



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 90 OF 2013**

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS,  
HOSPITALS AND ALLIED WORKERS.....CLAIMANT**

**-VERSUS-**

**INDERJEET SINGH.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday 20<sup>th</sup> September, 2013)**

**JUDGMENT**

The claimant trade union filed the memorandum of claim on 18.04.2013 on behalf of its member Loise Angila Olemba, the grievant in the case. The claimant prayed for judgment against the respondent for:

- a. **Kshs.7,154.00 being one month pay in lieu of the termination notice.**
- b. **Service gratuity for one year worked at 15 days pay being Kshs.3,577.00.**
- c. **16 months underpayment for 16 months in 2009 to April, 2010 at 4,155.00 per month making Kshs.66,480.00.**
- d. **Underpayment in June 2010 to 12<sup>th</sup> June 2010 at Kshs.4,721.00.**
- e. **Kshs.2,861.70 being salary for 12 days worked in June 2010.**
- f. **Unpaid house allowance for 16 months from January 2009 to April, 2010 at Kshs.848.30 making Kshs.13,572.00.**
- g. **Unpaid house allowance for May, 2010 at Kshs.933.20.**
- h. **12 months salaries for compensation for unlawful termination at Kshs.7,154.00 making**

**Kshs.85,848.00.**

**i. Total claim of Kshs.193,149.40.**

**j. Costs of the case.**

**k. Interest at court rates.**

The respondent filed the statement of defence on 06.05.2013 through Chepkwony & Company Advocates and prayed that the claimant's case be dismissed with costs.

The key preliminary issue for determination in this case is whether the grievant was employed by the respondent. The grievant testified that the respondent employed her as a domestic worker from 05.01.2009 to 12.06.2010 at a daily pay of Kshs.50.00 and being Kshs.1,500.00 per month. She testified that she was not housed and was not paid house allowance. The grievant testified that the respondent summoned her on 12.06.2010 and asked her to convert to a casual worker to be paid every two weeks but she declined to sign in acceptance and as a consequence the respondent sacked her. Her evidence was that she worked from 7.00 am to 1.00 pm and the respondent's residence was at Elvic Center on the first floor of the flat. She also knew that the respondent owned a workshop at Pioneer in Eldoret town. She stated that she was deployed at the house and not the workshop. She was expected to work up to the evening hours but the respondent had permitted her to leave at 1.00 pm every day she worked. At the time of the hearing, the grievant testified that she was engaged as a casual domestic worker with four customers.

The grievant's 1<sup>st</sup> witness was Florence Kadogo who stated that she had stepped in on behalf of the grievant for two weeks when the grievant's

brother died. It was on 15.5.2010 to 31.5.2010. The witness was not sure if it was for two or three weeks.

The respondent denied ever employing the grievant. He testified that his residence was at Lake Wheel flat, 1<sup>st</sup> floor. He received a demand letter and handed it over to his advocate. He employed only one domestic worker known as Lydia Vulekani, the respondent's witness (**RW**) and who testified that she was employed by the respondent from January 2009 without any break till at the time of the hearing of the case on 25.07.2013. RW gave the name of the respondent's daughter as Malbrid, similar to the one given by the grievant.

The court has considered the evidence on record. The grievant has not provided the details surrounding the alleged contract of employment. It is customary for the employee to vividly recall and narrate the engagement circumstances such as an invitation by the employer or request for employment or interview or such other circumstances. In this case, the grievant has merely alleged that she was employed by the respondent. Taking all the evidence and circumstances of the case into

account including the grievant's failure to vividly recall pertinent issues such as the names for the entire respondent's family, the court finds that the claimant has failed to establish a contract of employment in this case.

The court further holds that for a claimant to establish an oral contract of employment, the particulars and circumstances of the engagement must be vividly narrated and stated in the evidence as the foundational basis of the contract. That was not done by the claimant in this case and the court finds that on a balance of probability, there was no employment contract between the parties.

The court further finds that it is not believable that the respondent as an employer would have given the grievant permission to serve for only six hours on daily basis. The account as given by the respondent is more credible than that given by the grievant. The respondent has established that he retained only one domestic worker throughout the period in issue. Accordingly, the court finds that the evidence, on a balance of probability, provide an irresistible momentum for the finding that there was no contract of employment between the grievant and the respondent.

In conclusion, the claimant's case is dismissed with costs.

**Signed, dated and delivered in court at Nakuru this Friday, 20<sup>th</sup> September, 2013.**

**BYRAM ONGAYA**

**JUDGE**