



REPUBLIC OF KENYA



KENYA LAW
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**Kadesa v Bhagan (Cause 1948 of 2016)
[2023] KEELRC 2908 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2908 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1948 OF 2016
L NDOLO, J
NOVEMBER 16, 2023**

BETWEEN

VIOLET KADESA CLAIMANT

AND

VIKASH BHAGAN RESPONDENT

JUDGMENT

Introduction

1. On 22nd September 2016, the Claimant filed a claim against the Respondent, alleging wrongful dismissal and refusal to pay terminal dues. In his defence, the Respondent filed a Response dated 23rd November 2016.
2. At the trial, the Claimant testified on her own behalf but the Respondent did not call any witness. Only the Claimant filed final submissions.

The Claimant's Case

3. In her Statement of Claim dated 25th August 2016 and filed in court on 22nd September 2016, the Claimant states that she was employed by the Respondent verbally as a house-help, earning a monthly salary of Kshs. 4,800.
4. She claims to have been underpaid and adds that she was not paid house allowance.
5. The Claimant avers that she worked for the Respondent until 20th November 2015, when her employment was terminated.
6. The Claimant's case is that the termination of her employment was without justifiable cause and in violation of due procedure.



7. She adds that she did not go on leave and that the Respondent did not make any statutory contributions to the National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF).
8. The Claimant tabulates her claim as follows:
 - a. One month's salary in lieu of notice.....Kshs. 9,450
 - b. Annual leave 2014-2015.....7,633
 - c. Prorata leave for 2 months.....1,272
 - d. Underpayment for 14 months.....65,100
 - e. 12 months' salary in compensation.....113,400
 - f. Certificate of service
 - g. Costs

The Respondent's Case

9. In his Response dated 23rd November 2016, the Respondent states that the Claimant was a casual worker who provided her services only from 10.30 am to 12.30 pm each day. The Respondent adds that the Claimant was given off days on weekends and public holidays.
10. The Respondent further states that the Claimant herself decided not to report to work without giving any reasons.
11. By way of Counterclaim, the Respondent demands the sum of Kshs. 10,000 which he claims the Claimant took from his premises.

Findings and Determination

12. There are three (3) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful termination of employment;
 - b. Whether the Claimant is entitled to the remedies sought;
 - c. Whether the Respondent has established a proper counterclaim against the Claimant.

Unlawful Termination?

13. In his Response to the claim, the Respondent states that the Claimant was a casual worker who worked only for two hours per day.
14. The Claimant herself testified before the Court that she worked from 8.00am to 2.00 pm from Monday to Friday. By her own testimony, the Claimant did not work for a full day at any one time. She was also not able to prove that she earned a monthly salary.
15. The Claimant could not therefore be deemed to be a regular employee as defined in the [Employment Act](#). In my view, she was a piece rate worker who was paid per piece of work done. That being the case, she could not bring a claim for unlawful termination of employment or non- payment of terminal dues.
16. In the result, the Claimant's entire claim, which is premised on a non- existent regular employment contract, fails and is dismissed.



The Respondent's Counterclaim

17. The Respondent did not adduce any evidence to support his counterclaim against the Claimant. The counterclaim therefore also fails and is disallowed.

Final Orders

18. Finally, the Claimant's claim and the Respondent's counterclaim are dismissed.
19. Each party will bear their own costs.
20. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF NOVEMBER 2023.

LINNET NDOLO

JUDGE

