

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.554 OF 2014

GERMARIA MUINDI KILANGA.....CLAIMANT

- VERSUS -

CHIC FASHIONS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 16th November, 2018)

JUDGMENT

The claimant filed the memorandum of claim on 04.04.2014 through Namada & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) The declaration that the respondent's summary dismissal of the claimant from employment was unfair and unlawful and the claimant is entitled to payment of his terminal dues and compensatory damages as pleaded.
- b) Payment of terminal dues and compensation Kshs. 1, 002, 000.00 plus interest (the sum being salary for 6 days in January 2014 Kshs. 2, 400.00; notice pay Kshs.12, 000.00; unpaid December 2014 salary Kshs.12, 000.00; service gratuity Kshs. 126, 000.00; unpaid house allowance Kshs. 453, 600.00; pay in lieu of due annual leave Kshs.252, 000.00; 12 months compensation Kshs. 144, 000.00).
- c) Certificate of service to issue.
- d) Costs plus interest.

The response to the memorandum of claim was filed on 30.04.2014 through J.O Juma & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The evidence by the claimant is that he worked for the respondent as employed from sometimes in 1992 to 06.01.2014 without a break. He worked as a tailor and his testimony is that his last pay was Kshs.12, 000.00 per month.

His further evidence is that in December 2013 the claimant's wife was unwell and the claimant took a verbal permission given by the respondent's director one Frandiv and he proceeded to attend to his wife. On 16.12.2013 he reported back and Frandiv told him to report on 18.12.2013. On 18.12.2013 he reported and Frandiv told him to report on 23.12.2013 and when he did, he was told by Frandiv to report on 06.01.2014. He did and on 06.01.2014 Frandiv told him that his services were no longer needed and he should consider himself dismissed. In the cause of the hearing, the Court finds that the person the claimant called Frandiv was in fact the respondent's Director one Shah Pradipkumar and who simply testified that he had nothing to do with the claimant's employment or permission to be away from work.

The Court has examined the specific task daily contracts with daily payment on completion and finds that there were weeks when he worked less than 5 days in the week. The claimant admitted that he signed the daily contracts. The Court finds that he is bound accordingly. He was a daily worker and there was a break in the service. The contract of service ended at the end of every day. In such circumstances it cannot be that the claimant took permission as alleged to attend to his sick spouse because that was unnecessary. He does not deny to have signed on 05.12.2013 as his last day at work. He must have been paid up to that date.

The claimant's suit will therefore collapse. He was a daily worker. He had breaks in the service. He could be absent at will. Finally, on a balance of probability he only worked for the respondent upon the signed daily contracts. The alleged service from 1992 was not established. In conclusion judgment is entered for the respondent against the claimant for dismissal of the suit with orders that each party to bear own costs of the suit.

Signed, dated and delivered in court at Nairobi this Friday 16th November, 2018.

BYRAM ONGAYA

JUDGE