



REPUBLIC OF KENYA



KENYA LAW
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**Sirigoi v Pinpoint Hygiene Services Limited (Cause 2114 of 2016)
[2023] KEELRC 1629 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1629 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2114 OF 2016
MN NDUMA, J
JUNE 15, 2023**

BETWEEN

CAROLINE KHAMASI SIRIGOI CLAIMANT

AND

PINPOINT HYGIENE SERVICES LIMITED RESPONDENT

JUDGMENT

1. The suit was filed by the claimant on October 13, 2018. The claimant seeks the following reliefs from the respondent:-
 - a. Salary underpayments in the sum of Kshs 168,488.10 for the period February 21, 2014 to January 21, 2016 as set out in the Memorandum of Claim.
 - (b) Payment in lieu of 42 leave days not taken in the sum of Kshs 22,138.20.
 - (c) Payment for public holidays worked and not paid double salary Kshs 9,487.80.
 - d. Payment in lieu of notice Ksh.15,813.
 - (e) Severance pay Kshs 15,813
 - f. Gratuity for 22 months Kshs 4,400.
 - f. Costs and interest.
2. C.W.1, the claimant testified that she worked for the respondent from February 22, 2014 up to January 21, 2016 when her services were terminated. That her duties were to clean Hostels and the compound of Kenya Medical Training College. That her normal working hours were from 7.30 a.m. to 4.30 p.m from Monday to Saturday every week. That occasionally, the claimant was deployed to work on Sundays and Public holidays. That when the claimant started work, she was paid Kshs 350 per day,



payable at the end of every month. That she was not paid for rest days or public holidays worked throughout her employment with the respondent. The daily rate was subsequently increased to Kshs 400 per day payable at the end of each month. That the claimant was not paid whenever she fell sick or was off-duty for any reason. That she was not paid overtime. The claimant stated that she was not granted leave days or paid in lieu of leave.

3. That on January 21, 2016, while the claimant worked at Kenya Medical Training College, one Veronica Mwangi, a Supervisor confronted the claimant and told her to follow her carrying the dustbin she was using and a broom to an area outside the compound of the college. That Mrs Mwangi ordered the claimant to sweep the road from the gate. That the claimant asked her to allow the claimant to first finish the job she was doing at the corridor where she had poured water which needed to be mobbed up. That the supervisor insisted that she sweeps the road first which the claimant proceeded to do. Claimant testified that upon her return to the corridor, she found that the supervisor had taken away the cleaning equipment. The warden then asked the claimant to get the equipment and mob the corridor. The supervisor however ordered the claimant to immediately stop working. The claimant proceeded to the company office where she was asked by the company Secretary to go home and return on January 25, 2016. That upon return on January 25, 2016, the supervisor refused to talk to her and was not given any duties. The company secretary then asked the claimant to go home until further communication. The respondent did not receive the claimant again but only paid her salary for 18 days worked in January, 2016.
4. The claimant reported the matter to the labour office on February 12, 2016 who then wrote to the respondent on the matter. The labour officer recommended that the claimant be paid Kshs 10,400 in lieu of notice; Kshs 16,800 in lieu of leave and Kshs.12,000 service pay. The claimant stated that she was dissatisfied with that outcome and instructed an advocate to bring the matter to Court. The advocate wrote a demand letter which was not responded to hence the suit.
5. The claimant was cross-examined by the advocate for the respondent and persisted in her evidence as above, and prays to be awarded as prayed.
6. The respondent called R.W.1, Linda Wanjiru Mukami who testified that she is a manager of the respondent. That the claimant was employed by the respondent on February 22, 2014 to offer cleaning services to the clients of the respondent. That the claimant was a casual worker and did cleaning services only when the employees of the Respondent were absent or on leave. The claimant was therefore on standby and would be called from time to time especially to clean Kenya Medical Training College near Kenyatta National Hospital.
7. That the claimant spent about three (hours) in a day in cleaning the allocated areas and not 12 hours as she alleges. That the claimant was paid after every thirty (30) days by computing the pay for all the days worked during that period.
8. That the agreed daily rate was Kshs 400 for a maximum of three (3) hours per day worked in line with the minimum wage order.
9. That the claimant operated a kiosk and sold food stuffs at the said Training College, which was her own business. That the claimant was last engaged by the respondent on January 21, 2016 and the respondent did not engage her again. That on the said January 21, 2016, the claimant refused to sweep the allocated area by her supervisor, one Veronica but instead went to mop corridors against the instructions of her supervisor on that particular day. The claimant resisted the instructions to go back to sweep the allocated area and went to her kiosk. That the respondent did not employ her again.



10. Under cross examination R.W.1 stated that the claimant did not report that one Veronica manhandled her on January 21, 2016. R.W.1 denied that the claimant was ever employed by the respondent as a permanent employee. R.W.1 denied that the claimant worked continuously from Monday to Saturday between 8 am. to 4.30 p.m. R.W.1 insisted that the claimant worked as and when there was work and she cleaned for about 3 hours on a particular day. That the claimant worked for the respondent in a period of about two years until she absconded duty on January 21, 2016. R.W.1 stated that the claimant was paid different amounts each month depending on the number of days she was retained to clean for clients of the respondent. R.W.1 stated that she did not witness the events of January 21, 2016 between the claimant and one Veronica. R.W.1 stated that she has no employment record of the claimant because the claimant was employed as a casual. R.W.1 stated she received the report regarding the claimant from Veronica on January 21, 2016. That Veronica was the supervisor of the claimant.
11. That the claimant was not issued with any letter of employment. R.W.1 prayed that the claim be dismissed with costs.
12. The parties filed written submissions which the Court has carefully considered together with the evidence by C.W.1 and R.W.1. The issues for determination are:-
 - (i) Whether the claimant was employed as a casual or a permanent employee.
 - (ii) Whether the claimant simply stopped going to work or was dismissed unlawfully from employment by the respondent.
 - (iii) If the claimant is entitled to the reliefs sought.
13. The claimant has the burden of proving that she was employed by the respondent as a permanent employee and not as a casual in terms of Section 107 and 108 of the *Evidence Act*, Cap. 80 Laws of Kenya. The claimant testified that she was employed by the respondent in the capacity of a cleaner and was deployed at the Kenya Medical Training College and assigned duties of cleaning the Hostels and the compound.
14. The claimant stated that she was employed on February 22, 2014 and was paid a daily rate of Kshs 350 payable at the end of the month in the sum of Kshs 9,100. That the salary was calculated for 26 days and that she was not paid for her rest days and public holidays when she did not work. That the rate was later increased to Kshs400 per day. That she worked continuously until January 21, 2016 when she reported to work as usual and started to work on a corridor of the Kenya Training College but a supervisor M/s Veronica Mwangi approached her and ordered her to stop working. That she complied with the directive and followed the supervisor outside the building and was asked to sweep the road from the gate to the building. That she pleaded with Veronica to allow her complete cleaning the corridor before proceeding to the road but the supervisor retorted that the claimant was disturbing her. The claimant then swept the road and went back to finish cleaning the corridor but found that her equipment had been taken away. The supervisor then ordered the claimant to leave the client's compound and report to the respondent's office in Nairobi West which the claimant did and the claimant was ordered to go home and come back on January 25, 2016 by the Secretary. That on January 25, 2016, she was again instructed to go home until she was communicated to by the respondent which did not happen.
15. R.W.1 was not in a position to refute the credible testimony by the claimant. R.W.1 confirmed that the claimant had worked for the claimant cleaning the same premises for a period of two (2) years.
16. The totality of evidence by C.W.1 and R.W.1 confirms that the claimant was a permanent employee and not a casual as R.W.1 testified before Court. The claimant worked at the same premises, cleaning the same for a continuous period of two (2) years and would be paid a monthly salary at end of every



month. There is no evidence that the claimant was granted any rest days or leave days during that period of two years. There is no evidence that the respondent paid National Social Security Fund (NSSF) for the claimant. The claimant's testimony that she was told to go away until called back is evidence to prove that her employment was terminated summarily without notice, notice to show cause or a hearing. The respondent violated Sections 36, 41, 43, and 45 of the Employment Act, 2007 in terminating the employment of the claimant.

17. The respondent has failed to demonstrate that it had any valid reason to terminate the employment of the claimant. The Court also finds that the respondent did not follow a fair procedure in terminating the employment of the claimant. The claimant having worked continuously for a period of two (2) years was no longer a casual. Her employment was protected by the provisions of the Employment Act, 2007 and he is entitled to the minimum rights provided in the Act with regard to notice; leave; gratuity and due process before termination. The respondent failed in all these respects and the claimant is entitled to payment of the terminal benefits sought and to compensation for unlawful termination in terms of Section 49(1) (c) and 4 of the Act.

18. Accordingly, the Court grants the claimant the following reliefs against the respondent:-

- (a) a) Kshs 15,813 in lieu of one month notice.
- (b) Kshs 22,138.20 in lieu of leave days not taken.
- (c) Kshs 15,813 being service pay calculated at 15 days salary for each completed year of service.
- (d) Underpayment for the period February 21, 2014 to April 30, 2015 in the sum of Kshs 93,819.80.
- (e) Underpayment for the period May 1, 2015 to January 21, 2016 in the sum of 74,668.00.

The underpayments are in terms of legal notice No. 197 of August 30, 2013 and Legal notice No. 117 of 26/1/2015 being the minimum wage order setting out the minimum wage for a cleaner during the period as proved by the claimant. Total underpayments as set out in the memorandum of claim is Kshs 168,487.80 duly proved by the claimant.

- (f) The claim in respect of Public holidays worked has not been adequately proved and is dismissed. Severance pay is also not applicable in this claim.

19. Regarding compensation the claimant had worked for a period of two (2) years. Was underpaid by the respondent and wrongly treated as a casual employee. The claimant did not contribute to the termination. The claimant did not go on leave during the tenure of her work. The claimant lost her means of income unfairly and suffered loss and damage. The Court awards the claimant the equivalent of two (2) months' salary in compensation for the unlawful and unfair termination in the sum of Kshs(15,813 x 2) = Kshs 31,626.

20. In the final analysis, Judgment is entered in favour of the claimant against the respondent as in the sum of Kshs 253,878 as set out above.

21. Interest at Court rates from date of judgment till payment in full. Costs to follow the outcome.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 15TH DAY OF JUNE, 2023.

MATHEWS N. NDUMA



JUDGE

Appearances

Mr. Aswani for claimant

M/s Mwae respondent

Ekale: Court clerk

