



**Ncekei v Koleta Farm Limited (Appeal E148 of 2022)
[2023] KEELRC 1934 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1934 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E148 OF 2022
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

LUCY NCEKEI APPELLANT

AND

KOLETA FARM LIMITED RESPONDENT

*(Being an appeal from the Judgment & Order of the Ruiru Senior Resident Magistrate
C K Kisiangani delivered in Ruiru CMELRC No. E008 of 2021 on 11.08.2022)*

JUDGMENT

(Before Hon. Justice Byram Ongaya on Friday 4th August, 2023)

1. The appellant filed a memorandum of appeal on August 30, 2022 through D K Githinji & Company Advocates. The appellant appeals against the trial court's judgment delivered on August 11, 2022 (by Hon C. K Kisiangani, learned Senior Resident Magistrate). The grounds of appeal are as follows:
 - a. The learned magistrate erred in fact and in law and misdirected himself thereon, by failing to find that there was an employment relationship between the appellant and the respondent.
 - b. The learned magistrate erred in fact by failing to finding that the appellant had provided cogent *viva voce* and documentary evidence to establish an employment relationship with the respondent
 - c. The learned magistrate erred in fact and in law and misdirected himself thereon, by misapprehending the threshold of proof of an employment relationship as guided by law and the authority of this honourable court.
 - d. The learned magistrate erred in fact and law, in failing to correctly evaluate the evidence adduced before him.



- e. The learned magistrate erred in law and misdirected herself by failing to follow binding judicial precedent.
2. The appellant prayed for orders:
 - a. That this appeal is allowed.
 - b. A declaration that the termination of employment was unfair.
 - c. Salary arrears Kshs 834,900.00.
 - d. Overtime and extra hours Kshs 412,545.17.
 - e. House allowance Kshs 142,500.00
 - f. Leave pay Kshs 20,419.60
 - g. 12-month damages for unfair termination Kshs 840,000.00.
 - h. Interest on all the above at court rates from the day each payment fell due and payable until payment in full.
 - i. Certificate of service
 - j. Cost of the appeal and the lower court claim, that is to say, Ruiru ELRC No E008 of 2021.
 3. The appellant filed her respective submissions on the appeal. Mumia & Njiru Advocates upon being served with the appellant's submissions filed the respondent's submissions as was directed by the court. The court has considered all the material on record and makes findings as follows:
 4. The 1st main issue is whether the trial court erred in returning that the parties were not in employment relationship. The appellant pleaded in the statement of claim as follows. That she worked for the respondent from September 2019 to March 2021 when the Director Lumbi M'Nbea called her and informed her that her services had been terminated. She alleged that she worked in the position of Marketing and Sales Manager at basic salary of Kshs 45,000.00 per month- from September 2019 to December 2019. From January 2020 the salary was increased to Kshs 55,000.00. In September 2020 her role enlarged to include farm management and overall company operations and production at Kshs 70,000.00 basic salary. She was paid full salary in September and October 2019 but for the rest of the months she served she was paid in bits and trickles amounting to cumulative arrears of Kshs 834, 900.00. further she did not receive house allowance throughout the service. Further she worked extra hours, on Sundays and on public holidays but the same was not paid. She was not also allowed to have leave.
 5. The respondent filed the memorandum of response and pleaded as follows. At all material times the respondent never employed the appellant as was alleged. The respondent's director one Lumbi Wa M'nabea was introduced to the appellant by one Charity Ngonge sometimes on September 25, 2018. The appellant presented herself as a divorcee whose husband had destroyed her sources of livelihood and residence so that she needed a place to be housed by a good samaritan. The director with his Christian background was touched and would send her whatever money he would afford to alleviate her pain and suffering. It was purely on humanitarian grounds. The assistance had started as early as September 2018 and not in September 2019 as she had alleged. Further, sometimes the director's wife sent her food. At another time the director paid into a pay bill mpesa account Kshs 23,000.00 to the appellant's landlord to prevent her eviction. Sometimes the director engaged her on private assignments or tasks and paid her privately like in 2020 when she assisted collect data when the director



was undertaking his masters degree research thesis. Further the appellant would undertake the private assignments at the director's home office and would also visit the home even when no such private assignments had been given to her by the said Lumbi Wa M'nabea. The respondent was incorporated on July 10, 2019 with one director. The correspondence and other exhibits such as business cards exhibited by the appellant were not genuine documents at all. Since February 2020 to March 3, 2020 Lumbi Wa M'nabea was admitted at hospital. In July 2020 his wife was attacked with Covid 19 Their home was out of bounds. There was no way the appellant would have been working for him or respondent during that Covid situation period. The enterprise could not even sustain the alleged salaries and salary arrears. The overtime alleged is pure fiction. It was not possible to humanly work 23 hours per day as alleged. The respondent prayed the trial court to dismiss the suit with costs.

6. In decline to find that parties were in a contract of service, the trial court found that the appellant had failed to show the duties she allegedly was performing at the respondent's office. The trial court found that the appellant failed to explain the work done on the many days and long hours she alleged to have been in the respondent's employment. The court finds that the trial court cannot be faulted in that finding. In any event Lumbi Wa M'nabea had admitted that if at all there had been any relationship it was privately between himself and the appellant and that the respondent company had never employed the appellant. The respondent being an independent legal person, it was not in err for the trial court to find that the appellant had failed to establish the alleged employee-employer relationship between the appellant and the respondent. Accordingly, all the grounds of appeal will collapse as unjustified and not established at all.

7. In conclusion the appeal is hereby dismissed with costs in favour of the respondent.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 04TH AUGUST, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

