



**Otela v Suraya Property Group Limited (Cause E6490 of 2020)
[2023] KEELRC 2949 (KLR) (17 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2949 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6490 OF 2020
B ONGAYA, J
NOVEMBER 17, 2023**

BETWEEN

JOYCE OLESI OTELA CLAIMANT

AND

SURAYA PROPERTY GROUP LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim amended on 24.02.2021 through Musesya & Company Advocates. The claimant alleged that she was employed by the respondent on 20.01.2016 as a Systems Administration and Product in Data Processing Administrator. She pleaded that her monthly gross payment was Kshs.207,376.00 and net salary was Kshs.150,000.00. Her further case was pleaded as follows. By a letter dated 01.07.2018 she gave the respondent a one-month notice to resign from employment effective 27.07.2018. The resignation letter was dated 01.07.2018 but was delivered to the respondent on 01.06.2018. After receiving the letter, the respondent replied by the letter dated 27.06.2018 accepting to pay the claimant terminal dues including salary up to 31.07.2018; salary arrears for month of March – June 2018; any outstanding arrears for the year 2017. On 27.07.2018 the claimant left the respondent's employment and demanded the payment of her final dues as was stated in the respondent's letter dated 27.06.2018. The claim is for the unpaid dues per letter dated 27.06.2018. Further claim is for deducted but unremitted NHIF, NSSF, and, PAYE. The claimant alleges that the respondent breached section 18(2) (b) of the *Employment Act*, 2007 which provides that wages or salary is deemed due at end of a period of a month and, section 18(5) (a) that upon termination of a contract of service by effluxion of time, the employer shall ensure that the employee is paid entire amount of the wages earned by or payable to the employee and of allowances due to him as have not been paid. The claimant claimed as follows:

- a. 2017 salary arrears Kshs.134, 508.00.
- b. March 2018 salary arrears Kshs.66,334.00.



- c. April – July 2018 salary arrears $150,667 \times 4 = \text{Kshs.}602,668.00$.
- d. Unremitted NHIF from date of employment $\text{Kshs.}500 \times 9 \text{ months} = \text{Kshs.}9,500.00$.
- e. Unremitted NSSF from the date of employment $\text{Kshs.}200 \times 19 \text{ months} = \text{Kshs.}3,800.00$.
- f. Unremitted PAYE from date of employment $\text{Kshs.}54,809 \times 7 = \text{Kshs.}383,663.00$.
- g. Total claim = $\text{Kshs.}1,200,473.00$.

2. The claimant prayed for judgment against the respondent for:

- a. Payment of the $\text{Kshs.}1,200,000.00$ plus interest from 01.08.2018 till payment in full.
- b. To remit NSSF, NHIF, and PAYE within 14 days of the judgment and to issue a certificate of statutory deductions for 05.03.2018 to 31.08.2018.
- c. Issuance of certificate of service.
- d. Costs of the suit.
- e. Any further orders as the Court may deem just.

3. The respondent filed the defense and response to claim dated 25.03.2021 through L. Kimondo & Company Advocates. The respondent pleaded as follows. The respondent denied that it employed the claimant in January 2016 or at all. There was no letter of appointment and there being no contract of employment the respondent could not have paid the claimant a sum of $\text{Kshs.}150,667.00$ in monthly salary. The respondent was not aware of the payslip for January 2018, Further, the claimant's account and case was not believable such as, the resignation letter was dated 01.07.2018; alleged respondent's acknowledgment was dated 27.06.2018 being a date earlier than the alleged resignation letter; her resignation letter and alleged acceptance have differing effective dates of the resignation; and all claims were therefore denied. In any event the claimant's alleged letter of resignation did not mention the alleged salary arrears. The respondent urged that the claim was frivolous and it be dismissed with costs.

4. The claimant testified to support her case. The respondent did not call a witness. Final submissions were filed for the parties. The Court has considered the material on record and returns as follows.

5. The 1st issue is whether parties were in a contract of service. The claimant testified that she was not issued with a letter of appointment. However, she testified that it was agreed that she earns $\text{Kshs.}207,376$ gross monthly salary. The Court considers that if the contract of service was oral, then it was necessary that the claimant identifies the respondent's director, manager or other responsible officer with whom the alleged oral contract of employment may have been concluded on 20.01.2016 as is alleged. The Court therefore returns that the claimant has failed to show that the respondent company indeed employed her. The failure to detail the person who bound the respondent in the alleged oral contract of service together with the discrepancies in the dates of the alleged resignation letter and alleged acceptance letter and discrepancies in the effective dates of resignation and no mention of the alleged salaries arrears in the resignation letter and as pleaded for the respondent all make the claimant's account and case not believable on a balance of probabilities. Her case will fail upon the



finding that she has failed to show that there existed an oral or other contract of service between the parties. The respondent's case is upheld.

6. In conclusion, judgment is hereby entered for the respondent against the claimant for dismissal of the suit with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 17TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

