



**Khagondi v Kairu (Employment and Labour Relations Cause  
470 of 2017) [2023] KEELRC 966 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 966 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 470 OF 2017**

**AN MWAURE, J**

**APRIL 20, 2023**

**BETWEEN**

**EVERLYNE OUMA KHAGONDI ..... CLAIMANT**

**AND**

**PAULINE KAIRU ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed a statement of claim dated 9<sup>th</sup> march 2017 and claims she was unlawfully terminated.

**Claimant's Case**

2. He says she was employed as a house servant at salary of kshs 8,000. This was on or about April 2016. The claimant says after about two months her salary was enhanced to kshs 10,000. She says around august 2016 her employment was terminated.
3. She says her termination was unfairly and wrongfully terminated and was neither given an appointment letter nor any reason for termination of her employment. She now claims for damages.

**Respondent's Case**

4. The respondent in his response dated 5<sup>th</sup> May 2018 admitted they had employed the claimant in April 2016 at a monthly salary of kshs 8,000/-.
5. She says she moved to Karen but did not offer to pay the claimant kshs 10,000/-. She says in May she informed the claimant she was moving to Karen and would no longer require her services.
6. She says her sister Ann Wambui offered to pay claimant her salary. She says the claimant's employment ceased in June 2016 and so claimant was not her employee in July and August 2016.



7. The respondent further denies that the claimant worked for her on Sundays and public holidays. She says the claimant exhausted her leave days. The respondent prays the claimant's case be dismissed with costs.

### **Claimants Submissions**

8. The claimant did not give viva voce evidence in court but deposed an affidavit dated 27<sup>th</sup> January 2017 to support her claim.
9. In her submissions she states that she was employed by the respondent and not her sister and that the house where she worked belonged to the respondent.
10. The salary agreed between them was kshs 10,000/- according to the claimant and was necessitated by change of work to Karen from Lavington. She also says that the respondent failed to put her contract in writing. She further says the respondent failed to abide by section 10 (7) of the Employment Act and she did not disapprove the agreed salary of kshs 10,000.
11. She says that the respondent terminated claimant's employment as she did not want to pay her salary. She is depending on the case of Alinur Mohamed Abdi vs County Government of Garissa eKLR where court held thus "payment of salary is fundamental to an employment relationship and withdrawal or failure to pay the same constitutes fundamental breach of an employment contract justifying the termination thereof of an employee. The claimant herein having been forced to leave his job by the respondent's failure to pay his salary, I find that he was constructively dismissed.
12. The respondent violated claimant's rights to statutory notice of termination as provided in section 44 of the Employment Act.
13. She further avers she is entitled to house allowance.
14. She concludes that she is entitled to the reliefs sought.

### **Determination and Analysis**

15. The issue for determination is basically whether the claimant was unfairly terminated or not. Looking at the evidence on record and the pleadings claimant was employed from April 2016 up to August 2016 even though the mpesa statement indicate funds were received only in April and June 2016. The respondent unfortunately did not give her evidence in court and did not file any submissions. The court only had the response filed in court and no exhibits from the respondent.
16. The evidence available for the court's consideration is the claimant's pleadings via statement of claim and the respondent's response and the claimant's submission.
17. There is the issue of how long the claimant worked for the respondent. The respondent gives a period of April and May 2016 but the claimant states she worked up to August 2016. The respondent implies that the claimant moved with her to Karen and the respondent's sister agreed to pay the claimant but did not pay her. The fact remains the claimant was an employee of the respondent and any other person would be a third party. The respondent needed to regularise the relationship of employment with the claimant either by terminating her lawfully or retaining her and paying her due salary.
18. It is evident from the mpesa statement annexed as EOK- 1 that the claimant was being paid kshs 8,000 and it seems was paid in instalments. There is no evidence that the respondent was to increase the salary of the claimant to kshs 10,000. Hence the court would deduce from evidence adduced that the claimant worked for the respondent for 4 months and was entitled to payment of kshs 8,000 per month.



19. The failure to pay an employee his salary is a fundamental breach for the claimant's labour rights and must be frowned upon. In the case of *Jonathan Spangler vs centre for African family studies 9CAFS* 2017 eKLR the court held that failure to pay salary to an employee after rendering services amounts to subjecting him to degrading inhuman and servitude conditions contrary to article 28 and 30 of *the Constitution* of Kenya 2010.
20. Also in *Kusow Billaw Isaac v Ministry of Interior & Coordination of National Government & 3 Others* 2021 eKLR the court held:

”having considered the above submissions by the respondent the petitioner worked without pay for over 2 years I agree that the petitioner was subjected to inhuman treatment akin to slavery or servitude.”
21. The court finds the claimant deserved her pay for July and August 2016 and deserved to have been given notice to terminate her employment and as well to follow the provisions of employment and labour laws in Kenya as pertains to termination of employment. Employer should not just terminate an employee without complying to sections 41, 43 and 45 of *employment act* 2007 inter alia. The claimant was unlawfully terminated.
22. The court is persuaded the claimant deserve some of the relief's she has prayed.
23. Reliefs
  - a. One month salary in lieu of notice kshs 8,000/-
  - b. Salary for July and August kshs 16,000/-
  - c. Underpayments and weekly rests and holidays are not proved and are merely pleaded in generality and so are not awarded.
  - d. House allowance is not clarified if she was living with her employer or not and employer did not tender proof that she paid her house allowance and so the same is deserved at kshs 8,215/-
  - e. Annual leave is also not refuted by the respondent and court find it is deserved for 5 days kshs 3,194.
  - f. She served for about 4 months and so is awarded one month equivalent for unfair termination kshs 8,000/-.
  - g. She is also awarded the costs of the suit.
  - h. Total award is therefore kshs 43,409.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL, 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments



and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

