



**Nderitu v Kenya Farmers Association Limited (Cause 22 of 2014)
[2014] KEELRC 1178 (KLR) (18 July 2014) (Judgment)**

Joyce Muthoni Nderitu v Kenya Farmers Association Limited [2014] eKLR

Neutral citation: [2014] KEELRC 1178 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

CAUSE 22 OF 2014

B ONGAYA, J

JULY 18, 2014

BETWEEN

JOYCE MUTHONI NDERITU CLAIMANT

AND

KENYA FARMERS ASSOCIATION LIMITED RESPONDENT

JUDGMENT

1. The claimant Joyce Muthoni Nderitu filed the statement of claim on 30.01.2014 in person. The amended statement of claim was filed on 03.04.2014. The claimant prayed for judgment against the respondent for:
 - a) Salary for December 1999 Kshs.6,365.00.
 - b) 12 days worked in January 2000 Kshs.2,546.00.
 - c) Un-refunded sum of Kshs.29,954.40.
 - d) Total claim Kshs.38,865.40.
 - e) Costs of the suit.
2. The claimant also claimed and prayed at paragraph 8 of the statement of claim the difference in tax on her terminal dues that the Kenya Revenue Authority found she was entitled not to be deducted by the respondent.
3. The respondent filed the defence to claim on 19.06.2014 through Gatu Magana & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs. The respondent urged as follows:



- a) The suit is bad in law, fatally defective, misconceived, unsustainable, and an abuse of court process as it is res judicata. In particular, the respondent's case was that the matters in dispute were heard and determined in High Court Civil Suit No. 560 of 1998 between the plaintiffs including the claimant and the respondent being the defendant in that suit.
 - b) The suit is time barred under section 90 of the Employment Act and the Limitation of Actions Act and the suit should be dismissed.
4. The claimant testified that she was claiming salary from December, 1999 to 12.01.2000. It is clear that she prayed for salary for December, 1999. The other prayer is for days worked in January, 2000. The court finds that these two claims and prayers are time barred as urged for the respondent. They will therefore fail.
 5. At paragraph 8 of the claim, the claimant has pleaded and by the documents filed in court shown that by the letter dated 5.7.2013, the Kenya Revenue Authority confirmed that the claimant was to pay tax of Kshs.22,977.00 as opposed to Kshs.59,000.00 that the claimant had been subjected to by the respondent. The claimant testified that the respondent had paid her only Kshs.6,068.60 and failed to pay the other overtaxed due money. The court finds that the cause of action in that regard accrued on 5.07.2013 when the Kenya Revenue Authority advised the parties on the claimant's entitlement. The court finds that the respondent did not oppose the claim and the court further finds that the claimant has established her claim and she is entitled to be paid the outstanding Kshs.29,954.40 as claimed. While making the finding, the court further finds that the claimant specifically pleaded the claim and made the relevant prayer at paragraphs 8, 9, and 10 of the amended statement of claims but the respondent did not by pleading in the statement of answer or defence to claim oppose the claim and prayer. The court further observes that the claimant had repeated her claims about the over-taxation in the claimant's reply to memorandum of defence filed on 03.04.2014.
 6. The respondent will pay costs of the suit which the court fixes at Kshs.25,000.00.
 7. In conclusion, judgment is entered for the claimant against the respondent for the respondent to pay the claimant Kshs.54,954.40 by August 1, 2014, failing, interest to be payable at court rates from the date of filing of the suit being 30.01.2014 till full payment.

SIGNED, DATED AND DELIVERED IN COURT AT NAKURU THIS FRIDAY 18TH JULY, 2014.

BYRAM ONGAYA

JUDGE

