a house help from 04.02.2019 to 10.08.2023 at a monthly salary of Kshs 20,000/=.
 - b. She started working for the respondent whilst they lived in Kileleshwa estate, with her primary duties being household chores.
 - c. That she had been diagnosed with a medical condition known as deep vein thrombosis. However the symptoms had subsided. Unfortunately, in May 2022, the condition resurfaced and would cause her a lot of mental anguish and distress.
 - d. That the condition would characterize itself in the following manner:
 - i. calf pain and dorsiflexion of the foot
 - ii. a palpable, indurate, cordlike, tender subcutaneous venous segment



- iii. a blanched appearance of the leg
- iv. chronic pain while standing for a long time; and.
- v. swollen veins that would appear hard or sore when she would touch them.
- e. The medical condition did not render her unable to perform her duties as a house help and whenever the medical condition would take a turn for the worst, she would seek medical attention.
- f. That through this period, the respondent and her husband remained supportive and would give her leave to seek medical attention.
- g. In or about June, 2023 the respondent and her husband relocated to a bigger house in Kiambu County, the new house had more responsibilities than the petitioner could bear and as such the respondent employed a gate keeper and gardener.
- h. In July 2023, the petitioner's condition worsened and she informed the respondent that she could not live in pain anymore and requested leave to seek medical attention.
- i. On 01.08.2023, the petitioner sought medical help from Kenyatta national hospital and was given a sick off for seven days starting 01.08.2023 and ending 09.08.2023.
- j. It is the petitioner's case that the sick off was meant to cover business days as opposed to calendar days.
- k. On 07.08.2023, the respondent sent the petitioner a text message requesting for a meeting. In reply, the petitioner indicated that she would be available on 09.08.2023.
- l. On or about 12:00pm on 10.08.2023 the respondent and the petitioner met at Riverside Square, where the respondent informed the petitioner that she had terminated her services since the petitioner "could not afford to wait for me any longer".
- m. The petitioner indicated to her that she was in the process of recovering and was ready to resume work.
- n. The respondent indicated that she had already hired someone else to perform her duties as house help, and she could not afford to pay two people at the same time.
- o. The respondent handed the petitioner her belongings, which she had left at her house prior to taking leave.
- p. The petitioner states that the act of terminating her employment when the respondent was aware that she needed assistance and handing her, her belongings in public caused public embarrassment, distress and intolerable anxiety.
- q. The petitioner states that she had developed a good relationship with the respondent and her family and she denied her the opportunity to leave her employment with dignity and respect.
- r. With the help of Kituo cha Sheria the petitioner issued the respondent with a demand letter dated 23.08.2023, demanding her terminal dues, which the respondent paid.
- s. In October, 2023 the petitioner through her advocate on record wrote another demand letter to which the respondent's advocates replied vide their letter dated 17.10.2023 stating that the petitioner's medical condition impeded her ability to perform her duties and she sought to sever ties with the petitioner amicably given the sensitivity of the matter.



- t. It is the petitioner's case that the respondent did not subject her to a medical examination to determine that she was unable to perform her duties. That the respondent's decision to hire someone else to take up the petitioner's duties when she was on sick leave and to terminate her employment on the basis of her health status was unlawful.
 - u. That the respondent's decision to kick the petitioner out of the "economic enterprise" which was responsible for running her household in Kiambu was discriminatory.
3. The respondent filed the replying affidavit of Fidelia Imai, sworn on 31.01.2024 through Ajaa Olubayi & Company Advocates. It was stated and urged as follows:
- a. That the respondent employed the petitioner on an oral contract of employment, wherein it was agreed that either party could terminate the contract by giving to the other one-month notice, or if mutually agreed to.
 - b. Beginning of 2023 the petitioner's medical condition of deep vein thrombosis became severe, causing her to constantly seek leave to get medical attention.
 - c. It is the respondent's case that upon learning of the petitioner's medical expenses, she often provided financial assistance to cover the medical bills, exemplifying her as a compassionate and caring employer.
 - d. In May 2023, the respondent indicated to the petitioner that she was to relocate to another residence located in Kiambu County. Part of the discussions included talks about finding a replacement in the instance that the petitioner felt overwhelmed by work, subject to her medical condition.
 - e. The petitioner was afforded housing at the servant quarters and whenever she made additional requests including but not limited to extra money for her personal needs and transport, the respondent accommodated and fulfilled those requests.
 - f. Every beginning of the petitioner's children's school term, the respondent allowed the petitioner one week off from work to oversee and ensure a smooth transition of her children to school.
 - g. The respondent voluntarily covered the school fees and supplies for the petitioner's daughter during the period 2021 to 2022 demonstrating genuine concern for the petitioner's family welfare.
 - h. In July 2023, the respondent states that she noted that the petitioner was struggling with work and performance. She additionally developed dental problems causing the need for further medical assistance, which would affect the petitioner's attendance to work, timeliness and performance.
 - i. The respondent states that the petitioner's illness began to adversely affect her competence and ability to fulfil her job requirements. The respondent began to have valid concerns and in several instances, the respondent had to redo the petitioner's tasks, shoulder additional responsibilities and at times perform her job in its entirety, which further affected the respondent's productivity and efficiency at her place of work.
 - j. The petitioner frustrated the respondent's attempts to arrange for medical assistance through her designated doctor.



- k. The respondent states that the challenges she faced as a result, including poor performance issues, the burden of additional household chores and the impact of the petitioner's absences, her frustration reached a breaking point.
 - l. The respondent states that despite warnings issued, the petitioner failed to demonstrate any improvement in her performance and her work fell below the required standards.
 - m. Due to the persistent issues, the respondent was compelled to schedule a meeting with the petitioner on 10.08.2023 to discuss the concerns and seek clarification about the petitioner's difficulties.
 - n. The petitioner explained that her health condition had been affecting her performance and a mutual agreement was reached upon that it would be in the best interest of both parties to terminate the employment contract immediately in lieu of notice.
 - o. Subsequent to the meeting, the petitioner without the respondent's knowledge, approached the respondent's family member and was given Kshs 11,000/= to assist her bills.
 - p. The respondent maintains that the termination of the oral contract by mutual consent was done in good faith and in accordance with section 13(1)(a) and 35 of the *employment act* read together with the provisions of *the constitution* of Kenya 2010.
4. Final submissions were filed for the parties. The Court has considered all the material on record including the parties' respective oral testimonies. The Court returns as follows.
 5. First, parties were undisputedly in an employment contract from 04.02.2019 to 10.08.2023. The respondent employed the petitioner as a house-help to perform domestic duties.
 6. Second, the contract ended on 10.08.2023 when parties convened at Riverside Square. The parties had a conversation and the respondent decided to terminate the employment in view of the petitioner's medical condition, and which had made it considerably uncomfortable for the petitioner to perform assignments as expected. By her own pleading and evidence, she was in excruciating pain and mental anguish due to the ailment. She had requested to be given an off on 01.08.2023 to attend medical treatment. The doctor gave her a sick off and she was due to resume duty on 10.08.2023. In the circumstances, when summoned to the Riverside Square meeting she opined that she was resuming work but the respondent had brought her personal effects and terminated the employment.
 7. Third, the Court finds that the petitioner has failed to establish discrimination because of ill health or medical condition. The evidence was that she had been unwell for a considerable period culminating in her taking an off to go for medical attention on 01.08.2023. The evidence was that the respondent terminated the employment because of ill health and nothing more. The petitioner has not established the alleged discrimination or any other violation of rights and fundamental freedoms as was alleged.
 8. Fourth, the evidence shows that the respondent had a valid reason to terminate the employment. The petitioner by her pleadings and testimony confirms she was unwell. The work environment was the domestic set up at the respondent's home. There is no reason to doubt that the respondent had to step in and perform the chores whenever the petitioner was overwhelmed with pain and suffering arising out of the ailment. The Court finds that as at termination, the respondent had a valid reason per section 41 of the *Employment Act* 2007. The reason was fair as it related to the petitioner's compatibility and the respondent's operational requirements per section 45 of the Act.
 9. Fifth, the Court has considered all circumstances of the case including the home or domestic workstation. The parties were in close interaction. The petitioner has confirmed that she had been sick



for a considerable time. The respondent has testified that she could not afford to employ another house-help while retaining the petitioner in employment. Considering all those circumstances, it cannot be said that the respondent adopted unfair procedure to terminate the petitioner and as envisaged in section 45 of the Act. The Court finds that the termination was not unfair in procedure and substance.

10. Sixth, the petitioner has confirmed that after Kituo Cha Sheria did a demand letter, the respondent paid her terminal dues. No justification has been made for the claimed service pay and 56 leave days. The petitioner having affirmed payment of final dues, the claims are found unjustified on a balance of probabilities.
11. The Court has considered all circumstances of the petition including the unrebutted friendly and fridge benefits the respondent made in favour of the petitioner. The Court has also considered the petitioner's difficult experience with the ailment. Each party will bear own costs of the suit.

In conclusion, the petition is dismissed and each party to bear own costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

