



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Maisiba & another v Style Industries Limited (Cause 2031 of 2017)
[2022] KEELRC 1464 (KLR) (15 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1464 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2031 OF 2017
JK GAKERI, J
JUNE 15, 2022**

BETWEEN

SHEILLAH KEMUNTO MAISIBA 1ST CLAIMANT

PALINE NALIAKA WASIKE 2ND CLAIMANT

AND

STYLE INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The Claimants initiated this claim by a statement of claim filed on 11th October 2017 alleging unlawful termination and entitlement to terminal dues.
2. The Claimants pray for –
 - a. The sum of Kshs.356,808.00 made up of:
 - i. Sheilla Kemunto Maisiba
12 months' salary compensation
Kshs.14,867 x 12 Kshs.178,404
 - ii. Pauline Naliaka Wasike
12 months' salary compensation
Kshs.14,867 x 12 Kshs.178,404
Total Kshs.356,808
 - b. Certificate of service
 - c. Costs of this suit.



3. The Respondent filed a memorandum of defence on 25th September 2019 praying for dismissal of the Claimants' suit with costs.

Claimants' Case

4. The Claimants' case is pleaded as follows:
5. The Respondent employed the 1st Claimant as a general worker in April 2013 at Kshs.10,367/- inclusive of house allowance.
6. That the Respondent employed the 2nd Claimant as a general worker in May 2015 at Kshs.13,822.89 per month inclusive of house allowance.
7. That the Claimants signed three months' contract upon whose expiry the Claimant renewed the contract twice for a further six months after which they continued working for the Respondent with no contract of service. That the 2nd Claimant did not sign any other contract after the initial three months but continued working for the Respondent.
8. The Claimants aver that they carried out their duties diligently and their efforts was recognised by the Respondent who increased their salaries to Kshs.14,867/- per month.
9. It is averred that on 31st July 2017, the Claimants reported to work as usual and worked until 2 pm when the Supervisor instructed them to pay a visit to the Human Resource Manager, office on Lunga Lunga Road where they were asked to join a queue where they were requested to sign a form, after which they removed their dust coats, surrendered their cloaking cards and received cheques.
That they received termination letters showing that their contracts of employment had expired. They allege that they had not signed any contract due to expire on 31st July 2017.

Respondent's Case

10. The Respondent avers that it employed the 1st Claimant under a fixed term contract from 2nd May 2017 to 31st July 2017 and the 2nd Claimant from 2nd May 2017 to 31st July 2017.
11. That the Claimants were notified that their contracts had terminated on account of effluxion of time.
12. It is the Respondent's case that the Claimants' employment contracts were not terminated but lapsed and were not renewed.

Claimants' Evidence

13. The 1st Claimant adopted the written statement and was cross examined. The statement rehashes the contents of the statement of claim.
14. On cross examination, the CW1 stated that she was employed in April 2013 and continued working when the contract was renewed but had no documentary evidence of the contract. The witness confirmed that the last payslip she received was in July 2017.
15. On re-examination, the witness confirmed that the contracts of employment were limited to three months until July 2017.

Respondent's Evidence

16. The Respondent's Counsel informed the Court that it had no witness and would rely exclusively on the documents on record.



Claimants' Submissions

17. The Claimant identifies several issues for determination including the admissibility of the contracts on record since the Respondent tendered no evidence, nature of the contracts of employment, termination and the reliefs sought.
18. As regards admissibility of the contracts of employment filed by the Respondent reliance is made on Section 35(1)(b) of the *Evidence Act*. It is submitted that the Respondent gave no reason why it had no witness to testify and be cross examined. The decision in *Nation Newspaper Limited v Simon Muruchi Thing'a* [2016] eKLR is relied upon to reinforce the submission that the Court determines the evidential value of documents in the absence of oral evidence.
19. As to the validity of the contracts it is submitted that copies of the contracts filed by the Respondent were not genuine and the Respondent did not wish to subject the maker to cross examination. It is submitted that the Respondent should have availed all the contracts it had concluded with the Claimants.
20. The Court is urged to disregard the documents.
21. On the nature of employment, it is submitted that the payslips on record show that the Claimants worked for the Respondent for some time contrary to the Respondent's documents that they worked for three months to the end of July 2017.
22. Reliance is made on the provisions of Section 9 and 37 of the *Employment Act* to submit that the Claimants were permanent employees as opposed to fixed term contracts. That the renewable contracts were null and void.
23. As regards termination or effluxion of time, it is submitted that the Claimants served for over two years and if they were employed on fixed term contracts as alleged by the Respondent, the documents should have been produced as evidence.
24. It is further submitted that the termination of employment by the Respondent was unfair for noncompliance with the provisions of Sections 41 and 43 of the *Employment Act*.
25. The decision in *David Gichana Omuya v Mombasa Maize Millers Ltd* [2014] eKLR is relied upon to reinforce the submission.
26. As regards the reliefs sought, it is submitted that the Claimants are entitled to one (1) month's salary in lieu of notice by virtue of Section 36 of the *Employment Act* and 12 months' compensation for the unlawful termination of employment.

Respondent's Submissions

27. The Respondent did not file submissions.

Analysis and Determination

28. The issues for determination are whether: -
 - i. The Claimants were employed under a fixed term contract or permanently;
 - ii. The Claimants' employment was terminated by the Respondent or the contracts came to an end by effluxion of time;
 - iii. The Claimants are entitled to the reliefs sought.



29. As to whether the Claimants were employed on fixed term contracts or permanently, the starting point is the evidence on record.
30. Both Claimants testified that they were first engaged on three months written contracts but were not given copies after signing. The 1st Claimant told the Court that her contract was renewed twice but thereafter there was no renewal but continued serving the Respondent until termination in July 2017.
31. The 2nd Claimant testified that after the initial contract of three months lapsed, she did not sign another contract but continued working for the Respondent until termination in July 2017.
32. The 1st Claimant attached payslips for April 2013, May 2013, January 2014, April 2015, May 2015, September 2016, January 2017 and July 2017.
33. The 2nd Claimant availed payslips for July 2016, May 2017 and July 2017.
34. The Respondent led no oral evidence to contradict the Claimants' evidence on when they were employed, nature of contract or the salary paid.
35. According to the Respondents, the Claimants were employed for a duration of three months only from 2nd May 2017 to 31st July 2017 as evidenced by the contractual documents on record which both had signed.
36. The Respondent did not contest the payslips on record which show that the Claimants were employees of the Respondent for a longer duration than admitted.
37. But more significantly, CW1 confirmed on cross examination that she had seen the documents filed by the Respondent but had not comment about them. In particular the written contracts she allegedly signed on 2nd May 2017 which contradict her oral evidence that they did not execute other contracts after some time. The Claimants did not allege that the documents were forgeries or that they did not sign the contracts. They did not disown the signatures on these particular documents.
38. Finally, the letters of termination of employment make reference to the contracts and cite no other ground for termination of employment. The letters were produced by the Claimants.
39. On re-examination, CW1 testified that their contracts of employment were for a duration for three months until July 2017 when they were directed to report to the human resource office.
40. For the foregoing reasons, it is the finding of the contract that the Claimants were employees of the Respondent on fixed term contracts of three months which the employer renewed consistently as the Claimants' evidence attest.
41. There is no material on record to suggest that the Claimants were employed on permanent terms. The Claimants' Counsel rely on Section 37 of the *employment* to urge that the Claimants were permanent employees of the Respondent. This issue did not arise. The Respondent's case is that the Claimants were employed on fixed term contracts which lapsed on 31st July 2017. But more significantly, Section 37 applies to casual employees and the Claimants were not casual employees.
42. Having found that the Claimants were employed by the Respondent under three months fixed term contracts, I will now proceed to determine whether the Claimants' employment was terminated by the Respondent or the contract came to an end by effluxion of time.



43. In *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotbo-Kariuki* [2017] eKLR the Court of Appeal stated:

“Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent’s contract ought not to have been maintained. This is in relation to the salary for the months of April up to 5th May, 2010. Similarly, since the respondent’s contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.”

44. Similarly in *Stephen M. Kitheka v Kevita International Limited* [2018] eKLR Onyango J. stated as follows:

“Further, that as held by Rika J in *Margaret A. Ochieng v National Water Conservation and Pipeline Corporation* [2014] eKLR, Courts have upheld the principle that fixed-term contracts carry no expectation of renewal, in a catena of judicial authorities. That this Court has done so in *Industrial Court Petition No. 35 of 2012, George Onyango vs The Board of Directors Numerical Machining Complex Limited & Others*, [2014] e-KLR and in *Industrial Court Cause No. 1541 of 2010, Bernard Wanjohi Muriuki v. Kirinyaga Water and Sanitation Company Limited & Others*.”

45. The Court is in agreement with these sentiments.

46. From the evidence on record although CW1 testified that she signed only two renewals of the contract of employment after employment and the 2nd Claimant signed only once but both continued working for the Respondent until 31st July 2017, they did not contradict the copies of three months’ contracts allegedly executed by both of them on 2nd May 2017. None of them disowned the signature on their respective contracts.

47. Although the letter of termination stated that a detailed schedule of the payments was available for collection on or after 31st July 2017 at 2.00 pm none of the Claimants filed it for records. Nevertheless, the payslips for July 2017 availed by the Claimants show that they were both paid notice pay, a full months’ salary.

48. For the foregoing reasons, the Court is satisfied that the Claimants have on a balance of probabilities failed to prove that their contracts of employment were terminated by the Respondent unfairly.

49. Contrary to the Claimants’ submission that the copies of contracts filed by the Respondent were not genuine, the Claimants rendered no evidence to puncture their authenticity. The fact that the Respondents did not produce copies of the earlier contracts was never raised by the nor contested by the Claimants. Their authenticity was not queried during the hearing of the suit nor was an application made for their expunction from record.

50. In a similar vein, the Respondent led no evidence to rebut the Claimants’ allegation on when and how they were employed.

51. As regards the reliefs sought, the Court proceeds as follows:

(a) One month’s salary in lieu of notice

52. Although the Claimants submit that they are entitled to one 1 month’s salary in lieu of notice pursuant to Section 36 of the *Employment Act*, the same was neither pleaded nor proved. Moreover,



the Claimants' payslips for July 2017 have an entry for notice pay equivalent to the basic salary. Consequently, the claim is dismissed.

(b) 12 months' salary compensation for unlawful termination of employment

- . This is the only monetary relief claimed by the Claimants in the statement of claim. Having found that the Claimants have failed to discharge the burden of proof that termination of their contracts of employment was unfair, the claim for compensation is declined.
53. In conclusion, the suit herein is dismissed save for the prayer for certificate of service which the Respondent is directed to issue to the Claimants within 30 days of today's date.
54. Each party to bear own costs.
55. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 15TH DAY OF JUNE 2022

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

