

IN THE EMPLOYMENT RELATIONS COURT

AT SUVA

APPELLATE JURISDICTION

CASE NUMBER: ERCA 07 of 2020

BETWEEN: **RAJESH NARAYAN SINGH**
APPELLANT

AND: **PRAMILA DEVI**
RESPONDENT

Appearances: Mr. M. Yunus for the Appellant.

Mr. R. Charan for the Respondent.

Date/Place of Judgment: Friday 05 May 2023 at Suva.

Coram: Hon. Madam Justice Anjala Wati.

JUDGMENT

Catchwords:

Employment Law – Whether there existed an employment relationship between the parties for the Labour Officer to file a complaint against the respondent citing her failure to submit to the demand to provide time and wages records in accordance with s. 45(1) of the Employment Relations Act and for failure to meet the demand for wages made in accordance with s. 247(b) of the Act.

Cause and Background

1. The appellant has filed an appeal against the decision of the Tribunal of 16 March 2020 on its findings that there was no employment relationship between the parties to the proceedings and

as such the Labour Officer's complaint against the respondent alleging two offences under the Employment Relations Act ("**ERA**") had no basis. The charges were consequently dismissed.

2. The complaints against the respondent was failure to submit to the demand to provide time and wages records in accordance with s. 45(1) of the ERA and for failure to meet the demand for wages for the period 29 November 2014 to 29 November 2017 made in accordance with s. 247(b) of the ERA.
3. I will briefly outline the background of the dispute between the parties and the evidence that unfolded during the trial. On 27 September 2018, the respondent pleaded not guilty to the two complaints identified above. The matter was set down for trial.
4. Due to the parties' differing versions about their relationship, the tribunal correctly indicated that the central issue for determination was whether any employment relationship existed between the parties. To determine that, the tribunal reflected on the position of the parties they had taken at the trial. I will outline that evidence as analysed by the tribunal.
5. Mr. Rajesh Narayan Singh gave evidence that he took his complaint to the Labour Office on 15 December 2017 for non-payment of wages. According to Mr. Singh, he had worked for Ms. Pramila Devi from 2001 to 2008. He said that he was initially employed as a driver and mechanic and later assisted in the transporting of produce from Naitasiri to Lautoka. He claimed that he had been paid \$50 a week for his services, with an undertaking that the remaining wages would be paid into a savings account held by Ms. Pramila Devi and will be given to him at the end.
6. During cross- examination, Mr. Rajesh Narayan Singh conceded that he could not recall the year in which he commenced residing at the family home of Ms. Pramila Devi and indicated that there were no fixed hours of work. He claimed that whilst he was residing with Ms. Pramila Devi and her husband, who is now deceased, he built a house for the family, as a contribution to the costs of staying with them. He admitted to eating his meals with the family and having his cooking and washing done by the family.

7. Further in cross-examination Mr. Rajesh Narayan Singh admitted that he had suggested that Ms. Pramila Devi commence the buying and selling of produce, but denied having entered into a relationship with Ms. Devi during that time. Ms. Pramila Devi's husband was the one who had initially asked Mr. Rajesh Narayan Singh to come and live with the family as he was a cancer patient at that time.
8. The respondent Ms. Pramila Devi testified that she first met Mr. Rajesh Narayan Singh around 2006. He had first come to her place in the company of a taxi driver. He had assisted her husband source a motor engine from Suva. Mr. Rajesh Narayan Singh asked her whether he could undertake driving duties to assist her. He stayed home at the request of her husband who passed away in 2018.
9. According to Ms. Pramila Devi, Mr. Rajesh Narayan Singh was undertaking his own private mechanical works from within the family compound and began travelling to Suva with her to sell mangos where they would stay at a family friend's home. She stated that they ultimately entered into a relationship which ended in October 2017.
10. Pramila Devi's daughter also gave evidence. She stated that Mr. Rajesh Narayan Singh moved into the family home in or around 2006. She understood that he was there to help with the maintenance of the vehicles. The daughter indicated that he was like a father to her. He would stay at home and have his meals supplied and clothes laundered. It became known to her after three years that he was in a relationship with her mother. She said that she had figured it out. The daughter further stated that when she got married in 2015, Mr. Rajesh Narayan Singh had performed the role of her father at her wedding.

Tribunal's Findings.

11. The tribunal stated that the issue for consideration was whether the parties had an intention to create legal relations. It stated that the general principle in *Balfour v. Balfour (1919) 2 KB 571* must govern the analysis. The question that the tribunal said it needed to ask was whether the parties intended to make a bargain that should be enforced by law. It found that there was no evidence whatsoever of that.

12. The tribunal accepted that the evidence revealed that the arrangements that gave rise to Ms. Pramila Devi opening a stall at the Lautoka market and selling produce obtained from Naitasiri seemed to have emerged out of a domestic setting. It also found that there was no evidence of any consideration passing from Mr. Rakesh Narayan Singh to Ms. Pramila Devi based on any agreed terms or offer. It further found that there was no evidence of Ms. Pramila Devi intending that any of her promises, if she made any, should assume the form of a binding contract.
13. The Tribunal referred to the case of *Turner v. Turner (1918) 25 CLR at 570* and stated that it cannot shut its eyes to the ordinary facts of life, where domestic arrangements are entered into willingly by parties, without any intention of anything more. It said that it accepts the view of the respondent Ms. Pramila Devi that, in this case, the relationship between the parties had soured and the aggrieved Mr. Rajesh Narayan Singh sought to secure some compensatory benefit, as a consequence of his efforts.

Grounds of Appeal and Analysis.

14. The appellant raised 6 grounds of appeal. He contends that the Tribunal has erred in law and in fact:
 1. *when it failed to consider that there cannot be a de-facto relationship between the parties since during the period of the alleged offending, the respondent was legally married and living with her husband.*
 2. *when it held that there was no legal binding agreement because the arrangement arose out of a domestic setting since they were living under one roof even when there was no concrete evidence that the parties were in a de-facto relationship.*
 3. *when it held that there was no evidence of any consideration passing from Mr. Singh to Ms. Devi reliant on any agreed terms or offer when this was supposed to be vice versa, and the fact that it was undisputed that the appellant was receiving \$50 per week from the respondent.*

4. *when it failed to consider that the respondent had admitted that she had asked the appellant to undertake driving duties to assist her thus an employment relationship was in place as this as within the meaning of the term "domestic worker".*
 5. *when he failed to consider the evidence of the Labour Inspector that the appellant used to work for the respondent for 12 hours per day for 7 days of working which is clear breach of section 72(1) of the ERA.*
 6. *when it made an unreasonable and unsatisfactory finding in all the circumstances of the matter.*
15. The main issue on appeal is whether the tribunal made a correct finding based on the evidence that the relationship between the parties was not an employment relationship.
16. When the tribunal heard the parties, it had to decide whether there existed an employment relationship between the parties. The tribunal accepted the evidence of the respondent and her daughter that the parties were in a domestic relationship. I find that it was open to the tribunal to come to that finding based on the question of credibility and the available evidence before it.
17. I cannot interfere with the tribunal's findings on credibility unless I am shown that the tribunal could not have accepted the version of Ms. Pramila Devi and her daughter and rejected the version of Mr. Rakesh Narayan Singh. The version of the respondent and her daughter relates with other evidence which I will elaborate on.
18. Before I elaborate on the evidence, I must at the outset indicate that I do not accept the argument of the appellant's counsel that there could not be a domestic relationship as the respondent's husband was still alive at the time.
19. There are many instances of parties to the marriage entering into de-facto relationship without having their marriage dissolved or without the marriage breaking down irretrievably. Any suggestion that a party to the marriage cannot have a de-facto relationship disregards the

ordinary facts of life. There are so many cases in which findings have been made that a party to the marriage also had a de-facto relationship. The determination of whether there existed an employment relationship between the parties depended on the evidence and not on whether the parties could have had a domestic relationship.

20. If there was an employment relationship between the parties, the appellant would have demanded his wages and benefits when he was not paid fully since his engagement as a worker. He waited for over a decade and then complained when the relationship between the parties ended in 2017. This supports the respondent's evidence of a domestic relationship. That is the only reason why the appellant never complained about not being paid. The respondent had never intended that the appellant be his worker.
21. No worker will work for an employer who does not pay for years. In this case the appellant received only pocket expenses and that reflects more of a domestic setting than the employment relationship. Pocket expenses are given to family members. Workers receive salary and/or wages.
22. The appellant lived with the respondent and her family as a family member. He lived with the respondent, got treated as a family member and made suggestions about expanding the business as well. This is indicative of a domestic setting and not an employment setting.
23. The evidence of the daughter could not be ignored that the appellant played a father figure to her. This too is indicative of a domestic relationship between the parties. I do not think that an employee would get that privilege to take on responsibilities of the father.
24. There is also no evidence of the respondent making any compulsory deductions from his wages for Fiji National Provident Fund. Any worker will want to secure his or her future and plan for retirement. The compulsory savings is one means to ensure that. When the appellant was not paid for years, his savings for his retirement was affected. Any employee will then be concerned and raise this issue with the employer and failure to address may see the employee leaving work and/or making complaints to the relevant authorities. The appellant did not take

any steps until 2017. This is the time the respondent says that the domestic relationship came to an end.

25. I find that the appellant did not complain because he knew that he was not intended to be an employee of the respondent but as a partner. He therefore cannot claim wages as an employee when his personal relationship soured. There was no arrangement between the parties to employ him as a worker. I do not find any basis to flaw the finding of the tribunal.

Final Orders

26. In the final analysis, I find that there are no merits in the grounds of appeal and I therefore dismiss the same with an order that each party bears their own costs of the appeal proceedings.



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Hon. Madam Justice Anjala Wati

Judge

05. 05.2023

To:

1. *M. Y. Law for the Applicant.*
2. *Ravneet Charan Lawyers for the Respondent.*
3. *File: ERCC 07 of 2020.*