



**Ombisa & 2 others v Lorenzo Professionals Dry Cleaners (Cause
193 of 2018) [2022] KEELRC 76 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 76 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 193 OF 2018
MN NDUMA, J
JUNE 9, 2022**

BETWEEN

GERISHON ODARI OMBISA 1ST APPLICANT

MARY NYAMBURA 2ND APPLICANT

ANN WANGECHI MWANGI 3RD APPLICANT

AND

LORENZO PROFESSIONALS DRY CLEANERS RESPONDENT

JUDGMENT

1. The three claimants filed suit against the respondent on 20th February, 2018 seeking reliefs set out under paragraphs 14 (A), (B) and (C) of the Statement of Claim. The claimants pray to be awarded as set out in the final prayers thereof.
2. The respondent filed a Memorandum of Response on 15th May, 2018 in which the respondent acknowledges having employed the claimants as set out under paragraph 1 and 2 of the Statement of Claim.
3. The respondent denied the specific claims put forth by the claimants stating that disciplinary process against them is still pending and so the suit was filed prematurely. The respondent put the claimants to strict proof thereof. C.W.1, the 1st claimant testified on behalf of other two claimants with their authority. C.W.1 produced verifying affidavit by the claimants and relied on a witness statement dated 20th February, 2018 and produced documents in a list of the even date on behalf of all the claimants. C.W.1 produced letters of appointment for 2nd and 3rd claimants and said his letter of appointment was withheld by the respondent. He testified that he earned Kshs 50,000 a month at the time of dismissal whereas Mary earned Kshs 25,000 and Ann earned Kshs 30,000 respectively.



4. C.W. 1 testified that he worked as a Machine Operator whereas the 1st and 2nd Claimants worked as Customer Care assistants.
5. That they all worked until the 1st June, 2017 which was a public holiday. In the evening, their boss one Lawrence told them to go home and rest and that he would call them back after two weeks. After two weeks, Lawrence left a message that the three don't go back to work until he calls them back.
6. That on 3rd July, 2017, the three got letters from a boda boda operator. The letters were notices to show cause which are marked exhibit '2'. The three replied to the allegations made in the notices to show cause. Exhibit '3' is the respective responses from the three of them denying allegations of fraud. The three were suspended and were not paid June salary until investigations were completed.
7. C.W.1 testified that they did not get any investigation report and were not called to a disciplinary hearing to answer allegations made against them. C.W.1 said they did not get letters of dismissal nor did they get Certificates of service. That they were simply not recalled back.
8. C.W.1 stated that the claimants were not given leave days and their National Social Security Fund dues were never remitted.
9. The claimants pray to be awarded as set out in the Statement of Claim. The claims include, 9 months withheld salary while they awaited investigations to be completed and on suspension; one month salary in lieu of notice; service gratuity for two(2) years worked; payment in lieu of two (2) years leave days not taken and equivalent of 12 months compensation for unfair dismissal and provision of Certificate of Service.

No Defence

10. The respondent cross-examined C.W.1 and C.W.1 remained consistent and credible in his testimony under oath. The respondent informed Court at the close of the claimants' case that they would not call any witness to rebut the evidence adduced by C.W.1.
11. The particulars of claim as set out in the Statement of Claim therefore remain uncontroverted, and are backed by credible testimony by C.W.1.
12. The Court finds that the claimants have proved that they are entitled to the terminal benefits set out in the Statement of Claim and the court awards them accordingly.

Compensation

13. The Court further finds that the respondent violated Sections 36, 41, 43 and 45 of the [Employment Act](#), 2007 in that it dismissed the claimants for no valid reason and without following a fair procedure.
14. The claimants are therefore entitled to compensation from the date of constructive dismissal being the date they were verbally sent home by Lawrence and were never recalled back to attend alleged disciplinary action.
15. The claimants are not entitled to withheld salary for the 9 months period they claim they did not work but are entitled to compensation for unlawful and unfair constructive dismissal in terms of section 49(1) (c) and (4) of the [Employment Act](#), 2007.
16. The claimants were dismissed on similar circumstances without any fault proven; the claimants had served for the same period of two years. The claimants suffered loss and damage as they were unable



to get alternative employment whilst they waited in limbo for a period of nine months; the claimants were not paid any terminal benefits nor were they compensated for the job loss.

17. The Court relies on the case of *Pius Muchafu Isindu v Lavington Security Guards Limited* [2017] eKLR and all the factors above to find that the claimants are severally entitled to the equivalent of nine (9) months' salary in compensation for the unlawful and unfair dismissal.

18. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-

(A) Gerishon Odari Ombisa

- (i) Kshs 50,000 in lieu of one month notice.
- (ii) Kshs 40,386.60 in lieu of leave days not taken
- (iii) Kshs 57,692.30 service gratuity.
- (iv) Kshs 450,000 being compensation for unlawful and unfair dismissal and
- (v) Certificate of Service.

(B) Mary Nyambura Gichuki

- (i) Kshs 25,000 in lieu of one month notice.
- (ii) Service gratuity Kshs 28,846.15.
- (iii) Kshs 225,000 being compensation for unlawful and unfair dismissal and
- (iv) Certificate of Service.

(C) Ann Wangechi Mwangi

- (i) Kshs 30,000 in lieu of notice.
- (ii) Kshs 34,615.50 being service gratuity.
- (iii) Kshs 270,000 being compensation for unlawful and unfair dismissal and
- (iv) Certificate of Service.

(D) The award in A, B and C above to be paid with interest at Court rates from date of judgment till payment in full.

(E) Respondent to pay costs of the suit.

19. For the avoidance of doubt, though C.W.1 adduced evidence that all the three claimants did not take annual leave, Mary and Ann did not seek payment in lieu of leave in the statement of claim and so payment in lieu of leave days not taken was not awarded.

20. It is so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 9TH DAY OF JUNE, 2022.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Nyabena for claimant

Mr. Olonde for Respondent



