



REPUBLIC OF KENYA



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**Ahunguya v Grootenhuis (Cause 236 of 2014)  
[2020] KEELRC 1850 (KLR) (17 January 2020) (Judgment)**

*Rita Asenja Ahunguya v Jan Geu Grootenhuis [2020] eKLR*

Neutral citation: [2020] KEELRC 1850 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 236 OF 2014  
ON MAKAU, J  
JANUARY 17, 2020**

**BETWEEN**

**RITA ASENJA AHUNGUYA ..... CLAIMANT**

**AND**

**JAN GEU GROOTENHUIS ..... RESPONDENT**

**JUDGMENT**

1. The claimant brought this suit on 24<sup>th</sup> February 2015 seeking the following reliefs against the respondent:
  - (a) Declaration that his dismissal from employment was wrongful and unfair.
  - (b) Kshs.719,630 being terminal dues plus compensation for unfair termination.
  - (c) Certificate of service.
2. The respondent filed defence on 21<sup>st</sup> April 2015 denying the alleged wrongful and unfair dismissal and averred that it is the claimant who deserted employment when she failed to report back to work from 12<sup>th</sup> August 2014 after completing her maternity leave. She further averred that on 24<sup>th</sup> September 2014 the claimant collected her terminal benefits totalling to Kshs.46,000 and she signed a settlement agreement acknowledging the fact the amount paid was the final settlement.
3. In addition, the respondent counterclaimed against the claimant –
  - (a) Declaration that the claimant terminated the contract of employment by failing to report for duty 40 days after her maternity leave ended on 12<sup>th</sup> August 2014.
  - (b) Kshs.126,095 which she paid on behalf of the claimant to clear her maternity medical bill.



- (c) Finally, she prays for the claimant's suit to be dismissed with costs.

### **Claimant's Evidence**

4. The claimant testified as CW1. She stated that she was employed by the respondent as a house help on 19<sup>th</sup> February 2006 under a verbal agreement. She further stated that she was reporting to work at 6.00 and leave at 8.30 pm including weekends and public holidays. Her salary was Kshs.14,000 per month.
5. She further testified that on 12<sup>th</sup> August 2014, she reported to work as usual at 7 am and at 1 pm she went to rest at her servant quarters. That while sleeping there she was arrested by policeman and taken to Spring Valley Police Station without any reason being given. However, on arrival at the police station she was told that the respondent had complained that money was stolen from her house and she was a suspect.
6. CW1 then recorded as statement and after one hour she was released. According to her, the shock of being arrested caused her blood pressure to go up because she was pregnant with a baby of six months. She further contended as a result of foregoing matters she had a premature baby through an operation and the baby was put in an incubation for two months.
7. She further testified that after leaving the hospital, she reported back to work but the employer told her to go to the police station, her finger prints were taken and released with no charges. It was her case that from the police station, she reported back to work but the respondent told her that her job was over. No reason was given for the termination and no prior hearing was accorded to her.
8. She contended that her terminal dues were not paid and prayed for the reliefs sought in the claim. She further contended that she never went for any annual leave and she was not registered for NSSF and NHIF.
9. In cross examination CW1 stated that she was employed by respondent from February 2000 and in 2008, the respondent moved to Limuru with her but terminated the services of all the other employees. She admitted that the househelp had blood pressure due to pregnancy and used to attend clinic at Wangige with the employer's permission.
10. She further admitted that the child was born prematurely on 12<sup>th</sup> May 2014, just after she had been arrested and taken to the police station. She contended that upon admission she called the respondent to notify her about the admission at Nazareth Hospital and also gave the doctor the respondent's phone number. She further contended that the boss granted a leave of 3 months up to 12<sup>th</sup> August 2014 but when she reported back to work that day she was told that her job was over. She admitted that the respondent paid her hospital bill.

### **Respondent's Evidence**

11. The respondent testified as RW1. She stated that she employed the claimant in April 2006 when she was living at Kitusuru. She further stated that on 1<sup>st</sup> March 2011 she terminated the services of the claimant alongside all her other employees and paid their terminal dues and relocated to Tigoni Limuru. However, she re-employed the claimant for two months in her new home at Limuru. Thereafter she moved to Bendera Home and gave the claimant a new contact and provided her with a servant quarter with two rooms and a washing area.
12. RW1 further testified that the claimant was a good performer and she trusted her. She used to pay her salary in cash plus overtime. She further testified that the claimant had a history of blood pressure and



- she occasionally gave her permission to attend hospital in Naivasha and the doctor had advised her not to get pregnant.
13. RW1 contended that in February 2014 she noticed that the claimant was pregnant and due delivery in July 2014. RW1 further testified that in May 2014 she lost Kshs.140,0000 and on 8<sup>th</sup> May 2014 she reported to the police. Thereafter the police checked the safe in her bedroom and dusted it for finger prints before taking away her children and the claimant. She further contended that on 12<sup>th</sup> May 2014 the police came again and took finger prints for all except the claimant who was missing.
  14. RW1 testified that she learnt later that the claimant was admitted at Nazareth Hospital and she spoke to her over the phone. On 20<sup>th</sup> June 2014, she received a call from the claimant demanding payment of her hospital bill. Thereafter other people including claimant's sister started to visit her home to demand for payment of the claimant's hospital bill. As a result, she bought a Banker's cheque and gave it to the claimant's sister.
  15. RW1 stated that at the end of July 2014, the claimant went to her office to demand for salary and she told her to come back after one week but she never did so. As a result, she employed another house help to replace the claimant. She contended that she paid claimant her terminal dues.
  16. In cross examination, RW1 maintained that she employed claimant on 11<sup>th</sup> April 2006 and separated with her on 1<sup>st</sup> March 2011 after moving into a small house which could not accommodate her. She however stated that she later re-employed the claimant.
  17. She admitted that on 8<sup>th</sup> May 2014 she reported loss of money and on 12<sup>th</sup> May 2014, the claimant was admitted in hospital where she underwent an operation to deliver a baby. She admitted that she paid the claimant's hospital bill on 24<sup>th</sup> June 2014 and thereafter the claimant went to the police station for finger prints but no charges were preferred against her. She contended that the claimant reported back on 22<sup>nd</sup> September 2014 to demand for her salary and not to work.
  18. RW1 admitted that she never served the claimant with a show cause but contended that she also never served the claimant with any termination letter. She concluded by stating that she reported the claimant's disappearance to the Labour office and she was advised to treat the claimant as a deserter.
  19. The respondent's husband Mr. Jau Geu Grootenhuin testified as RW2 but his testimony basically echoed that of RW1. He stated that the claimant went for maternity leave in May 2014 but thereafter she failed to report back to work but only went to demand her salary during the maternity leave and again in September 2014. He denied that the claimant was dismissed and maintained that she is the one who disappeared forcing the respondent to employ another person.
  20. In cross examination, RW2 admitted that after the claimant deserted, she was not served with a letter to show cause why she should not be dismissed. He further admitted that the claimant was never charged by the police in connection with the loss of money in his house.
  21. He however contended that after delivering a baby, the claimant was discharged from the hospital on 25<sup>th</sup> June 2014 after he paid the hospital bill.
  22. After careful consideration of the pleadings, evidence and the rival submissions, the main issues for determination are –
    - (a) Whether the claimant deserted employment or she was unfairly dismissed.
    - (b) Whether the reliefs sought by the claimant should be granted.
    - (c) Whether the respondent's counter claim should be allowed.



### **Whether the claimant deserted work or she was unfairly dismissed?**

23. The claimant admitted that upon being admitted in hospital for a premature delivery, she called the respondent and informed her of the same. She further admitted that she was then given a 3 months' maternity leave which was to end on 12<sup>th</sup> August 2014. She however, alleged that when she reported back to work, she was referred to the police station and thereafter informed by the respondent that her employment was over.
24. On the other hand, the respondent and her witness disputed the claimant's story and contended that the claimant went to demand for her salary during the maternity leave but she never reported back to work after the lapse of her maternity leave. They further contended that the claimant visited them in September 2014 again to demand for her salary and they paid her Kshs.46,000 as final dues and she acknowledged the same by signing the agreement dated 24<sup>th</sup> September 2014.
25. I have carefully considered the evidence tendered by the two sides. It is clear that on 12<sup>th</sup> May 2014, the claimant was admitted at Nazareth Hospital and delivered a baby the same day through a caesarean section and left on 20<sup>th</sup> June 2014. From 12<sup>th</sup> May 2014, 3 months lapsed on 12<sup>th</sup> August 2014 when she was expected to report back to work. The burden of proving that she reported back to work on the said date or at all rests with the claimant. She however did not adduce any documentary evidence or call any witness to support her allegation that she reported back to work on 12<sup>th</sup> August 2014 and she was told by the employer that her employment was over. I therefore find and hold that the claimant was never dismissed by the respondent but she voluntarily deserted her employment from 12<sup>th</sup> August 2014 when she failed to report back to work after her maternity leave.

### **Reliefs sought in the Suit**

26. In view of the foregoing finding, I decline to make declaration that the claimant was wrongfully and unfairly dismissed. For the same reason, I decline to award the prayer for compensation for unfair termination. In addition I decline to award any terminal dues because she voluntarily executed a settlement agreement dated 24<sup>th</sup> September 2014 acknowledging receipt of Kshs.46,000 as final settlement.
27. In *Coastal Bottlers Limited v Kimathi Mithika* [2018] eKLR the Court of Appeal held that: -

“In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent's termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the respondent's part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties...”
28. Although she alleged that she was forced to sign the agreement, she adduced no evidence to support that allegation and she never reported the matter to the police. I therefore dismiss the alleged coercion for lack of evidence.



### **Counter Claim**

29. The respondent claimed refund of Kshs.126,095 which she paid on behalf of the claimant to clear her maternity hospital bill on 25<sup>th</sup> June 2014 vide banker's cheque number 236350. The claimant admitted that indeed the respondent paid the said hospital bill. She has however not proved that the respondent was bound to pay the said bill under the contract of service and the law. I therefore find and hold that the claimant is bound to pay the respondent the said debt of Kshs.126,095.
30. In addition, I further award the respondent Kshs.14,000 being one month's salary in lieu of notice because the claimant deserted employment without prior notice.
31. In the end I dismiss the claimant's suit with costs and enter judgment for the respondent for the sum of Kshs.140,095 plus interest at court rate from the date hereof.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI ON THIS 17<sup>TH</sup> DAY OF JANUARY 2020.**

**ONESMUS MAKAU**

**JUDGE**

