



REPUBLIC OF KENYA



KENYA LAW
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Katenje v Ouko (Cause E1154 of 2017)
[2023] KEELRC 455 (KLR) (23 February 2023) (Judgment)

Neutral citation: [2023] KEELRC 455 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1154 OF 2017
MN NDUMA, J
FEBRUARY 23, 2023

BETWEEN

JOSPHINE KATENJE CLAIMANT

AND

EUNICE OUKO RESPONDENT

JUDGMENT

1. The claimant filed suit on June 20, 2017 praying for an order in the following terms:-
 - (a) A declaration that the claimant's termination from her employment was unlawful and unfair.
 - (b) Compensation in respect of (a) above.
 - (c) Terminal benefits including notice pay; arrear salary; in lieu of leave days not taken; unpaid public holidays and gratuity.
 - (d) Interest and costs.
2. CW1 testified that she was employed by the respondent on July 2, 2011 as a house help earning a monthly salary of Kshs 12,500 inclusive of house allowance.
3. That she worked diligently until November 28, 2014 when she was arrested on allegations of theft in the respondent's neighbour's compound.
4. CW1 testified that she was released on bond on June 26, 2016 and resumed work at the respondent's house.
5. On July 25, 2016, the respondent terminated her services without any valid reason, notice to show cause and or any hearing.



6. That the respondent unlawfully retained the claimant's national identification card, voters card and clothes.
7. CW1 testified that she worked overtime and was never paid. That she was not paid for public holidays worked. That she was not paid gratuity nor for leave days not taken. CW1 testified that she was not registered with National Hospital Insurance Fund (NHIF) and National Social Security Fund.
8. That despite demand the respondent has failed and/or neglected to pay compensation and terminal benefits due and owing to the claimant.
9. Under cross-examination, the claimant admitted that she got her identification card and clothes from the advocate and was chased away when she reported at the respondent's gate in 2016. CW1 admitted that she worked up to November, 2014. That she was in custody from 2014 until June, 2016. CW1 stated that she did not receive salary for November, 2014.
10. That the claimant be awarded as prayed.
11. The respondent admitted the particulars of employment of the claimant on February 2, 2011 at monthly salary of Kshs 12,500 as a house help.
12. RW1 Eunice Ouko testified that she is a former banker. That she employed CW1 as a house help in July, 2011 up to November, 2014. That the claimant was arrested in connection of robbery of a motor vehicle in a neighbour's compound. RW1 denied that she owed the claimant as claimed or at all. She testified that upon her arrest, RW1 paid CW1 her money while she was in custody and the cash payment was witnessed by a police officer and she signed for it also.
13. RW1 produced a list of payments she made to CW1 from 2011 up to 2014. RW1 testified that the claimant went on leave; did not work overtime and that RW1 paid the claimant bonus from time to time. RW1 stated that she was not involved in the arrest of the claimant. That upon her release from custody, CW1 did not go back to work. RW1 stated that she only met CW1 in court when she was called there as a witness. RW1 stated that she employed another house help upon the arrest of the claimant. RW1 confirmed that the claimant's identification card and clothes were released to her through her lawyers. RW1 stated that she did not owe the claimant any terminal benefits and that she did not terminate the employment of the claimant.
14. Under cross-examination, RW1 stated that the claimant worked 6 days a week and was off on Sundays. RW1 stated that she did not pay the claimant overtime since she did not work during the day after preparing the meals. That in the evening she would prepare dinner and would be finished by 9 pm. That the claimant lived with the respondent. RW1 admitted not paying National Social Security Fund and National Hospital Insurance Fund for the claimant. RW1 stated that the claimant was given off during public holidays. That she paid CW1 bonus from time to time and especially when she went on annual leave. RW1 testified that in 2011; 2012 and 2013, the claimant took her annual leave.
15. Under re-examination, RW1 reiterated that the claimant made breakfast from 5 am to 6 am in the morning. That the claimant was free most afternoons and would then make dinner in the evening up to 6 p.m. The claimant therefore did not work any overtime.
16. RW1 also testified that she paid the claimant salary for November, 2014 at the police station and the claimant signed for it.
17. The respondent prays that the suit be dismissed with costs.



Determination

18. The parties filed written submissions. The court has considered the same together with the evidence adduced by CW1 and RW1. The issues for determination are:-
 - (a) Whether the claimant did not return to work upon arrest or whether her employment was terminated by the respondent.
 - (b) Whether the claimant is owed the terminal benefits and compensation sought in the statement of claim.
19. Upon a careful consideration of the testimony adduced by CW1 and that by RW1, the court is satisfied that the claimant was arrested by the police and placed in custody in connection with a robbery committed in the neighbouring house. The court is satisfied that RW1 did not have anything to do with that arrest. That the claimant remained in custody from November, 2014 up to July, 2016 when she was released from custody.
20. The court is satisfied that the respondent did not terminate the employment of the claimant. The respondent was free to employ another house help upon arrest of the claimant. There is no evidence to prove that the respondent terminated the employment of the claimant as alleged or at all. The prayer for a declaration that the respondent terminated the employment of the claimant lacks merit and is dismissed. The claimant is therefore not entitled to payment of any compensation.
20. The court has carefully evaluated the evidence by CW1 vis a vis that of the respondent on whether or not the claimant was paid salary for November, 2014. The court is satisfied the salary was paid. The court is also satisfied that the claimant was not owed any leave days. The claim for payment in lieu of leave is therefore dismissed.
21. The claimant had the onus to prove that she worked during public holidays and was not paid double salary. The claimant failed to discharge that onus. The claim has no merit and is dismissed.
22. The respondent ably rebutted the claim for payment of overtime for the period of 4 years the claimant worked for the respondent. The court is satisfied that the claimant did not work for more than 8 hours in the six (6) days per week she worked for the respondent. The claimant was a live -in- house help and so remained within the respondent's premises during her work and after finishing her work. The claimant mainly made breakfast in the morning and supper in the evening. The respondent was at work during the day. The respondent satisfied the court that the claimant had a free afternoon daily. The claim for payment of overtime lacks merit and is dismissed.
23. The only viable claim is for payment of service gratuity for the period of four (4) years the claimant worked for the respondent since the respondent admitted that she did not pay National Hospital Insurance Fund and National Social Security Fund for the claimant. The claimant sought payment of the equivalent of one month salary for every completed year of service. The respondent did not directly challenge the claim.
24. The court therefore awards the claimant service gratuity in terms of section 35(5) of the [Employment Act](#), 2007 in the sum of Kshs 50,000 (12,500 x 4).
25. In the final analysis, judgment is entered in favour of the claimant against the respondent in the sum of Kshs 50,000. The sum is payable with interest at court rates from date of judgment till payment in full. The respondent to pay costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF FEBRUARY, 2023.



MATHEWS N NDUMA

JUDGE

Appearance

Mr Nyabena for claimant

M/s Diru for respondent

Ekale – Court Assistant

