



**Kalani v East African Growers Limited (Cause 2181 of 2015)  
[2022] KEELRC 1663 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1663 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2181 OF 2015**

**L NDOLO, J**

**MAY 26, 2022**

**BETWEEN**

**JANET KATALI KALANI ..... CLAIMANT**

**AND**

**EAST AFRICAN GROWERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Janet Katali Kalani, the claimant in this case, was an employee of East African Growers Limited, the respondent herein. she brought this claim alleging unfair termination of her employment by the respondent on April 13, 2015.
2. The claim is contained in a Memorandum of Claim dated December 2, 2015 and filed in court on December 9, 2015. The Respondent filed a Reply on April 7, 2016.
3. At the trial, the claimant testified on her own behalf and thereafter called Berina Nthenya Musila. The respondent called its Group Human Resources Manager, Vitalis Owino Osodo. Both parties further filed written submissions.

**The Claimant's Case**

4. The claimant states that she was employed by the Respondent as a general labourer sometime in the year 2002. She claims to have earned a daily wage of Kshs. 479 which was payable bi-monthly.
5. The claimant further states that on April 13, 2015 while on duty, she was informed by her supervisor, one Mr. Koech that her services were no longer required.
6. The claimant avers that she was not issued with prior notice of the intention to terminate her employment. She adds that for the entire period of her employment, she did not take annual leave and was not paid in lieu thereof.



7. The claimant further avers that the respondent did not remit her National Social Security Fund (NSSF) dues and that she was not paid house allowance.
8. In addition, the claimant claims to have worked from 8.00 am to 8.00 pm everyday including Sundays and public holidays, translating to 4 hours in overtime daily.
9. The claimant lays a claim for unlawful and unfair termination of employment and now seeks the following reliefs:
  - a. Pay in lieu of notice.....Kshs. 14,100
  - b. Leave days for 13 years.....183,300
  - c. Overtime for 4 hours daily for 13 years.....126,900
  - d. Service/gratuity for 13 years.....91,650
  - e. 12 months' salary in compensation.....169,200
  - f. Certificate of service
  - g. Costs plus interest

### **The Respondent's Case**

10. In its Reply filed in court on April 7, 2016, the respondent denies that the claimant was its employee. The Respondent states that it does not have any supervisor by the name Koech.
11. The respondent therefore avers that the claimant is not entitled to any of the remedies sought.
12. The respondent maintains that the claimant could not have been dismissed as she was never its employee.

### **Findings and Determination**

13. From the parties' pleadings and submissions, the first issue that emerges for determination is whether there was an employment relationship between the claimant and the respondent.
14. The respondent denies ever having employed the claimant. On her part, the claimant claims to have been employed by the respondent sometime in the year 2002. In her testimony before the court, she gave the effective date of her employment as February 14, 2002. The claimant did not produce any documents to back her statement. She nevertheless called Berina Nthenya Musila to corroborate her testimony.
15. However, the claimant's testimony did not accord with that given by her witness. In her Memorandum of Claim, the claimant gave the date of termination of her employment as April 13, 2015 while the demand letter issued by her Advocates on September 23, 2015 gave the date of April 13, 2013. On the other hand, in her witness statement dated June 11, 2021, the claimant's witness, Berina Nthenya Musila gave the termination date as August 27, 2012. In her testimony before the Court, Musila shifted and gave April 2013 as the termination date.
16. There is firm jurisprudence that contradictory evidence is of no probative value and ought to be rejected. In the final submissions filed on behalf of the respondent, reference was made to the decision



in *Daniel Otieno Migore v South Nyanza Sugar Co. Ltd* [2018] eKLR where Mrima J rejected evidence that was contradictory, stating:

“It is now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however strong, that tends to be at variance with the pleadings must be disregarded.”

17. In this case, the claimant and her witness not only departed from the pleadings but also contradicted themselves in the course of their testimony. This rendered their testimony worthless and the existence of an employment relationship between the claimant and the respondent was not established.
18. In her final submissions, the claimant made an attempt to shift the burden of proving the existence of an employment relationship to the respondent, by stating that the respondent, being the custodian of employment records, ought to have availed them. The only thing to say is that the fact that the respondent was the custodian of employment records did not discharge the claimant from the burden of proving her case. If the claimant believed that the respondent was in possession of any records that would have supported her case, she ought to have served a production notice.
19. That said, I find and hold that the claimant failed to establish an employment relationship between her and the respondent and her entire claim therefore collapses.
20. Each party will bear their own costs.

Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Omamo for the Claimant

Ms. Wachira for the Respondent

