

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT OF KENYA AT NYERI

CASE NO. 35 OF 2018

SALOME MAINA.....CLAIMANT

VERSUS

CHIEF OFFICER DEPT. OF EDUCATION,

LAIKIPIA COUNTY GOVERNMENT.....RESPONDENT

RULING

1. The objection is on the question being asked regarding the existence of a contract. Mr. Chege objects that the questions being put are not proper as the Claimant should be proving her employment and not asking the Respondent's witness why there is no employment. There is a tacit admission, he says, that there is no employment based on the question asked.

2. Mr. Opiyo for the Claimant argues that the question is relevant as Section 9 of the Employment Act places a burden on the employer to prepare and cause to be executed a contract of employment. He thus asserts it is a proper question to put to the witness.

3. Mr. Chege in brief reply states that the proper question to be asked is on the issue of employment as the Respondent has asserted there is no employee-employer relationship and thus the question as whether there is no contract is superfluous.

4. The objection taken relates to the framing of a question in relation to the issue of an employment contract. Indeed it is true as Mr. Opiyo asserts that Section 9 of the Employment Act imposes an obligation on an employer to cause a contract to be drawn where the employment is for more than a month. The Claimant's representative however is misplaced in the framing of the question put. As pointed out by Mr. Chege the Respondent has denied the existence of the employer-employee relationship. It thus would be untenable to ask why there is no contract as that issue is denied by the Respondent and the Claimant has not availed a counter to that position. The proper question may be put for the witness to answer but not as to why there is no contract. Perhaps the question could be whether she was employed and what the terms were or whether she was enumerated as employee.

Objection is thus well founded and is upheld.

It is so ordered.

Dated and delivered at Nyeri this 25th day of February 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar