

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 319 OF 2017

ESTHER WANGUI MAINA.....CLAIMANT

VERSUS

JANE WAIRIMU NDIRANGU.....1ST RESPONDENT

THE PRESBYTERIAN FOUNDATION.....2ND RESPONDENT

JUDGMENT

1. The Claimant sued the Respondents asserting that she was a cleaner-cum gardener at P.C.E.A Kirathimo Church under King'ong'o Parish from sometime in 2010 till 28th December 2016. She sued the Session Clerk as 1st Respondent and the Foundation as the 2nd Respondent. She avers that her payment was below the minimum consolidated wage under the minimum wage guidelines issued by the Government. She averred that her dismissal was without lawful cause, reason or excuse terminating her contract of service with only 3 days notice. She averred that she was dismissed against the tenets of justice and the objects of the P.C.E.A constitution. The Claimant thus sought payment of Kshs. 361,608/- being wage underpayments from June 2010 to December 2016, Kshs. 36,408/- being in lieu of 3 month's notice, Kshs. 72,816/- as service pay, Kshs. 28,080/- being unremitted statutory deduction for 78 months, Kshs. 32,200/- being NHIF dues unremitted for 78 months, overtime worked – Kshs. 221,020.80 for 6 years, Kshs. 8,090.60 being double pay for public holidays, a certificate of service and interest at court rates.

2. The Respondent's filed a defence to the memorandum of claim in which it was stated that the 1st Respondent was improperly joined in the proceedings. It was averred that the Respondents have come to learn that the Claimant was a volunteer at Kirathimo Local Church where the members had come to an arrangement with the Claimant where she would keep the compound clean and the members would pay her children's fees and raise other funds for her. The Respondents averred that given the special relationship between the Local Church Council and the Claimant the claims set out in her claim were untenable. The Respondents aver that any claim based on a contract of employment is misconceived and thus sought the dismissal of the suit with costs.

3. The Claimant testified as did Joseph Maina Muchiri and the 1st Respondent. The testimony of the Claimant was that she was employed to clean the compound and did other tasks including waiting for the night watchman to report to work and relieving the night watchman each morning. She claimed that she worked overtime for which there was no payment by the Respondents. The Respondents' witnesses testified that the Claimant was not an employee but was a volunteer who was helped by the Local Church Council to meet her daily needs through donations and gifts and that in exchange she would clean the compound from time to time. The parties also filed submissions and in the submissions advanced the different positions.

4. The Claimant was a dishonest person. In her testimony she alluded to being an employee of the Respondents which was a lie as the 1st Respondent in her official or personal capacity could not be the employer of the Claimant. The 2nd Respondent does not employ casuals either. The Claimant was therefore wrongly suited and was not entitled to any of the prayers she sought as she sued the wrong people. In any event she was ungrateful and was hitting back at the church that had helped her raise her children through donations and the like.

5. The Claimant's suit is dismissed. Whereas it would be appropriate to order costs against her, she came across as a person with no means and an order for costs would be futile. In the premises I order that each party bears their own costs.

It is so ordered.

Dated and delivered at Nyeri this 13th day of December 2018

Nzioki wa Makau

JUDGE