



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 933 OF 2017

JOSEPHINE NDINDA KIMWELI 1st CLAIMANT

FLORENCE KATUNGE KYENGO2nd RESPONDENT

v

MR. & MRS. JAZZ WARAH..... RESPONDENTS

RULING

1. The 2 Claimants (acting in person) instituted legal proceedings against the Respondents on 18 May 2017 and the Issue in Dispute was stated as

Unfair termination of Miss Josephine Ndinda Kimweli (House servant) employed on 1st May 1999 terminated 4th October 2016. Salary Shs 15,000/= per month No House. (2) Florence Katunge Kyengo (House servant) employed 2nd January 2010 terminated 3rd October 2016. Last salary Shs 11,000/= per month, house provided and failing to pay the Claimants terminal benefits as contained in the Employment Act 2007 and the Regulation of Wages Legal Notices and any other Laws.

2. In its Response, the Respondent indicated that it would raise a Preliminary Objection on the ground that the Claimants had previously filed Nairobi Cause No. 2590 of 2016 in which the cause(s) of action was the same.

3. On 21 November 2017, the Respondents moved Court seeking orders

1. **THAT** the Claimants suit filed herein be struck out with costs to the Respondents.

2. **THAT** the costs of this application be paid by the Claimants.

4. When the application was placed before Court on 25 January 2018, the Court directed the Respondents to serve the Claimants through the phone numbers they had indicated in the Memorandum of Claim.

5. According to an affidavit filed in Court on 19 February 2018, the person who answered the phone used by the Claimants denied knowledge of them.

6. The Court therefore allowed Mr. Kang'ethe to prosecute the application.

7. Among the attachments filed with the supporting affidavit to the motion was a Statement of Claim in Nairobi Cause No. 2590 of 2016, *Josephine Ndinda Kimweli & Florence Kyengo Katunge v Jazz Warah and Mini Warah* wherein the Issue in Dispute was stated as

Wrongful dismissal of the Claimants **JOSEPHINE NDINDA KIMWELI** and **FLORENCE KYENGO KATUNGE**, being aggrieved by such wrongful dismissal.

8. The dates of dismissal were pleaded as 3 October 2016 and 5 October 2016.

9. The pleadings were drawn by Wangari Njuguna & Co. Advocates.

10. It does not require any analysis to establish that the Claimants have filed 2 different Causes which arise from the same legal injury/wrongful action allegedly perpetrated by the Respondents.

11. That is an abuse of the Court process and should not be allowed.

12. The Court will therefore allow the instant application and order that this Cause be struck out with costs to the Respondents.

Delivered, dated and signed in Nairobi on this 9th day of March 2018.

Radido Stephen

Judge

Appearances

Claimants In person (did not participate)

For Respondent Mr. Kang'ethe instructed by Kang'ethe & Co. Advocates

Court Assistant Lindsey