



REPUBLIC OF KENYA



KENYA LAW
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Raniga v Munyao (Appeal 084 of 2021)
[2023] KEELRC 3255 (KLR) (7 December 2023) (Judgment)

Neutral citation: [2023] KEELRC 3255 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 084 OF 2021
B ONGAYA, J
DECEMBER 7, 2023

BETWEEN

MR & MRS SURESH R RANIGA APPELLANT

AND

HELLEN EDEL MBENGE MUNYAO RESPONDENT

(Being an appeal from the Judgment and Decree of Honourable D.O. Mbeja, Principal Magistrate, delivered on 23.07.2019 at Nairobi in CMEL Case No. 1377 of 2019)

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. Kshs.248,881.06 plus costs of the suit and interest at court rates.
 - b. The respondents to give the claimant a certificate of employment as required by the [Employment Act](#), 2007.
2. The appellant filed the memorandum of appeal on 19.08.2021 through Mbai Waweru Advocates. The appellant stated that the trial Court erred in law and fact and misdirected itself as follows:
 - a. By failing to consider the respondent bound herself to the terms of the fixed term contract once she executed the same.
 - b. By failing to consider the fixed term contract referred to by the respondent had expired and the respondent refused to execute a new contract with the appellants.
 - c. By failing to consider the respondent was paid her dues in full at the expiry of the fixed term contract.



- d. By failing to consider the commissions and omissions of the respondent.
 - e. By failing to consider and/or appreciate the appellant's submissions as well as the authorities thereto.
3. The appellant prayed for orders:
- a. The appeal be allowed.
 - b. The entire judgment be set aside and be substituted with such finding the honourable court may deem so appropriate.
 - c. Cost of the appeal be borne by the respondent.
 - d. Any other or such further relief as the justice of the case may require.
4. The appellant filed submissions on the appeal. The respondent also filed the submissions through Chwero & Company Advocates.
5. The respondent had filed before the trial Court the statement of claim on 09.08.2019. Her case was as follows:
- a. That on or about 19.03.2018 she was employed by the appellants as a house servant at a salary of a daily rate of Kshs.400/= up to 31.03.2018. The respondent's case was that she was underpaid by Kshs.222/= per day for 13 days totalling to Kshs.2,886/=.
 - b. On or about 01.04.2018 the respondent was employed by the appellant on a monthly contract at a salary of Kshs.13,500 and a 15% house allowance, totalling to Kshs.14,865.53. The respondent's case was that she was underpaid by Kshs.1,365.53 for the month of April, 2018.
 - c. The respondent requested for a pay rise, the same resulted in the appellant issuing her a contract of 12 months.
 - d. The respondent stated that on or about 01.05.2018 she earned a salary of Kshs.13,500 per month instead of the required Kshs.15,608.83, resulting in her underpayment by Kshs.2,108.83 per month for a period of 14 months up to 31.05.2019, totalling Kshs.29,523.62.
 - e. The respondent stated that she demanded for the balance of her salary from the appellants, who responded stating that she was demanding a lot of money and as a result terminated her services by letter dated 01.07.2019 and paid her June, 2019 salary, one day worked in July 2019 and one day leave pro-rata for one month against 1.75 days a month.
6. The respondent claimed for:
- a. Underpayment of salaries Kshs.33, 775.15.
 - b. One-month payment in lieu of notice Kshs.15,608.83.
 - c. Accrued leave Kshs.4,265.10.
 - d. 1 month leave Kshs.692.92.
 - e. One day worked not paid July 2019 Kshs.203.10.
 - f. 12 months salary for unfair termination at 15,608.83=Kshs.187,305.96.
 - g. 1-year severance pay (15 days) Kshs.7,030.51.



- h. Total claim Kshs.248,881.06.
7. The respondent prayed for payment as claimed, interest, costs, and certificate of service per section 51 of the *Employment Act*.
8. The appellant filed a statement of response on 10.09.2019 and their case was as follows.
- a. That they had entered into a one-year contract of employment with the respondent, and her salary was paid less statutory deductions.
 - b. That in the course of her employment the respondent received full salary dues as agreed and leave days were fully paid.
 - c. That upon expiry of the respondent's contract, the appellant offered the respondent a new contract, but she declined to execute the same and instead opted to demand service pay.
 - d. That the respondent without notice terminated her services, and the appellants efforts to have her tender a resignation letter were futile as she quit without the same.
 - e. That upon termination of the contract the claimant raised a demand that the appellants deemed ridiculous granted that they had paid all her dues in full.
 - f. The appellants thus declined to honour her demands.
9. 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.
10. The Court has considered the material on record.
11. The 1st issue for determination is whether the termination was unfair or the term contract lapsed and the respondent refused to sign the next contract. The respondent testified that she worked for the appellant from 19.03.2018 up to 01.07.2019. She also testified that on 01.07.2019 she signed for her final dues Kshs.14,200. While testifying that she did not understand whatever she signed for, the Court finds that she was feigning ignorance because in any event she had adopted her witness statement filed in Court rendered in English and without alleging that she did not understand the same. The terminal dues she signed for included payment up to 01.07.2019 and pay for that day plus one day leave. The Court finds for the appellant that parties separated under a mutual understanding per the appellant's exhibited letter that the respondent did not wish to continue in employment. There was no established unfair termination in the circumstances of the case. The respondent cannot be trusted to claim upon such headings she had actually been paid for and by the date of the hearing before the trial Court, despite the alleged language barrier but which was not shown to exist at all, the respondent had received the benefit of legal counsel to understand the circumstances as per the separation documents filed for the appellant.
12. To answer the 2nd issue, the Court finds that the trial Court failed to consider the respondent's misconduct per appellant's testimony and respondent's refusal to continue in employment. The Court returns that the trial Court erred in finding that the termination was unfair and unlawful because the evidence of what appeared to be a mutually agreed separation and refusal by the claimant to continue in employment was not considered at all. The respondent testified she did not sign a new contract. Such evidence was contradictory to the claim that she had been terminated. It is that the respondent refused to continue in appellants' employment and she signed to separate when she was paid the final dues.



What the respondent relied in her testimony on is the appellants' letter copied to Spring Valley Police Station. The letter confirmed that despite her alleged misconducts therein the appellants were willing to retain her but she had refused to continue in employment. The Court finds that the trial Court erred in finding there had been unfair termination. It is that the month to month service relationship ended and the respondent refused to continue in service.

13. The Court finds that in the circumstances all the grounds of appeal will succeed. The Court observes that the trial Court granted all the claims and reliefs as had been prayed for but without justification in that regard. The claims and prayers were not justified based on contract or evidence. They were not available at all especially that the respondent had already been paid some of the claims she purported to make. The appeal will succeed except that the appellant will deliver the certificate of service within 30days from the date of delivery of this judgment. In consideration of failure to deliver the certificate of service each party to bear own costs of appeal and the suit subject of the appeal.

In conclusion, the appeal is hereby allowed with orders:

- a. The judgment and decree by the trial Court subject of the appeal is set aside.
- b. The respondent to deliver the certificate of service in 30-days.
- c. Each party to bear own costs of the appeal and the suit subject of the appeal.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

