



**Talala v Baogan Hotel Limited (Cause E012 of 2021)  
[2022] KEELRC 3791 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3791 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E012 OF 2021**

**B ONGAYA, J  
JULY 29, 2022**

**BETWEEN**

**FRANK E A TALALA ..... CLAIMANT**

**AND**

**BAOGAN HOTEL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on February 12, 2021 through Wambo Muyala & Company Advocates. The claimant prayed for judgment against the respondent for:
  - a) A declaration that the claimant was lawfully a monthly employee under the [Employment Act](#) cap 226 Laws of Kenya.
  - b) An order compelling the respondent to pay the claimant his unpaid thirteen months' salary at Kshs. 80, 000.00 per month cumulatively totalling to a sum of Kshs. 1, 040, 000.00.
  - c) General damages.
  - d) Certificate of service.
  - e) Costs of the suit.
  - f) Interest thereon at contracts.
  - g) Any other relief the Honourable Court may deem fit.
2. The claimant pleaded as follows. He had a good relationship with the respondent's Managing Director. He had a long experience in management and he worked as the respondent's employee since May 2017 and immediately after resigning from a lucrative position of Purchasing Manager at Eden Beach Apartments and SPA on May 5, 2017. The claimant and the respondent's Managing Director agreed verbally to Kshs. 80, 000.00 per month. The claimant's further case is that he was not paid the salary



from May 2017 to February 2018 despite the claimant duly working diligently. He pleads he was not told how his monthly statutory deductions would be paid. His further case was that on October 25, 2020 he was again approached to work for the respondent upon the same terms of service. He pleads that prior to agreeing to work for the respondent he demanded his outstanding salary from the previous employment relationship and the respondent agreed to settle the same. His claim is therefore for 18 months' salaries for the period May 2017 to February 2018.

2. The respondent filed the memorandum of response on March 25, 2021 through Kihoro and Company Advocates. The respondent denied the alleged good and friendly relationship between the claimant and the respondent's Managing Director. The respondent stated that it had never employed the claimant and there was no employer-employee relationship. The respondent particularly denied employing the claimant from May 2017 to February 2018 and again from October 25, 2020. Further, in the intervening period the claimant alleges the respondent employed him it was not in existence and the claimant's claims are illusory. The respondent denied jurisdiction of the Court as it would raise a preliminary objection.
3. The claimant testified to support his case. The claimant also called two witnesses one George Ochieng' Akuno (CW2) and Janet Gambo (CW2) whose testimony was that sometimes in October 2020 their Lucgheor Enterprises supplied the respondent to supply printed and general stationary. The respondent's witness (RW) was Alexandriah Ariana Majani, the respondent's Director and Manager. Her testimony was that the respondent never employed the claimant and the Managing Director Welsa Bange Oganda Ayoo (deceased) who was her grandfather died on 23.06.2023 and the respondent hotel ceased operations.
4. To answer the 1<sup>st</sup> and main issue for determination, the Court finds that the claimant has failed to establish that he had a contract of service with the respondent. First, the respondent has shown that it was registered on 30.12.2020. It cannot therefore be that it employed the claimant in May 2017 to February 2018 and again from 25.10.2020 as alleged for the claimant and as per the claimant's testimony. Second, the claimant has failed to offer evidence on the particular date in May 2017 when he may have been employed. Third it is not conceivable and believable that the claimant worked from May 2017 to February 2018 without pay and without a grievance being reported to the labour officer or the Court in that regard. Fourth, the claimant has failed to establish the work he may have actually performed for the respondent for all that period of time he alleges to have worked for the respondent. He has not pleaded and offered evidence on the position he was engaged to serve or his job description or duties. The testimony by CW2 and CW3 did not aid the claimant's case at all because as submitted for the respondent they relied upon their own local purchase orders and they had no evidence of payment by the respondent with respect to the alleged supplies. The Court finds that in the circumstances the suit must collapse as there was no established employer-employee relationship as defined in section 2 of the *Employment Act*, 2007. In any event May 2017 to February 2018 and again from October 25, 2020 to February 2021 do not add up to the 13 months the claimant has claimed for payment of special damages in salary arrears as claimed. The trite law is that special damages are specifically pleaded and strictly proved. That was not done and the claims and prayers are found unfair. The claims for service said to be ending in February 2018 is also found to have been time barred under section 90 of the Act the suit having been filed after lapsing of 12 months of limitation from cessation of such continuing injury.
5. The claimant has failed in his suit and will pay the respondent's costs of the suit.
6. In conclusion, judgment is hereby entered for the respondent against the claimant for dismissal of the suit with costs.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS  
FRIDAY 29<sup>TH</sup> JULY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

