



REPUBLIC OF KENYA



KENYA LAW
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**Olang v Gumbo & another (Appeal 56 of 2019)
[2023] KEELRC 524 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 524 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 56 OF 2019
J RIKA, J
FEBRUARY 28, 2023**

**BEING AN APPEAL FROM THE RULING OF THE
HON. A.M. OBUWA, SENIOR RESIDENT PRINCIPAL
MAGISTRATE DELIVERED ON 11TH OCTOBER 2019
IN THE CHIEF MAGISTRATE'S EMPLOYMENT AND
LABOUR RELATIONS CAUSE NO. 620 OF 2019**

BETWEEN

ESTHER OLESI OLANG APPELLANT

AND

NICHOLAS GUMBO 1ST RESPONDENT

SUSAN GUMBO 2ND RESPONDENT

(Being an Appeal from the Ruling of the Hon. A.M. Obura, Senior Resident Principal Magistrate delivered on 11th October 2019 in the Chief Magistrate's Employment and Labour Relations Cause No. 620 of 2019)

JUDGMENT

1. The appellant was employed by the respondent couple as their house help in 2013. Her contract was terminated by the respondents on September 12, 2018.
2. She disputed termination and the matter went before the labour office, at Nairobi. Conciliation took place, culminating in a disputed agreement between the appellant and the 2nd respondent.
3. A handwritten copy on record indicates that the claimant accepted to be paid by the 2nd respondent a total sum of Kshs 31,500 in 2 instalments of Kshs 15,750 each.



4. The 2nd respondent alleges that she paid the 1st instalment, but the appellant, declined to collect the 2nd instalment.
5. She instead filed CMEL No 620 of 2019 against the respondents, claiming compensation for unfair termination and terminal dues, amounting to Kshs 1,720,497.
6. The respondents moved the trial court through an application dated May 29, 2019, to find that the claim is *res judicata* having been considered and determined on conciliation. The 1st respondent, who is the husband to the 2nd respondent also asked for his name to be struck out, on the ground that the claimant was employed by his wife, and not by him.
7. In a ruling delivered on October 11, 2019, the trial court declined to strike out the name of the 1st respondent, but struck out the claim, holding that the claim is *res judicata*, having been settled through conciliation.
8. The appellant filed the memorandum of appeal, dated November 7, 2019, founded on 3 grounds: -
 - a. The trial court erred in finding that there was an agreement between the parties.
 - b. The trial court misapplied the Court of Appeal decision in [Coastal Bottlers v Kimathi Mitbika](#) [2018] e-KLR.
 - c. The trial court erred by relying on a letter by the labour officer, which was not executed by the appellant.
9. Parties agreed to canvass the appeal by way of written submissions, which they confirmed to have filed and exchanged at the last mention, on November 1, 2022.

The Court Finds: -

10. The agreement relied upon by the respondents in convincing the trial court to find that the claim was *res judicata*, is not executed by the appellant, or indeed any of the respondents. It is not an agreement.
11. It does not contain any acknowledgment of payment, or importantly any discharge clause. The decision of the Court of Appeal invoked by the trial court, relates to discharge vouchers executed by employees on receipt of terminal dues, not agreements or conciliation notes, drawn by labour officers.
12. The trial court erred by upholding the principle of *res judicata*. The claimant presented a complaint to the labour office, alleging her contract was unfairly terminated. Section 47 [3] of the [Employment Act](#) states that: -

The right of an employee to present a complaint under this section shall be in addition to his right to complain to the industrial court on the same issue and to the right to complain of any other infringement of his statutory rights
13. Conciliation proceedings are not court proceedings. conciliators make recommendations, which do not bind the court. The appellant did not execute the agreement on conciliation, and even if she had, it would not result in *res judicata*. It would not foreclose her right to file the claim. Section 47 [3] of the [Employment Act](#) allows her to approach the court on the same, or fresh grounds.

It Is ordered: -

- a. The appeal is allowed.



- b. The claim before the trial court is reinstated, to be heard *de novo*, before a different Hon Magistrate.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH DAY OF FEBRUARY 2023.

JAMES RIKA

JUDGE

Rika J

Court Assistant: Emmanuel Kiprono

Nyabena Alfred & Company Advocates for the Appellant

G&A Advocates for the Respondents

