



Peter & 13 others v Attorney General (Appeal 4 of 2019)
[2022] KEELRC 3943 (KLR) (20 September 2022) (Judgment)

Neutral citation: [2022] KEELRC 3943 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 4 OF 2019
MA ONYANGO, J
SEPTEMBER 20, 2022
FORMERLY HCCA NO. 652 OF 2008

BETWEEN

MONICAH W. PETER 1ST APPELLANT
GRACE NGUGI 2ND APPELLANT
MARGARET N. MUNYIRI 3RD APPELLANT
ROSEMARY NGIMA 4TH APPELLANT
PURITY W. NYAMU 5TH APPELLANT
MERCY WAMBUI MURIUKI 6TH APPELLANT
ANN WAITHERA WAITHAKA 7TH APPELLANT
PERIS WAIRIMU GICHOHI 8TH APPELLANT
FAITH WANJIRA NJUKI 9TH APPELLANT
MARGARET NJOKA 10TH APPELLANT
REUBEN NGURI NGARA 11TH APPELLANT
JANNURIES G. J. KAARA 12TH APPELLANT
MARY NYAMBURA MUCHIRI 13TH APPELLANT
RUTH WANJA KANYORO 14TH APPELLANT

AND

ATTORNEY GENERAL RESPONDENT

(Being an appeal arising from the judgment of P. M. Gichohi (Mrs.) Senior Resident Magistrate, delivered on the 14th day of July 2005 at the Principal Magistrate's Court



JUDGMENT

1. This is an appeal from the decision of P. Gichohi (Mrs) Senior Resident Magistrate delivered on July 14, 2005 in Milimani Commercial Court in PMCC No. 10049 of 2003.
2. In the Memorandum of Appeal dated November 27, 2008, the Appellant raises five grounds of appeal as reproduced below –
 - i. The Learned Magistrate erred in disregarding the weight of evidence of the appellant.
 - ii. The learned Magistrate erred in- failing to consider the appellant's evidence to the effect that she was employed by the Ministry and not the Polytechnic as exhibited by the exhibits produced.
 - iii. The learned magistrate erred in law and fact when She failed to appreciate that the appellant was an employee of the Respondent.
 - iv. The learned magistrate erred in fact by failing to establish that the appellant's services were terminated by the Government.
 - v. The learned magistrate erred in failing to appreciate the exhibit produced by the appellant and the weight of evidence of the exhibits;
3. The Appellant prays for the following reliefs: -
 - a. That this appeal be allowed and the judgement of the Principal Magistrate's Court delivered on 14th July 2005 be set aside.
 - b. That judgement be entered for the appellant as prayed for in Milimani PMCC No. 10049 of 2003.
 - c. That the costs of this appeal of the lower court be awarded to the appellant.
4. In the plaint dated September 24, 2003, the Claimant had sued the Attorney General on behalf of the Ministry of Labour alleging that he was employed on February 28, 1986 and deployed to work as an Economics Instructor under contract of service at Muranga Youth Polytechnic. That on or about September 30, 2000, the Respondent, its servants or agents terminated her employment and failed to pay her entitlements constituting the following: -
 - a. Two months' salary in lieu of notice Kshs.5,180.00
 - b. Gratuity (golden handshake) Kshs.40,000.00
 - c. Severance pay $(1,780 \times \frac{5}{2} \times 8 \text{ years})$ Kshs.90,650.00 Kshs.135,830.00
5. She prayed for special damages in the sum of Kshs.135,850/=, costs of the suit and interest.
6. After hearing the suit, the Learned Magistrate dismissed the suit with costs to the Respondents. In the judgment the Learned Magistrate found that the Appellant did not prove that the Respondent terminated her employment or that she was entitled to the remedies sought in the plaint.



7. The Appellant was aggrieved and appealed to the High Court in Civil Appeal No. 652 of 2000 which was transferred to this Court in 2019.
8. The appeal was disposed of by way of written submissions.
9. I have considered the grounds of appeal and the record of appeal. From the grounds of appeal, the only issue arising for determination is whether or not the Appellant was employed by the Respondent, in this case, the government of Kenya through the Ministry of Labour as alleged in the plaint.
10. In a first appeal like this one, the duty of the Court is to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. See *Bwire v Wayo & Sailoki* (Civil Appeal 032 of 2021) [2022] KEHC 7 (KLR) (24 January 2022) (Judgment).

The Evidence

11. At the hearing, the Appellant (PW1) testified that she was employed by the Ministry of Culture and Social Services in 1986. That when she requested for a transfer in 1995, she received a response from the Ministry of Research Technical Training. She testified that the Government was sending cheques to Youth Polytechnic then the Manager would issue individual cheques to the Appellant. Upon receiving her salary, she would sign the payroll.
12. The Appellant further testified that when she received the retrenchment letter she was in class. That the letter of retrenchment was from the Ministry of Labour sent through the Manager, Karuru Youth Polytechnic. That when she wrote a letter to the Ministry of Labour requesting for arrears of salary, she received a response from the Ministry of Research and Technical Training advising her to claim the arrears from the Ministry of Culture and Social Services where the Youth Department had been transferred.
13. Under cross examination the Appellant stated that her letter of appointment was issued by the District Social Development Officer, Ministry of Culture and Social Services. That she never received a letter of confirmation as an employee of the government and was never made a permanent employee. That she did not understand the relationship between Youth Polytechnics and the government. She testified that she was not aware that government involvement in youth polytechnics was limited to issue of grants only or that she was never an employee of the government. Referred to the payroll, the Appellant agreed that it was for approved salary grants to government assisted polytechnics and that she was working in a government assisted polytechnic. That she was never in the payroll of the central government.
14. The Respondent filed a defence in which it denied that the Plaintiff (Appellant) was employed by the Defendant (Respondent) or that the termination of the Appellant was unlawful.
15. At the hearing, the Respondent called one witness who testified as DW1. She testified that she was working at the Ministry of Labour and Human Resources Directorate of Industrial Training, Vocational Training Division as Head of Polytechnics. She testified that the Department of Youth Polytechnics had moved between several ministries. DW2 testified that at the material time, the government was assisting 395 out of 600 youth polytechnics. Others were assisted by churches.
16. She testified that the management committees of youth polytechnics employed staff with guidelines from the Ministry on salary scales. That staff from the youth polytechnics were never absorbed into the public service. She referred to a circular no. 2 dated May 14, 1991 on staff recruitment in village polytechnics.



17. DW1 testified that instructors are employees of the management committees of the polytechnic they worked in. That in October 2000, the government withdrew grants to youth polytechnics and management committees were required to pay the instructors they wished to retain. She testified that the Ministry did not issue a letter of termination to the Appellant.
18. Under cross examination DW1 testified that the Appellant's letter of appointment was issued by the Ministry of Social Services through the management committee of the youth polytechnic and that the Ministry was mandated to run the polytechnics. That the payroll produced by the Appellant was for a grant sent to the polytechnic and not a salary from the government.
19. In the judgment the Learned Magistrate found that the Appellant was not employed through the Public Service Commission to qualify to be a civil servant. That she was working in a government assisted polytechnic and received salaries from grants sent to assist youth polytechnics.
20. I have reviewed the evidence and agree with the Learned Magistrate's finding that the Appellant had not proved that she was employed by the Respondent. The payrolls she produced clearly indicated that her salary was from a grant which Government of Kenya assisted youth polytechnics. The title reads "approved salary grants to G.O.K Assisted Youth Polytechnics Payroll for the month of (relevant month) and (name of the polytechnic)". What the Appellant produced was payroll or September 1994 for CITC Muriranjas Polytechnic Muranga from Ministry of Research, Technical Training and Technology and another payroll for May 2000 from Ministry of Labour and Human Resource Development for Karuru Youth Polytechnic, Muranga.
21. I further agree with the finding of the Learned Magistrate that the Appellant failed to prove that her services were terminated by the Government or that she was issued with a letter of termination by the Government and that the circular on retrenchment of civil servants exhibit 9 did not apply to the Appellant.
22. For the foregoing reasons, I find that the appeal has no merit and dismiss it with costs to the Appellant.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 20TH DAY OF SEPTEMBER 2022

MAUREEN ONYANGO

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.

MAUREEN ONYANGO

JUDGE

