

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 53 OF 2016

JOSEPH WANJOHI NJOROGE.....CLAIMANT

VERSUS

HELLEN WAIRIMU NJOROGE.....RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent and averred that he was employed as a general labourer in 1986 by the Respondent who is his sister in law. He averred that he was dismissed unilaterally without any justifiable cause on 14th September 2015. He averred that at the time of termination he was earning a monthly salary of Kshs. 13,000/- and that he lodged a complaint at the Murang'a Labour Office and after conciliation on 19th November 2015, they agreed on various sums to be paid to the Claimant being salary arrears for 2014 – Kshs. 86,000/-, a refund of Kshs. 30,000/- due from the Respondent's husband in the year 2003, Kshs. 63,000/- being refund of weekly allowances, Kshs. 150,000/- being piecework done by the Claimant for the Respondent's husband in Britain in 2003, one month's salary in lieu of notice – Kshs. 13,000/-, annual leave for 5 years – Kshs. 45,488.90, rest days for 5 years – Kshs. 112,666.60, public holidays for 3 years – Kshs. 21,666.60, service gratuity for 24 years – Kshs. 150,000/-, compensation for unlawful dismissal from service – Kshs. 156,833/-, costs of the suit plus interest.

2. The Respondent filed a defence in which she averred that there was a mutual agreement that she would pay school fees for the Claimant's children and in return the Claimant would help with farm work at the Respondent's farm. The Respondent averred that she received the complaint referred to the Labour Office and that there was no agreement reached at the said office as matters were left in abeyance. She averred that she scuttled the negotiations at the Labour Office and that the Claimant in breach of the laid down procedure deceitfully in pursuit of an expedited settlement occasioned the collapse of the negotiation proceedings. She urged the dismissal of the suit.

3. The Claimant testified as did the Respondent and her witnesses Stephen Kamau Ngubu and Julius Kiugu Mwangi. The Claimant testified that he was employed by the Respondent in 1986 at the farm in Murang'a and that he used to receive Kshs. 13,000/- at the time of dismissal. In cross-exam he stated that he used to earn Kshs. 5,000/- and that he received this sum till 1990 and that his wife moved to the farm in 1990 and that he joined her later. He would be paid through MoneyGram and the Respondent and her husband would send a lot of money to pay for a lot of stuff. He stated that both his brother and the Respondent employed him and did not give him a letter. He confirmed that he did not have any document to show receipt of money through MoneyGram. He stated that he was accused of theft of some items by the Respondent and there was a meeting with elders and it was then that he went to the labour office saying that he was employed by the Respondent. He stated that in 2003 he worked in the UK not at his brother's. He stated that in 1990 his parents were brought to stay on the farm and that he had not sued his brother as he was abroad and that he had sued his brother's wife which was the same. In re-examination he testified that he was employed by his brother in 1986 and that his wife worked on the farm before he joined her. He stated that his brother was not resident on the farm.

4. The Respondent testified that she never employed the Claimant. She stated that she went to the UK in late 1986 and that she left her mother and father in law in charge of the farm. She stated that her brother in law, the Claimant was not her employee. She testified that she came visiting in 2015 and noticed some things were missing and on questioning the Claimant he was obstinate. She stated that she called for a meeting and that the Claimant initially denied any wrongdoing at the first meeting but eventually admitted that he used to steal and sought forgiveness. She arranged for another meeting and the Claimant said he would not turn up. She said that she was asked to produce letters at the Labour Office and her response was that there were none as she had not employed the Claimant. In cross-exam she stated that the Claimant would go to the farm from time to time to visit his mother. She testified that her father in law died in 1995 and that he was as fit as a fiddle and that he worked the farm from 1986 till 1995 and that after his demise her mother in law was in charge. She said that her nieces and nephews would come and work on the farm. She stated that the Claimant would come and go as did everyone else and he was not in charge of her farm. She stated that the Claimant stole chicken manure, eggs and was lying that he had sent her son money via Mpesa. She testified that she never reported to Police and that the Claimant was not convicted of theft.

5. The Respondent's 1st witness Stephen Kamau Ngubu testified that he was a distant cousin to the Claimant and the Respondent. He stated that attended a number of meetings and that he was present when the Claimant admitted stealing from the Respondent and the Claimant asked for forgiveness. In cross-examination he testified that he attend the meeting at the behest of the Claimant's brother and stated that the Claimant's brother called him and asked him to attend the meeting. He stated that at the meeting, the Respondent accused the Claimant of theft of chicken manure and Mpesa. He stated that he did not know if the Claimant was an employee. The Respondent's 2nd witness Julius Kiugu Mwangi testified that the Claimant used to run errands for the couple and was resident at the farm alongside other relatives. He stated that at the first meeting the Claimant denied any theft and at the second meeting he admitted to all the allegations and asked for forgiveness. He testified that the Claimant did not show up at the third meeting and instead took the matter to the labour office at Murang'a. In cross-examination he testified that the Claimant lived at the Respondent's farm as a visitor and that when he visited the farm he would find the Claimant there on occasion. He stated that the relations between the Claimant and the Respondent deteriorated and the Claimant was accused of the loss of some items. He said that no court action was taken and the matter was not reported to the Police. He stated that the Claimant did not go to the Labour Office when the Respondent gave her version.

6. The parties filed submissions and the Claimant submitted that parties are bound by their pleadings and that the Respondent had admitted that there was an informal relationship between her and the Claimant. It was submitted that she admitted that the Claimant would help with the Respondent's farm work and in return she would pay school fees for the Claimant's children. The Claimant submitted that she did not bring any evidence that she paid school fees for the Claimant's children equivalent to the work done by the Claimant at the Respondent's farm. He submitted that the matter was referred to the Labour Office Murang'a and the complaint did not elicit a response as the Respondent did not avail employment records as requested. The Claimant submitted that the County Labour Officer calculated the dues and required the Respondent to deposit the sum within 14 days but the Respondent did not. The Claimant urged the court to award the Claimant his dues as calculated in his claim or such award as the court deems fit within the realm of labour laws.

7. The Respondent submitted that the issue to be determined was whether the Claimant was an employee of the Respondent and if not, whether he was an employee of the Respondent's husband though he is not a party to the suit. The Respondent submitted that the Claimant had cast his case such that the Court would find that he was either an employee of the Respondent or her husband. Regarding the Claimant and the issue at the Labour Office, it was submitted that the scheme was hatched in 2015 and the Labour Office requested for records and that the Respondent could not deliver any as there was no employer-employee relationship. It was submitted that strangely without any shred of evidence of the employer-employee relationship the Labour Office went ahead and calculated what is believed to have been owed. The Respondent submitted that there was a civil claim in the suit and that the fact that the Claimant was a brother to the Respondent's husband and would visit and till the farm did not entitle him to be an employee otherwise all the relatives of Respondent's husband who stay in the homestead when the two are in Britain would be employees. The Respondent urged the dismissal of the suit with costs.

8. The suit is a peculiar one. The Claimant asserts he was employed by the Respondent and her husband (his brother) in 1986. In his testimony he stated that he moved to the farm in 1990 and that he had sued the Respondent. He gave the reason for not suing his brother as absence from Kenya and he stated that he had sued the Respondent which was one and the same thing. He thus sought payment of the dues he tabulated in his claim being the unpaid dues including notice, severance, unpaid allowances and compensation for unlawful termination. The Respondent on her part denies ever employing the Claimant and asserts that the agreement was that the Claimant would assist on the farm and in return the Respondent would pay fees for the children of the Claimant. An employment relationship does not seem to have existed as the Employment Act defines an employee as follows: "*employee*" means a person employed for wages or a salary and includes an apprentice and indentured learner. Nothing in this definition suggests that one who works for something in kind or under an arrangement as suggested herein is an employee. Despite asserting that he was paid some Kshs. 5,000/- at the beginning and some Kshs. 13,000/- later through bank transfer, the Claimant did not adduce any shred of evidence to show the employee-employer relationship existed. In his demands, he sought sums he did not prove in addition to seeking relief for a hefty sum of money he claims we was owed (allegedly) for work done in Britain in 2003 from the Respondent's husband who is not even a party to the suit. That was a ridiculous attempt if ever there was one. The inevitable fate of this suit is dismissal and I hereby dismiss the suit with costs to the Respondent.

It is so ordered.

Dated and delivered at Nyeri this 28th day of May 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar