



Litali v Sawjani (Cause 599 of 2018)
[2023] KEELRC 2241 (KLR) (28 September 2023) (Judgment)

Neutral citation: [2023] KEELRC 2241 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 599 OF 2018
L NDOLO, J
SEPTEMBER 28, 2023

BETWEEN

PETRONILLA SHISUNU LITALI CLAIMANT

AND

SACHIN MADHUSUDAN SAWJANI RESPONDENT

JUDGMENT

Introduction

1. By her Statement of Claim dated April 23, 2018 and filed in court on April 25, 2018, the Claimant has sued the Respondent for compensation for unlawful termination of employment and payment of terminal dues. The Respondent filed a Response dated June 10, 2021.
2. At the trial the parties testified on their own behalf. In addition, the Respondent called his neighbour and landlord, Satwant Singh Kalsi.

The Claimant's Case

3. The Claimant states that she was employed by the Respondent as a house-help in October 2008. She claims to have been paid a daily rate of Kshs 100 which translated to a monthly pay of Kshs 3,000.
4. The Claimant avers that she worked for the Respondent until 14th June 2017 when her employment was terminated on allegations of break-in and stealing.
5. She seeks the following remedies:
 - a. Notice pay.....Kshs 12,597.80
 - b. Unremitted NSSF deductions.....14,400.00
 - c. Leave pay for 8.7 years.....94,987.40



- d. Underpayment.....457,207.50
- e. House allowance.....135,212.80
- f. 12 months' salary in compensation.....151,172.40
- g. Costs plus interest

The Respondent's Case

6. In his Response dated June 10, 2021, the Respondent states that he had engaged the Claimant, as a part-time house servant, working discontinuously between October 2008 and April 2009 and in June 2017.
7. According to the Respondent, the Claimant worked for only one (1) hour per day for which she was paid Kshs. 180 for the hour.
8. The Respondent states that on June 21, 2017, a robbery took place at his residence. He claims to have reported the incident at Kileleshwa Police Station, where the Claimant was summoned for questioning, since she was among the people who had access to the house.
9. The Respondent denies terminating the Claimant's employment and states that the Claimant herself deserted work for more than seven (7) days commencing on June 26, 2017.
10. The Respondent claims to have made attempts to call the Claimant to resume her duties but the Claimant was unreachable.
11. The Respondent denies the Claimant's claims for compensation, notice pay, unremitted NSSF dues, leave pay, underpayment and house allowance.

Findings and Determination

12. The first issue for determination in this case has to do with the nature of the Claimant's engagement with the Respondent.
13. The Claimant bases her claim on an alleged employment contract between herself and the Respondent.
14. Section 2 of the [Employment Act](#) defines an employee as:
 - a person employed for wages or a salary and includes an apprentice and indentured learner
15. The same provision defines an employer as:
 - any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company
16. A contract of service is defined as:
 - an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies
17. The Respondent's case is that the Claimant worked for him on part time basis. This was corroborated by the Respondent's neighbour and landlord as well as the Claimant herself who told the Court that



she worked from 8.00 am until 2.30 pm and sometimes from 5.00 am to 7.00 am. The Claimant's allegation that she worked for the Respondent's mother for the remainder of the working hours was not supported by any evidence.

18. From the evidence on record, it is safe to conclude that the Claimant was not engaged as a regular employee as defined in the *Employment Act*. Rather, she was engaged on piece rate basis, for which she was fully compensated.
19. Consequently, her claim which is premised on a presumed regular employment contract, is without basis and is dismissed.
20. Each party will bear their own costs.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF SEPTEMBER 2023

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JUDGE

