



**Global Apparels (EPZ) Limited v Ng'ang'i (Appeal E026 of 2023)
[2023] KEELRC 3318 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3318 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E026 OF 2023
B ONGAYA, J
DECEMBER 20, 2023**

BETWEEN

GLOBAL APPARELS (EPZ) LIMITED APPELLANT

AND

SARA VATA NG'ANG'I RESPONDENT

(Being an appeal from the judgment and decree of Hon. E. Kimaiyo Suter, Principal Magistrate delivered on 13.10.2022 at Mavoko in CMELRC No. 061 of 2020)

JUDGMENT

1. The learned Principal Magistrate delivered the judgment in the suit before the trial Court in favour of the respondent and against the appellant for:
 - a. A declaration is entered that the claimant's termination was unfair and unlawful.
 - b. The respondent shall pay the following:
 - i. One month's salary in lieu of the notice Kshs14,438/=
 - ii. CompensationKshs.86,628/=
 - iii. Total..... Kshs.101,066/=
1. The appellant filed the memorandum of appeal on 11.11.2022 through Morara Apiemi & Nyangito Advocates. The appellant stated that the trial Court erred in law and fact and misdirected itself as follows:
 - a. By holding that the respondent was employed by the appellant on a permanent basis against the weight of evidence adduced at trial showing that the former was employed on a contractual basis.



- b. By finding that the respondent was employed on a permanent basis whereas the respondent did not adduce any evidence in support of the same.
 - c. By disregarding the evidence adduced by the respondent thereby arriving at a finding that the respondent had been employed on a permanent basis which finding was erroneous and untenable.
 - d. By shifting the burden of proof on facts which were reasonably proved by the appellant and not rebutted by the respondent during pretrial and trial.
3. The appellant prayed for orders:
 - a. That the judgment of the lower court in CMELRC no. E61 of 2020 Mavoko delivered on 13.10.2022 be set aside in its entirety.
 - b. That judgment be entered in favour of the appellant against the respondent dismissing the claim.
 - c. That in the alternative the Honourable Court do analyse the evidence, submissions on record and the applicable provisions of the law and make its own findings.
 - d. That the appellant be awarded costs both in the lower court and for this appeal.
4. The appellant filed submissions on the appeal. For the respondent were filed through J.A Makau & Co Advocates.
5. The respondent had filed the statement of claim on 02.10.2020. Her case was as follows:
 - a. She was employed by the appellant as a machine operator at their go-down in Athi-river vide an oral employment contract in November 2007.
 - b. At the time of the employment she earned a net salary of Kshs.11,638/=.
 - c. She maintained that she worked diligently over the period of 12 years of her employment, with no disciplinary issue.
 - d. The respondent stated that over the course of her employment she used to work for more than 8 hour without any overtime allowance, despite having agreed to a rate of Kshs.1,500 per week for overtime worked, which sums she demanded in the suit.
 - e. The respondent stated that she was not accorded a fair hearing, and was not issued with a termination letter, nor was she issued with a notice. That on 20.12.2019 when she reported to work, she was turned away by her managers stating that her services were no longer required and she should never step foot in the premises.
6. The appellant filed a response to the statement of claim on 09.11.2020.
7. The appellant's case was as follows:
 - a. The respondent was employed for a term contract of 3 months per exhibited contract of employment dated 03.01.2019 lapsing on 25.03.2019.
 - b. The respondent's contract was for a period of three months, which lapsed and the contract between the parties automatically terminated.



- c. The appellant's nature of work is seasonal, and during high season the appellant engages more employees and issues them short term contracts and after the period is over the contracts come to an end.
 - d. The terms of the contract entered into by the parties herein expressly showed that the contract was to come to an end on 25.03.2019.
 - e. The appellant maintained that it did not owe the respondent any money as her dues were paid upon her signing the discharge.
8. This is a first appeal and the role of the Court is to reevaluate the evidence and arrive at conclusions one way or the other bearing in mind it did not by itself take the evidence. The decision of the trial Court ought not be disturbed unless shown it misdirected itself and thereby arrived at conclusions that were not just or correct. The Court has considered the parties' submissions.
 9. To answer the 1st issue, the Court returns that while the respondent denied signing the contract exhibited for the appellant, there is no reason to doubt that he had signed and as per his own pleading and testimony, he was told to leave employment in March 2019 which the Court finds to have been upon the lapsing of the three months and the parties separated per term contract. As submitted for the appellant, the contract of service lapsed by effluxion of time. The court observes that the respondent cannot be trusted as while claiming leave and overtime, during cross-examination he confirmed that he had been paid leave and overtime. The trial Court misdirected itself in holding that the appellant ought to have provided earlier term contracts. In any event there was no evidence before the trial court provided by the respondent establishing that he had been employed by the appellant effective 2014 as pleaded and the NSSF statement and the job card relied upon by the respondent did not establish that pleading. The finding of permanent employment was inconsistent with the three months' term contract the appellant had exhibited.
 10. To answer the 2nd issue, the Court returns that as submitted for the appellant the trial Court erred by awarding one-month salary in lieu of termination notice, 6-months' salaries in compensation. The award is found to have been contrary to the evidence on record and was unjustified.
 11. To answer the 3rd issue, all the grounds of appeal will succeed.
 12. In conclusion, the appeal is allowed with orders:
 - a. The judgment of the lower Court and the decree flowing therefrom appealed against herein is set aside and substituted with dismissal of the suit with costs.
 - b. The appellant is awarded costs of the appeal.
 - c. The Deputy Registrar to forthwith return the court file herein to the Machakos Court's Sub-registry.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 20TH DECEMBER, 2023.

BYRAM ONGAYA, PRINCIPAL JUDGE

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