

**THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION**

31 July 2017

**B e f o r e :**

**MASTER MCCLOUD  
BETWEEN**

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**MRS RASHIDA ABEJE AJAYI**

**Claimant**

**And**

**(1) MR JOEL UDUKHOKHE ABU  
(2) MRS TERESA MOJISOLA ABU**

**Defendants**

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**Claimant: Ms Anna Beale of Counsel instructed by the Anti Trafficking and Labour Exploitation Unit (ATLEU).**

**Defendant Mr Emil Lixandru of Counsel instructed under Direct Access.**

**Hearing: 18 July 2017**

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**HTML VERSION OF JUDGMENT**

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*Keywords: labour exploitation – human trafficking – modern slavery - domestic servitude - minimum wage – domestic worker – employee rights -Immigration and Nationality Directorate – terms and conditions – wage deductions – special hearing arrangements - civil procedure – National Minimum Wage Act 1998 – family worker exemption – UK Visa - ECHR Art. 6 – Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims 2011*

**Master McCloud:**

1. This is my trial judgment in this claim brought by Mrs Ajayi, who alleges human trafficking, and labour exploitation by the Defendants. On her case she served as a domestic worker in the Defendant's home from 2005 to 2015 having been brought here from Nigeria for that purpose. It is pleaded that on 1 April 2015 the United Kingdom Human Trafficking Centre determined that there were reasonable grounds to believe that the Claimant was a victim of human trafficking by reason of the circumstances of her arrival in the UK. That factual averment is not admitted by the Defendants. She says she was paid only about £3000 (somewhat over that sum) over 9 years of domestic work with little or no personal freedom.
2. The Defendants who are alleged to have trafficked her and exploited her are, in the case of Mrs Abu, a civil servant involved in Policy Support at the Department of Business, Energy and Industrial Strategy, and in the case of Mr Abu, a supervisor working for Steris Instrument Management Services.

## **Civil Procedure: Procedural modifications where there may be a real risk of secondary victimisation**

3. By a letter dated 23/2/17 the Claimant's representatives (ATLEU) requested special hearing arrangements for this trial in view of the allegations of trafficking, the alleged vulnerability of the Claimant and the risk that a failure to adjust court procedure for the trial would interfere disproportionately with Ms Ajayi's Article 6 rights to a fair hearing.
4. I take note that Art. 11(4)(b) read with Art. 12 of the Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victim, 2011/36/EU, recognises that Member States must ensure that victims of trafficking receive specific treatment aimed at preventing as far as possible (consistent with national law and judicial discretion) that visual contact between victims and defendants including during the giving of evidence, so as to avoid secondary victimisation.
5. I was referred to *Kimathi and Others v Foreign and Commonwealth Office* [2015] EWHC 3684 (QB), in which Stewart J ordered the provision of video links in relation to a number of claimants and to *Duffy v George* [2013] EWCA Civ 908 where the Court of Appeal reminded tribunals that they have a wide discretion when it comes to designing fair procedures for substantive hearings (although this discretion must be exercised judicially). I was also referred to Witness Charter (2008) in relation to appropriate court facilities and measures. (In fact the current edition is that dated 2013).
6. Whilst this is not a criminal trial I considered that it was appropriate consistent with the Overriding Objective, and with Art. 6 of the Convention to direct that the trial take place in a courtroom at the Royal Courts of Justice which provided (i) separate entrances and exits from the court for the Claimant and Defendant sides, (ii) screening so that during the giving of evidence the Claimant could be cross examined by counsel but would not be in the line of sight of the Defendants themselves and (iii) that there should be separate waiting areas for the two sides.
7. In the event the Court system struggled to meet those requirements and the trial started late. Only certain court rooms are suitable, and the appropriate court had been arranged and listed but it was nonetheless found to be in use for a different case and judge, which delayed matters. Witness screens had not been arranged by the Court Service and there was initial refusal by the relevant office to do so on the day (this was later resolved), and the room adjacent to the court affording direct access to the witness box, which had been set aside for use by the Claimant and legal team separately from the Defendants had been occupied by staff from a public inquiry, and could not be used.
8. I commend the Masters' court staff assisting me 'on the ground' on morning of trial for having gone to great lengths to enable the trial to go ahead on the day. It is essential that the court fulfils its obligations in respect of proper measures to allow witnesses to give their testimony freely.

## **Background**

### **The right to be paid a proper wage**

9. Prior to the Industrial Revolution the general approach to labour law in the UK can I think fairly be said to have been for the most part focussed more on enforcing servitude by workers and punishing failures to work (and regulating the powers to punish) than on any notions of labour protection or welfare. That is not to overlook the passage of the Elizabethan poor law and the (in effect emergency law) Statute of Labourers 1351 enacted in the light of the Black Death, for example, albeit the latter especially was more about oppressive wage restraint than a minimum wage, with predictable ultimate consequences in the Peasants' Revolt, but is I think an acceptable generalisation for present purposes.
10. The basic notion that a worker is entitled to be paid a wage, rather than being open to being forced to take goods or services amounting to a deduction from wages at an employer's valuation, is surprisingly ancient and can be traced from the 1400s right through by way of the Victorian Truck Acts, to today's employment rights legislation. I can do no better than to quote from the speech of Lord Ackner in *Bristow v City Petroleum* [1987]

*"The old Truck enactments were very numerous and date from about the year 1464. The particular evil intended to be remedied was the truck system, or payment by masters of their men's wages wholly or in part with goods – a system open to various abuse – when workmen were forced to take goods at their master's valuation. The statutes were applied first to one branch of manufacture, and then in succession to others, as experience and the progress of manufactures dictated, until they embraced the whole or nearly the whole of the manufactures of England. They established the obligation, and produced, or at least fortified the custom, of uniformly paying the whole wages of artificers in the current coin of the realm. By 1831 they were collected and consolidated I one Act (1 & 2 Will. 3, c.37). They were, in truth, part of a system of legislation regulating the relation of a master and workman, this part of it being in favour of the workman, who, as an individual, was deemed weaker than his master and therefore liable to oppression: per Byles J. in Archer v James (1859) 2 B & S 61, 82."*

11. Today one descendant of the Truck Acts is to be found in the Employment Rights Act 1996.
12. The quotation above highlights that in certain circumstances, especially pay, a servant (nowadays one would say 'employee') on his or her own is typically in a weaker position than his or her master ('employer) and is potentially more exposed to oppression. It is self-evident that economic oppression of the sort which gave rise to the Truck Acts can in the ultimate limit become a means of controlling the basic freedoms of the worker, especially where conditions of domestic service are involved.
13. Thus, a domestic servant who is unpaid, or is paid too little to live on without virtually complete dependence on the employer for basic day to day requirements at the employer's behest (such as a roof over their head, food and necessities), may be bound by economic shackles which mean they wish to choose to leave and work elsewhere.
14. Those who are well educated, speak and communicate well in English, and are citizens or have legal rights to reside and work here, may find it practicable to remove themselves from exploitative work and seek employment elsewhere in the marketplace.
15. However it seems to me self-evident that those whose lawful right to be in the country depends on the continued relationship with the specific domestic employer, whose knowledge of legal rights and of the English language, is minimal and who do not have qualifications or a means of financial support other than minimal or discretionary cash payments from the employer, may reasonably be expected to find it much harder or impossible to remove themselves from exploitation.

## **Outcome**

16. This case concerns the position of Ms Ajayi in the household of Mr and Mrs Abu which I will say more about below, but for the reasons which I set out below I find that:
  - a. Mr and Mrs Abu made deductions from wages for Ms Ajayi, in respect of food and accommodation; and
  - b. They are not entitled to rely on the exemption from the legal obligation to pay at least the national minimum wage which appears in reg57(3) of the National Minimum Wage Regulations 2015 SI 2015 No. 621 ("NMWR").
  - c. It follows that the Defence to the claim for breach of contract brought by Ms Ajayi must fail.
  - d. For the avoidance of doubt I consider that the Claimant's parallel application to strike out and for summary judgment, based on the pleaded defence, including as it does the Part 18 request about which I express views below, discloses no reasonable ground for defending the claim should be struck out and judgment entered for a sum to be determined, on the wages claim insofar as it relates

to minimum wages. In the light of the trial decision as to the facts on the technical defence to the minimum wage issue, it follows there is no reasonable prospect of defending the wages claim and there is no other compelling reason for a trial on the remaining aspects of that part of the claim since they could not in any event now afford a defence.

### **The parties' cases in outline**

17. Ms Ajayi's case is that she was brought to this country – in the circumstances trafficked - by her previous domestic employers in Nigeria so as to come to work for these Defendants and has been subjected to minimally paid domestic servitude.
18. She says (I paraphrase) that she was subject to a regime of *ad hoc* and minimal pay and was permitted very little freedom. She did not when she was brought here she could not read or write English, and had no knowledge that the law of this country is that workers must normally be paid at least a minimum wage. She was brought to the UK by her previous domestic employers whom she served in Nigeria, and they passed her into the service of the current Defendants.
19. Her position is that she thought that by coming to the UK to serve the Defendants she would be able to learn English, get training and obtain the right to remain in the UK, so as ultimately to find a better life here than she had in Nigeria.
20. Her position is that the time came when she had learned enough English to realise that the Defendants had been representing to the Immigration and Nationality Directorate in this country for some years that she was being paid wages and had various employment rights and she says she refused to go along with that because it was untrue and she was not prepared to continue signing the documents presented to her which made those representations.
21. Whilst this is not a judgment on quantum, her position is that save for occasional modest 'pocket money' level payments of £20 or £25 at the discretion of the Defendants, she received and saved for herself from them around £3,000 cash over a period of around 9 years of domestic service. If one wants to look at that in annual terms, that is a shade over £300 *per annum* if her case on that is ultimately accepted. There were some additional payments of modest sums which she also accepts were made.
22. The Defendants' case is quite to the contrary. They say that they treated her as a member of their family, paid her appropriately or perhaps at times generously for the work she did and made no deductions from her pay in respect of meals and accommodation or anything else. They do not accept that the documents which were submitted to the Immigration and Nationality Directorate over the period 2005-2015 were in any way a misrepresentation for the purposes of obtaining a family worker visa and visa renewals. Their position is instead that she was to be paid for the work she in fact did, which they say was not very much in reality, rather than a specific fixed wage.
23. They accept that when they paid her, they paid in cash, and kept no records either of sums paid or of hours worked her, and their position in oral evidence was that this was because one would not do that in the case of a person treated as a member of the family, and it simply was not something they thought it necessary to do. As their own counsel put it in cross examination of the Claimant, they paid her 'what she deserved' for what she did but that she never did as much work as the 30 hours per week envisaged by the 'terms and conditions' documents submitted by them from time to time to the immigration authorities.
24. Their view, expressed via counsel in submissions and in cross examination, is that at some stage a friend or other person must have told her she could be paid more and that this led to the claim now made, in other words that it was that external influence which led her into the present claim.

### **The parties' legal positions**

25. In strict point of law Ms Ajayi alleges that the Defendants have breached the written contracts which set out the

terms and conditions of her service, and section 1 of the National Minimum Wage Act 1998 (and the implied terms read into the contracts by that Act), in the manner in which they purportedly remunerated her for her work within the Defendants' household.

26. The Claimants claim arises from her service as a domestic worker in the Defendants' household in the period 2005 to 2015. She alleges breach of implied term of her employment contract, by way of payment of less than the national minimum wage contrary to s.17 of the NMWA, and also alleges harassment contrary to the Protection from Harassment Act 1997 during the period of her employment. This judgment does not deal with the Harassment claim.

27. Section 17 of NMWA states:

**17. Non-compliance: worker entitled to additional remuneration.**

(1) If a worker who qualifies for the national minimum wage is remunerated for any pay reference period by his employer at a rate which is less than the national minimum wage, the worker shall be taken to be entitled under his contract to be paid, as additional remuneration in respect of that period, the amount described in subsection (2) below.

(2) That amount is the difference between—

(a) the relevant remuneration received by the worker for the pay reference period; and

(b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the national minimum wage.

(3) In subsection (2) above, "relevant remuneration" means remuneration which falls to be brought into account for the purposes of regulations under section 2 above.

28. The basic entitlement to be paid the national minimum wage arises from s.1 of the NMWA:

**1. Workers to be paid at least the national minimum wage.**

(1) A person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage.

(2) A person qualifies for the national minimum wage if he is an individual who—

(a) is a worker;

(b) is working, or ordinarily works, in the United Kingdom under his contract; and

(c) has ceased to be of compulsory school age.

(3) The national minimum wage shall be such single hourly rate as the Secretary of State may from time to time prescribe.

(4) For the purposes of this Act a "pay reference period" is such period as the Secretary of State may prescribe for the purpose.

(5) Subsections (1) to (4) above are subject to the following provisions of this Act.

29. It is the Defendants' case that the Claimant fell within the scope of the 'family worker' exemption from the obligation on the employer to pay the national minimum wage. The 'family worker' exemption appears in regulation 57(3) of the NMWR. That Regulation states:

## **Work does not include work relating to family household**

57.—(1) In these Regulations, "work" does not include any work done by a worker in relation to an employer's family household if the requirements in paragraphs (2) or (3) are met.

(2) The requirements are all of the following—

- (a) the worker is a member of the employer's family;
- (b) the worker resides in the family home of the employer;
- (c) the worker shares in the tasks and activities of the family.

(3) The requirements are all of the following—

- (a) the worker resides in the family home of the worker's employer;
- (b) the worker is not a member of that family, but is treated as such, in particular as regards to the provision of living accommodation and meals and the sharing of tasks and leisure activities;
- (c) the worker is neither liable to any deduction, nor to make any payment to the employer, or any other person, as respects the provision of the living accommodation or meals;
- (d) if the work had been done by a member of the employer's family, it would not be treated as work or as performed under a worker's contract because the requirements in paragraph (2) would be met.

30. The Claimant's position (so far as material to this trial) is that the exemption relied on by the Defendants does not assist them because she was liable to deductions, by the employer as respects the provision of her living accommodation and meals. I heard oral evidence and cross examination so as to decide the issue of fact as to whether such deductions were or were not made.

### **Authorities cited**

- 31. The Claimant cited Delaney v Staples [1990] ICR 331, CA.
- 32. The Defendant cited Nambalat v Taher [2013] ICR 1024 and Jose v Julio [2012] ICR 487.

### **Burden of proof**

- 33. This is a trial of the issue of fact as to whether the Defendants made deductions from wages which fall within the scope of re. 57(3)(c) of the NMWR and it is plain that if that issue of fact is decided against the Defendants then their defence relying on reg. 57(3) fails.
- 34. By s. 28 of the NMWA it is provided that:

### **Reversal of burden of proof.**

(1) Where in any civil proceedings any question arises as to whether an individual qualifies or qualified at any time for the national minimum wage, it shall be presumed that the individual qualifies or, as the case may be, qualified at that time for the national minimum wage unless the contrary is established.

(2) [...]

(3) Where in any civil proceedings a person seeks to recover on a claim in contract the amount described as additional remuneration in section 17(1) above, it shall be presumed for the purposes of the proceedings, so far as relating to that amount, that the worker in question was remunerated at a rate less than the national minimum wage unless the contrary is established.

35. In my judgment in this trial the burden therefore falls on the Defendant in relation to whether the Claimant was entitled to the minimum wage and she is presumed to have qualified unless the defence under reg. 57(3) is established. However there is also an application by the Claimant to strike out and/or for summary judgment and the burden on that application of course falls on the applicant.

### **The evidence**

36. The Claimant gave oral evidence and was cross examined as were Mr and Mrs Abu.

### **Claimant**

37. In chief the Claimant's evidence was that she was told by the Defendants that she would receive food and accommodation in exchange for work for them and that they would pay for school fees for her. She said that she now knows, and did not know at the time, that various documents later given to her by the Defendants were terms and conditions of employment (in English) given to her each year. She knew nobody in the UK who she could trust to give her advice and she could not read or write English. She had no option but to trust the Defendants.
38. She described how as time passed in this country she gradually learned some English and she realised that the documents which the Defendants had been getting her to sign were saying, falsely that she would be paid of the order of £800 per month (the contracts vary somewhat from year to year). She exhibits the terms and conditions documents. She says she understands (as is not in dispute) that those terms and conditions were used by the Defendants to secure visa renewals each year to enable her to remain in the Defendants' service in the UK.
39. The Abus opened a bank account in her name in 2006, and she exhibits the bank statements. She was paid only in cash but deposited what she could after some necessities were paid for by her. She had no other source of income. She exhibits a table of underpayment relative to the minimum wage, calculated by her solicitors, which is based on the claimants estimate of 84 hours servitude per week, from 11/9/05 to 12/2/15 totalling £238,498.80 at the National Minimum Wage rates prevailing at the relevant times. The total paid into the account was £3,030 over the above period.
40. She also indicated that some small payments (they appear to total around £195) were made directly by the Defendants to the Claimant's relatives in Nigeria and she accepts that those sums should be set off against her claim. She also accepted that on 3 or 4 occasions the Defendants paid her sums of £200 per month and a further £100 in December 2014 but that she did not pay those into her bank account.
41. She denied that she was paid the salary suggested in the Defendants' spreadsheet, whether that be the sums recorded there of over £800 per month (typically) or the lesser sums of the order of £313 or so based on one interpretation of the Defendants' case on the spreadsheet figures.
42. She said that in 2014 the Defendants took her to a lawyer in connection with a visa application. She was told to sign a document which she understood to say she was being paid around £800 per month. She was worried she would get into trouble if she refused to sign so she did so, but later went back to the lawyer to challenge the correctness of the document.
43. In cross examination, insofar as she expanded upon her evidence summarised above, she said she was told that she was to look after the Defendants children and that she was unaware she was supposed to be paid a wage. She was told she should do everything in the house.

44. They had told her they would sponsor her for a proper education, deal with 'her papers' (ie for immigration purposes) to get her a UK Passport. She did get some education but not to the level she had anticipated.
45. The Home office had asked for proof she was being paid and had refused her eventual application for indefinite leave to remain. At that stage she was taken to a lawyer by the Defendants and asked to sign a document saying she was being paid around £800 per month but was also told that the Defendants were deducting £500 for food and accommodation so that she was being paid a net sum of £300 in cash. That was all untrue and she refused to lie, after which the Defendants had started to make things difficult for her, told her to leave and work somewhere else (but my understanding is that she could not lawfully do so on her visa). She wanted them to tell the truth.
46. She went to Church on one occasion in that period and when she returned all her belongings had been put outside.
47. Because of 'the way things are in Nigeria' she had thought that coming to work for the Defendants was an opportunity to improve her life and the Defendants promised her an education and to be able to read and write English. She accepted she did get some education in the UK. She accepted that the Defendants had purchased a computer which it took her a while to access since she did not know about how to use it. She said she did have a bit of time after the household work was done and the children cared for to study, do something for herself. Her work for the Defendants included cooking, cleaning, child care, ironing. She would get up at around 6pm, get the Defendants' children ready for school take them to school, return and do the housework for the whole household, collect the children from school and then take them for example to swimming after school. She had most of the responsibility for the washing.
48. She accepted that at weekends they would cook together at times, but in the week she did that. Sometimes gardening would be done together with the Defendants.
49. The Defendants had paid her 'pocket money' (counsel's expression) of the order of £20 or £25 but not all the time.
50. The Defendants only took her to a lawyer when her application for indefinite leave to remain was rejected. The Defendants knew why it was rejected and told her it had happened before. The Home office wanted proof she was paid wages.
51. In terms of travelling to college, the Defendants would give her a bus pass for that on Mondays and Wednesdays and otherwise would drop her off near her church and she would then be picked up by them there.
52. Other than to go to church and to the college she did not go out or engage in social activities and did not have and was not allowed friends. On one occasion a Jehovah's Witness lady had started to get to know her and had given her a book to help with her English but Mr Abu had told her not to contact Ms Ajayi, when on one occasion the phone had rung and Mr Abu had been present.
53. She never went out late as she would describe it – such as 8pm or 9pm or 10pm - but the latest would be 6pm when coming back from church and then she would rush back because she did not want any trouble, and would shake. That was the context in which on one occasion she had written an apology letter to the Abus for coming home 'late' and that she had shouted at the Abus on that occasion asking why they hated her so much, because they were making her life so miserable. They would tell her to pray if she had done something and would also criticise her for example for not facing a particular way while praying. She had to do what they said and obey every rule in the house.
54. The Abus would 'borrow her' some money from time to time. On questioning her it became apparent to me that she meant that they would borrow money from her rather than lending her money. She gave a specific example of Mr Abu wanting £200 of her money from her account, and of her giving him her pin and card so he could remove the money, but that he had in fact withdrawn more than he said he wanted. They did give it back but only after 'a while' and she was not sure whether the specific money in the example had been repaid.



55. She was questioned about whether she spent money on clothes catalogues. She said she had purchased items from Next from the sale catalogue from time to time but only when there was a sale, and it was not correct to say that the Abus had paid for her; she had used the cash she had been paid from time to time when they paid her £20 or so.
56. She was asked if she had been permitted by the Abus to do voluntary work. She explained that the only work she did was for her church and no other voluntary work.
57. She explained that she was not permitted to speak freely to her brother in Nigeria and indicated that the phone would be on 'speakerphone' with Mr Abu listening and she thought this might be because her brother might ask how they were treating her. She had purchased a 'calling card' so as to be able to make calls without him being aware.
58. She said that on one occasion Mrs Abu had said in their own language rather than English - in relation to Ms Ajayi – that they 'could put her into debt', the context as I understood her to say was that this was a threat to exert more control if she misbehaved, by way of indebtedness. She would cry at night.
59. Counsel for the Defendants put to her that she was there for education but yet was now expecting to be paid and wanted more. He suggested that she was asking for money she was not entitled to and that perhaps some person put that idea into her mind. She responded that nobody had put that into her mind. She did not want year after year of her life to be wasted as they were in Nigeria.

### **Defendants**

60. In response to a Part 18 Request raised by the Claimant's representatives, the Defendants put in an 'excel' spreadsheet. The Part 18 request and reply insofar as material here were:

*"Of "Paragraph 12 of the Particulars of Claim is admitted. This document did not purport to be a contract of employment. The document summarised the domestic worker arrangement and the working conditions the Claimant was subject to for immigration purposes. Save that it is denied that the documents constituted a contract of employment, paragraph 14 of the Particulars of Claim is admitted. The monetary values in the document were designed to cover the Claimant's school fees, the cost of her accommodation and any maintenance in respect of clothes as well as her salary"*

*please state:*

*(a) What proportion of the designated "weekly payments" set out in the successive statements of terms and conditions [please refer to paragraphs 14 and 15 of the Particulars of Claim for details] was ascribed to:*

- i. The Claimant's salary;*
- ii. The Claimant's school fees;*
- iii. The cost of the Claimant's accommodation;*
- iv. Maintenance in respect of the Claimant's clothing;*
- v. Any other cost(s) or benefit(s) [if this applicable, please specify which cost(s) or benefit(s) and the amounts ascribed to each].*

### Response

Please refer to excel spreadsheet attached titled Claimant's Salary – showing Cash and Kind between October 2005 and January 2015."

61. I have not quoted request (b) or response (b) which merely refer back to the same spreadsheet in relation to dates and what the deductions were, etc since the response is to the effect that the spreadsheet answers that.
62. The spreadsheet has 8 columns as follows: "Year" "Month" "Items" "Claimant's salary" "Expenses" "Balance" "Yearly Difference" and "Notes"
63. I need not go through it in detail. It provides an entry for each month in the period when the Claimant was in service with the Abus. An example which is fairly typical suffices:

Year	Month	Items	Claimant's salary	Expenses Balance	Balance	Yearly Difference	Notes
2006	January		£	£	£	£	
		Claimant's salary	828				
		Half Board lodging		200			
		Feeding		100			
		Toiletries		20			
		Hair salon		30			Hair salon visit - curly perm
		Family outing Bluewater		10			Lunch and drinks
		Cash payment		150			
			828	510	318		

Much the same pattern appears month after month though on at least 2 occasions the 'balance' figure is negative, ie the 'Expenses' exceed the "Salary" figures. Note the entries under expenses for "feeding" and "Half board lodging" and the fact that "Balance" equals "Salary" minus "Expenses".

### **The evidence of the Defendants in chief and in cross examination**

64. The statements of the Defendants were similar to each other and very short. I shall summarise them together but for the most part the matters covered do not relate to the issue of deductions and hence are mostly irrelevant for present purposes unless what is said undermines her credibility or theirs.
65. Mrs Ajayi was well respected in the household. Nobody knew she was a domestic worker in their household because she was treated. She was treated as a member of the family. She picked up the children from school between Monday and Wednesday but dropping them off was a shared responsibility. There had never been any restriction on her freedom or rights.
66. Mr Abu said she only worked a few hours weekly and so was paid accordingly and sometimes for even more hours than she worked.
67. Mrs Abu said that Ms Ajayi was fairly paid for the hours she worked. If she had worked only 10 hours a week she would have been paid 10 hours. She would have been paid the amount stated in the Terms and Conditions if she had worked 30 hours per week. She did not work on Saturdays. She would regularly attend church from 8am to 6pm preparing the church for Sunday services. She would attend church in the evening including the Night Vigil from 10pm Friday nights to Saturday morning.
68. Mrs Abu said she herself would always cook for the Claimant and even do the laundry on Saturdays including hers. Ms Ajayi did not iron everyone's clothes. She was not working 12 hours a day as her claim alleged.

69. As to the Excel spreadsheet Mrs Abu in her statement said: *"The spreadsheets in the bundle were wrongly drafted by my husband as he was not used to Microsoft Excel and instead of adding the salary to the expenses incurred with the Claimant, he in change by mistake made a separated column and put the expenses as deductions which is not correct as there has been no deduction because the Claimant has not been paid that huge amount to deduct something from it"*.
70. Mr Abu on the topic of the Excel spreadsheet, in his statement said: *"The spreadsheets in the bundle were wrongly drafted by me as I was not used with Microsoft Excel and instead of adding the salary to the expenses incurred with Miss Ajayi without her doing anything at all for us, I by mistake made a separated column and put the expenses as deductions which his not correct as there has been no deduction because Miss Ajayi has not been paid that huge amount to deduct something from it. The Excel typo (typographical error) was the following, looking for example at the December 2005 spreadsheet where we have got there the "Claimant's salary £828", "Expenses £515", "Balance of £313". Miss Ajayi did not receive a salary of £828 as she did not work that much to receive that salary. The right spreadsheet should have looked like this: "Claimant's salary £313", "Expenses £515", and the "Balance £828"*.
71. In cross examination Mr Abu stated that if Ms Ajayi had worked for example 10 hours a day she would have been paid for 10 hours a day. He repeatedly stressed that she was 'treated as a member of the family'. He accepted that she was entitled to have been paid in accordance with the Terms and Conditions but his position was that this was only if she worked and for the time she worked. He said she never worked as much as 10 hours.
72. He conceded however that Ms Ajayi was alone in the house when both him and Mrs Abu were out at work, and that Ms Ajayi was looking after the children in that time. He said however that there was 'never a time when she worked, say, 2 or 3 hours. When pressed on this and other points he generally reverted to saying she was treated as a member of the family.
73. He said however that every household task was done together. Where the Terms said that the domestic worker was expected to work 30 hours per week and would be paid a specific figure for a wage per week, he said that that was only 'what was expected'. He was taken to an example of the various Terms and Conditions letters over the 9 year period, from 2007 in which the pay was stated to be £170 per week, with £7.60 per hour for hours worked over that, and which stated that the worker was expected to work 30 hours per week (and other terms such as 2 days off per week). He said again that there was never a time when she did that level of work but denied that he and his wife were misrepresenting the situation to the Home Office so as to secure a visa and renewals.
74. As to the Excel spreadsheet, his evidence in cross examination departed from the position which had been stated in his witness statement (itself by way of a correction to the Part 18 answer). His position was now that the 'balance' figure in the spreadsheet was not the salary. He said that the spreadsheet was done wrongly and that they had never said that that was the money Ms Ajayi was being paid. He said she was given money from time to time on a regular basis and went shopping most of the time. She had been paid cash.
75. He said he was not aware that Ms Ajayi had been told to say that she was paid £800 per month and was not aware she was told that £500 was to be deducted from that by the Abus.
76. Mrs Abu in cross examination confirmed that she is a civil servant in the Department of Business, Energy and Industrial Strategy and was aware Ms Ajayi was in the UK on a domestic worker visa. She confirmed that the Terms and Conditions documents were those relating to the Claimant on which the Claimant was employed and said she had got them from the internet because she wanted to find out what was the legal requirement for a visa. She said that notwithstanding what the terms say as to a weekly wage, Ms Ajayi was to be paid for the hours she in fact worked. (In response to a question from me she accepted that they had not kept any record of hours worked).
77. She denied that Ms Ajayi was doing as much housework as she alleged, and this was said to be that Ms Ajayi

would not have had the time to do the amount alleged because of the time Ms Ajayi was spending looking after the Defendants' young child at the time, and there would have been no time to do housework.

78. She accepted Ms Ajayi was not paid the sums stated in the contracts. She was paid in cash and all her living expenses were met by the Abus. She said several times that Ms Ajayi was treated like a member of the family. She did not think the bank statements produced by Ms Ajayi were a true account of sums paid.
79. She said she had not looked over the Excel spreadsheet which was her and her husband's Part 18 response, before it was sent. Asked about the reinterpretation of that spreadsheet in her and her husband's witness statement she said that there had been no deductions. It was a spreadsheet which put down what they could remember about what they spend on her, and hence there were negative balances on some months.
80. Asked about whether she had been lying to the Home Office to secure a visa for Ms Ajayi to continue to work for the household, she denied this. She said 'those were the terms we put down – you should be able to say you are responsible for her accommodation.' The amounts in the contract represented the costs such as of the visa.

### **The terms and conditions**

81. The Terms and Conditions documents need not be set out fully but I shall quote the material part of one example, that from 2007. In each case the Terms and Conditions had been attached to a letter to the Home Office from the Defendants confirming that the Claimant was employed on those terms and seeking an extension of the visa and confirming they would comply with all relevant UK laws as to employment and wages.

#### STANDARD TERMS AND CONDITIONS

"The Domestic Worker will have a separate fully furnished bedroom to herself and will share the bathroom and toilet with the rest of the family (free accommodation)"

"The Domestic Worker is expected to be working for 30 hours a week."

"The Domestic Worker will be paid £170.00 weekly but additional hours will attract £7.60 per hour."

### **Discussion**

82. The two authorities cited by Mr Lixandrou related to the question whether a person was 'treated as a member of the family' and were not in my judgment relevant to the question for me to decide namely whether deductions were made from the Claimant's wages in respect of (among other things) accommodation and meals such as to defeat the defence under Reg 57(3) of the NMWR.
83. The authority cited by Ms Beale (*Delaney v Staples*) relates to what I am satisfied is an analogous situation in relation to unlawful wage deductions in what was the Wages Act 1986 to the effect that a failure to pay a sum due by the employer amounts to a deduction. Whilst it was correctly accepted by her that the authority relates primarily to an express provision of the Wages Act 1986 which treated non-payment as a deduction, she relied on a more general discussion by Nicholls LJ at page 341 where he said:

*"I am not convinced that, even leaving section 8(3) altogether aside, section 1(1) does draw a distinction between non-payments and deductions. Drawing this distinction involves defining the word "deduction" in some such terms as those suggested in the Alsop case [1990] ICR 378. In that case the tribunal considered that, for there to be a deduction, there must be an amount which the employer claims is due to him from the employee. I do not think that it can be right to attempt to define "deduction" in any such limited way .... I am unable to discern any underlying policy reason why Parliament should have intended to draw such a distinction."*

84. In my judgment whether the Abus withheld money from the Claimant which she was entitled to, or whether they

withheld money on the basis that they were entitled to do so because in some sense she owed them money for accommodation, is immaterial. Either way that would be a 'deduction' in my judgment. The NMWR provide, as set out at the start of this judgment, that the defence under Reg. 57(3) is lost if deductions are made for meals or accommodation.

85. The evidence of the Defendants was entirely lacking in credibility. The Excel spreadsheet produced by them in response to a Part 18 request which was in clear terms, sets out carefully and clearly the deductions made relative to the contractual wages ostensibly due under the 'Terms and Conditions'. It is fanciful to suppose that somehow the whole thing is one large error and that the 'balance' column was in fact the wage due. As counsel said in submissions (quite apart from the fact that the entire story of the 'error' is incredible) it would be so unlikely as to be absurd to suppose that, by coincidence, the hours worked by Ms Ajayi (which was the basis on which the Abus say they paid her despite the fixed weekly wage in the terms) would exactly match the figure required (when expenses of accommodation and so on were added) to miraculously equal the sum ostensibly due as a total wage under the contracts. I discount that explanation as false.
86. In cross examination Mr Abu departed again from the spreadsheet but it was far from clear what his new explanation was other than that the spreadsheet was simply all wrong. Certainly nothing was said by the Abus which led me to think that the spreadsheet produced by them was anything other than a reflection of the fact that as far as they have been concerned, for nine years, they felt able to deduct pay from Ms Ajayi (by not paying her either her express contractual wage or implied contractual minimum wage under the NMWA) on the basis that they were assigning deductible value to the accommodation and food provided to Ms Ajayi.
87. I am entirely satisfied that the Abus created the Terms and Conditions so as to 'tick the boxes' as to the terms needed to ensure that the Home Office gave their domestic servant a visa to ensure they were able to continue to benefit from her work in their home. It seems to me that it was accepted in evidence that the reality was that Ms Ajayi was not paid anything like the sums represented in the Terms and Conditions. The explanation given namely that she never worked long enough and that the pay was only to be strictly hours based does not detract from the fact, as is I think absolutely plain, that Ms Ajayi's very limited pay was the product of effectively making her pay for the 'free' accommodation and meals which the terms provided for.
88. Ms Ajayi was clearly a scared witness when she came to court. Her confidence grew during the giving of evidence. She had disclosed her bank account, and accepted some money was paid to her in small amounts which she had not paid in. She accepted that on some occasions larger sums such as £200 or so had been paid. Given that the Abus had absolutely no records of money paid, hours worked and had given no disclosure of their own banks statements showing cash deductions from their bank to pay her, it would have been easy for a dishonest witness to omit to make the concessions she did.
89. I found her account of how Mr Abu used her cashpoint card to borrow money back from Ms Ajayi compelling and truthful. Likewise the description of the use of the phone on 'speakerphone' by the Abus to monitor conversation with her bother had the ring of truth as did the indication that Ms Ajayi had bought a calling card to be able to make undisclosed calls to him to avoid that. I found the explanation of how the Abus had even criticised the manner in which she pays, convincing as a flavour of her experience.
90. I found her account of the threat by Mrs Abu to place her into debt, as a means of control, convincing and in the context very plausible.
91. I am aware of course that my task, narrowly, is to decide the dry fact as to whether deductions were made in respect of accommodation and meals and hence whether the reg. 57(3) defence is doomed to fail, and I do make that finding. The remarks above therefore relate to credibility and to which account I prefer.

## **Conclusions**

92. The over all picture I have from the evidence is that Ms Ajayi was kept in economic servitude and that she was prevented from having friends, prevented from having a wage sufficient to give her basic freedoms, and was subject to constraints on contact with her brother, all in the context of hard work done by her in the household to

which in my judgment the Abus attach little appreciation.

93. The fact that she gained some limited education, had a roof over her head and had food supplied by the Abus is better than starvation and physical imprisonment, but in this case where the attitude of Defendants is that 'she was paid what she deserved', as their counsel put it, it is obvious that the power relationship here was such that she was kept utterly economically dependent on the Abus for their subjective assessment of what pocket money she should be allowed intermittently. Her immigration position was such that she could only work for the Abus and could have no recourse to public funds.
94. Her circumstances in the Abu household were oppressive servitude, done in clear breach of the NMWA and fell short of the standards which the law of the land requires as a basic minimum for the dignity of the worker and their remuneration. It is disturbing that a civil servant such as Mrs Abu should quite obviously have represented to the Home Office for visa purposes that the payment terms for Ms Ajayi were as set out in the Terms and Conditions whilst knowing full well that they were not, and it seems to me that the attitude taken was that it was acceptable to use such a document so as to fulfil the legal requirements (as a formality) irrespective of the reality. The law looks to substance, not to 'having the papers' merely saying what is needed.
95. The Defence to the Minimum Wage claim clearly fails as a result and I shall strike out that aspect of the Defence and judgment is entered for a sum to be assessed, and costs to be assessed if not agreed. I am, lest it need be said, satisfied that for the purposes of summary judgment there is no real prospect of the defence to the untried aspects of the wage claim on liability succeeding since a failure to succeed on the NMWR reg. 57(3) point is fatal whatever the outcome on any other issues pleaded. There is plainly no other compelling reason for a trial on liability on that aspect of the claim.
96. Counsel for the Claimant should please send me an order entering judgment on that aspect of the claim for a sum to be assessed, and costs to be assessed if not agreed.

MASTER VICTORIA MCCLOUD

ROYAL COURTS OF JUSTICE

31/7/17