



Koki v Vekaria (Cause 1473 of 2017)
[2022] KEELRC 13013 (KLR) (28 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13013 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1473 OF 2017
J RIKA, J
OCTOBER 28, 2022

BETWEEN

JANE KOKI CLAIMANT

AND

MUKHESH VEKARIA RESPONDENT

JUDGMENT

1. Hearing in this Claim proceeded on 6th October 2022, in the absence of the Respondent.
2. The hearing date was fixed by the Claimant before the Deputy Registrar, on 20th July 2022 in the absence of the Respondent. The Claimant filed an Affidavit of Service, sworn on 20th July 2022 by Process-Server Peter Sema Mutunga, showing that the Respondent was served with the hearing notice at his residence, situate at 2nd Parklands Road, on 20th July 2022.
3. The Claimant adopted her Statement of Claim filed on 28th July 2017, her Witness Statement filed on the same date, and 3 Documents comprising letters of demand issued to the Respondent before institution of the Claim.
4. She told the Court that she was employed by the Respondent as his Domestic Help, on or around March 2006. She earned a monthly salary of Kshs. 10,000. She was not issued a written contract.
5. She fell and dislocated her hand in August 2016. When she got better, the Respondent unfairly dismissed her. She claims that the Respondent refused to pay her terminal dues, claimed at: -
 - a. Notice of 1 month at Kshs. 10,954.
 - b. House allowance in arrears at Kshs. 197,160.
 - c. Underpayment of salary May 2015 to August 2016 at Kshs. 15,275.Total ...Kshs. 278,163.



- d. Certificate of Service to issue.
 - e. Costs and interest.
 - f. Any other relief.
6. The Respondent filed a Statement of Response on 31st October 2017. It is conceded that the Respondent employed the Claimant as a Domestic Help, in March 2006. It is conceded that employment was through an oral contract. The Claimant resigned on her own volition, citing poor health. She was paid a mutually agreed, and all-inclusive monthly salary. The Respondent acknowledges receiving demand letters from the Claimant. He offered to pay her a golden handshake of Kshs. 100,000, and gave her an opportunity to resume work, once her health improved. The offer remains. The Respondent provided her with adequate food, water and medical attention. He paid her hospital bill. The Respondent prays the Court to dismiss the Claim with costs.

The court finds:-

7. The Respondent has not given evidence to support his Pleadings. The evidence given by the Claimant is unchallenged.
8. It is conceded that the Respondent employed the Claimant as his Domestic Help, for 10 years, spanning 2006 to 2016.
9. It is common ground that the Claimant suffered an injury to her hand, in 2016. According to her, the Respondent declined to continue employing her, once she had mended. But the Respondent pleads that he offered to continue employing the Claimant once she had mended, and also offered her a golden handshake of Kshs. 100,000.
10. As observed above however, the Respondent has not supported his Pleadings with evidence.
11. The Court has not been persuaded that the Claimant was underpaid. There was no Wage [Amendment] Order placed before the Court, supporting the prayer for underpayment. There is no evidence on the rate which was paid, against what should have been paid.
12. The Claimant pleads that her monthly salary was Kshs. 10,000, but makes her claims based on a monthly salary of Kshs. 10,954. She did not explain in her evidence why there is a top-up of Kshs. 954.
13. The Respondent did not present any evidence or other material, to show that the Claimant was ineligible for service pay, under section 35[6] of the *Employment Act*. She worked for 10 complete years, and merits service pay.
14. The Court is not persuaded that she merits house allowance in arrears of 10 years. Although there is no evidence adduced by the Respondent, it is pleaded that the Respondent catered for basic requirements of the Claimant. For 10 years, she did not make any demands on house allowance. The Court is not able to agree entirely with the Claimant that she is owed Kshs. 197,160 in arrears of house allowance. The Respondent offered to settle the Claim at Kshs. 100,000 which he characterized as golden handshake. He pleads at paragraph 9 of his Statement of Response, this is “an offer the Respondent still extends to the Claimant to-date.” The Respondent offered her monetary award and an opportunity to continue working, The Court does not take away a benefit which has been offered to an Employee by his/ her Employer.



It is ordered:-

- a. The Respondent shall pay to the Claimant golden handshake at Kshs. 100,000 as offered; notice of 1 month at Kshs. 10,000; and service pay equivalent of 15 days' salary for each of the 10 complete years of service at Kshs. 57,692 – total Kshs. 167,692.
- b. Certificate of Service to issue.
- c. Costs to the Claimant.
- d. Interest allowed at court rate, from the date of Judgment till decree is fully satisfied.

DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAIROBI THIS 28TH DAY OF OCTOBER 2022.

JAMES RIKA

JUDGE

