



**Sangura v Western Steel Mills Limited & another (Cause 244 of 2018)  
[2025] KEELRC 2719 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2719 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 244 OF 2018  
MA ONYANGO, J  
OCTOBER 3, 2025**

**BETWEEN**

**AMOS MUTALA SANGURA ..... CLAIMANT**

**AND**

**WESTERN STEEL MILLS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JOKALI HANDLING SERVICES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed the Statement of Claim dated 17<sup>th</sup> June 2016 against the Respondent seeking the following orders: -
  - i. A declaration that summary dismissal was unfair and unlawful.
  - ii. A declaration that the Claimant is entitled to house allowance.
  - iii. A declaration that the Claimant is entitled to one-month salary in lieu of annual leave.
  - iv. A declaration that the Claimant is entitled to National Social Security Fund deductions for the period worked.
  - v. A declaration that the Claimant is entitled to National Hospital Insurance Fund (NHIF), for the period Worked.
  - vi. A declaration that the Claimant is entitled to their dues, compensation, damages, and benefits as a result of wrongful dismissal from the employment as calculated above.
  - vii. A maximum compensation of 12 months as per Section 49 (c) of the *Employment Act*.
  - viii. Damages and Terminal Dues as per the calculations above



- ix. Loss of Earning of salary for a period of 31 years that the Claimant would have worked until the statutory retirement age of 60 years.
  - x. A Certificate of Service as per section 51 of the *Employment Act*
  - xi. The claim be allowed in entirety
  - xiii. Any other relief as the Honourable court deems fit and just to grant
2. In his Statement of Claim, the Claimant averred that he was employed by the Respondents on 8<sup>th</sup> May 2015 as a General Worker on permanent basis at a salary of Kshs 15,750 per month.
  3. He states that he served the Respondents with dedication and commitment but the Respondents summarily dismissed him from employment on 30<sup>th</sup> March 2016.
  4. The Claimant contends that the termination of his employment by the Respondents was unlawful, unprocedural, irregular, unfair and in total violation of section 45(2) of the *Employment Act*.
  5. It is the 1<sup>st</sup> Claimant's case that as a result of the unfair and unlawful termination of his employment he is entitled to compensation and payment of his terminal dues which he particularized as follows: -
    - a. Unpaid house allowance for the year 2015 and 2016.....Kshs 34,650
    - b. Annual leave dues 2015.....Kshs 18,900
    - c. Service benefits.....Kshs 7,875
    - d. One month salary in lieu of notice.....Kshs 18,900
    - e. 12 months' compensation for unfair termination.....Kshs 226,800
    - f. Unpaid public holidays.....Kshs 69,300
    - g. Unpaid days off.....Kshs 6,300
    - h. Overtime dues.....Kshs 97,451.64
    - i. NSSF remittance not remitted.....Kshs 1,600
    - j. NHIF remittance.....Kshs 2,860
    - k. Loss of future earnings.....Kshs 7,030,800
  6. The 1<sup>st</sup> Respondent entered appearance and filed a Statement of Response dated 17<sup>th</sup> May 2022, wherein it denied that the Claimant was ever its employee. The 1<sup>st</sup> Respondent further averred that the claim of unlawful termination are without basis, misconceived, and without merit, and accordingly urged the Court to dismiss the Claim with costs.
  7. The 2<sup>nd</sup> Respondent despite being served with summons to enter appearance dated 20<sup>th</sup> June 2016 did not file response or participate in this claim.

### **The Evidence**

8. The suit was heard on 7<sup>th</sup> December 2023 when the Claimant testified as CW1 in support of his case.
9. The Claimant testified that he was employed by both Respondents on 8<sup>th</sup> May 2015 as a general worker, a position he held until 30<sup>th</sup> March 2016. He stated that his last salary was Kshs. 15,750, which was paid through Diamond Trust Bank, the final payment having been made on 24<sup>th</sup> March 2016.



10. The Claimant testified that on 30<sup>th</sup> March 2016, he was instructed by one Mr. Singh to carry a heavy piece of metal. When he protested that the metal was too heavy and ought to be lifted by a crane, he was allegedly assaulted and chased away. He further stated that he sought treatment at Uasin Gishu District Hospital, where he was issued with a P3 Form, and that he never resumed work thereafter.
11. The Claimant testified that although he had worked for Jumbo in 2014, he was not employed there in 2015. He insisted that it was the Respondents who paid his NSSF and NHIF contributions, and that the reason his name continued to appear under Jumbo's records was due to delays in updating the NSSF system.
12. When the matter came up for cross-examination, counsel for the 1<sup>st</sup> Respondent raised the issue of the Claimant's identity and requested that he appear in open court. After several adjournments, counsel for the Claimant informed the Court on 5<sup>th</sup> November 2024 that the issue had been resolved, whereupon the Claimant's case was closed without the Claimant being cross-examined.
13. The 1<sup>st</sup> Respondent called Michael Njuguna, its Human Resource Manager, who testified as RW1. He adopted his witness statement dated 17<sup>th</sup> October 2023 as his evidence-in-chief and relied on the documents filed by the 1<sup>st</sup> Respondent in its defence. RW1 testified that the Claimant was never an employee of the 1<sup>st</sup> Respondent, explaining that the Respondent engaged independent contractors to supply manpower. He further stated that the Claimant's name did not appear in the 1<sup>st</sup> Respondent's records, noting that all employees of the 1<sup>st</sup> Respondent executed written contracts of employment, copies of which were retained by the 1<sup>st</sup> Respondent.
14. On cross-examination, RW1 maintained that the Claimant was not an employee of the 1<sup>st</sup> Respondent, as evidenced by the records in its custody.
15. At the close of the 1<sup>st</sup> Respondent's case, the court directed parties to file written submissions. The Claimant filed his submissions dated 10<sup>th</sup> June 2024 while 1<sup>st</sup> Respondent's submissions are dated 29<sup>th</sup> October 2024 were filed on 13<sup>th</sup> November 2024.

### **The Claimant's Submissions**

16. In his submissions, the Claimant identified the following issues for determination:
  - i. Whether he was unlawfully, unprocedurally, and unfairly dismissed from employment
  - ii. Whether he is entitled to compensation for such termination as prayed for in the Memorandum of Claim
  - iii. Whether he is entitled to an award of a Certificate of Service
  - iv. Whether he is entitled to any other reliefs
  - v. Who is liable for the alleged unfair termination of his employment?
17. On the first issue, the Claimant submitted that he was unfairly dismissed from employment as his termination was abrupt and without any notice.
18. The Claimant further submitted that his dismissal was without justification and that he was never accorded an opportunity to be heard before being summarily terminated, which amounted to a breach of the law and principles of natural justice.
19. On the second issue, the Claimant maintained that he is entitled to compensation for unlawful, unprocedural, and unfair termination. On the prayer for compensation, the Claimant urged the Court



to award him 12 months' salary together with salary in lieu of notice, as he had proved that his dismissal was unfair and without justification.

20. On the prayer for off days and overtime, the Claimant submitted that he worked for the Respondents seven days a week without rest and is therefore entitled to overtime and payment for off days.
21. With regard to the prayer for annual leave dues, he contended that he never proceeded on leave during his employment and is entitled to payment in lieu thereof. On the claim for statutory deductions, the Claimant argued that by virtue of section 19 of the *Employment Act*, the Respondents effected deductions for NSSF and NHIF but failed to remit the same. He thus prayed for a refund of the unremitted deductions. On house allowance, the Claimant submitted that he was not paid any during the entire period he was engaged by the Respondents and is therefore entitled to the same.
22. On the second issue of liability, the Claimant submitted that although the 1<sup>st</sup> Respondent in its response denied employing him and stated that the 2<sup>nd</sup> Respondent should be held responsible, the two Respondents had a principal-agent relationship. In his view, the 2<sup>nd</sup> Respondent was acting as an agent of the 1<sup>st</sup> Respondent and this rendered the 1<sup>st</sup> Respondent equally liable and responsible for the actions of the 2<sup>nd</sup> Respondent.
23. The Claimant therefore urged the Court to find that both the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were jointly and severally liable for his unfair dismissal.
24. In conclusion, the Claimant prayed that the Court grants the reliefs sought in his Statement of Claim.

### **The 1<sup>st</sup> Respondent's submissions**

25. On its part, the 1<sup>st</sup> Respondent identified the following issues for determination:
  - i. Whether there existed an employment relationship between the Claimant and the 1<sup>st</sup> Respondent.
  - ii. Whether the reliefs sought are merited as against the 1<sup>st</sup> Respondent.
  - iii. Who should bear the costs of this cause?
26. On the first issue, the 1<sup>st</sup> Respondent, while relying on section 4 of the *Work Injury Benefits Act (WIBA)*, submitted that the Claimant in his Statement of Claim acknowledged that it was the 2<sup>nd</sup> Respondent who was the employing agency. It was therefore submitted that by virtue of section 4(2) of WIBA, the 1<sup>st</sup> Respondent cannot be deemed to be the statutory employer of the Claimant.
27. To fortify this position, the 1<sup>st</sup> Respondent cited the decisions in *Fredrick Byakika v Mutiso Menezes International Unlimited* [2016] eKLR and *Maurice Oduor Okech v Chequered Flag Limited* [2013] eKLR, in which the courts emphasized that liability rests upon the actual employer who exercises control and authority over the employee.
28. On this basis, the 1<sup>st</sup> Respondent asserted that the Claimant was under the control of the 2<sup>nd</sup> Respondent and not the 1<sup>st</sup> Respondent.
29. On the second issue, the 1<sup>st</sup> Respondent submitted that the reliefs sought by the Claimant, can only be directed against his employer, the 2<sup>nd</sup> Respondent, upon proof of an employment relationship
30. With respect to the third issue on costs, the 1<sup>st</sup> Respondent submitted that costs follow the event and, in the circumstances, the Claim against it ought to be dismissed with costs in its favor as the successful party.



## Determination

31. I have considered the pleadings, the evidence of the parties, the submissions and the authorities cited. In the court's view, the issues that arise for determination are: -
- i. Whether the Claimant was an employee of the 1<sup>st</sup> or 2<sup>nd</sup> Respondent,
  - ii. Who between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent is liable for the unfair dismissal of the Claimant from employment,
  - iii. Whether the reliefs sought should issue and against which Respondent.

## Whether the Claimant was an employee of the 1<sup>st</sup> or 2<sup>nd</sup> Respondent

32. In its defence, the 1<sup>st</sup> Respondent disputed the existence of an employment relationship between itself and the Claimant.
33. The Claimant, on the other hand, pleaded in his Statement of Claim that he was employed by both Respondents. In his oral testimony before the Court, he stated that he was remunerated for the services he rendered through his account with Diamond Trust Bank, and in support of this assertion, he produced copies of his DTB account statement together with NSSF statements, which he filed in Court.
34. I have carefully examined the bank statement and the NSSF statement produced by the Claimant. Neither of these documents identifies either of the Respondents as his employer. Although the bank statement reflects entries of salary payment credits, it does not disclose the source of those payments. The NSSF statement also does not indicate the identity of the Claimant's employer.
35. Section 2 of the [Employment Act](#) defines an employee as: -
- “a person employed for wages or a salary and includes an apprentice and indentured learner”.
36. An employer is defined as: -
- “any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual”
37. The burden of proof is explained under section 107(1) and (2) of the [Evidence Act](#) to wit:-
- “107.
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
38. Although the Court appreciates that it is the responsibility of an employer to document the employment relationship and that in certain circumstances the burden of proving or disproving a term of employment may shift to the employer, in the present case the Claimant was first required to adduce evidence demonstrating that he was indeed employed by either of the Respondents before the burden of proof can shift to the Respondents. It is not sufficient for a party to merely allege, without more,



that an employment relationship existed. Allegations must be supported by cogent evidence, and in the absence of such proof, the Court cannot be persuaded that an employment relationship existed.

39. Moreover, where a party believes that relevant documents necessary to establish such proof are in the custody of the adversary or even a third party, the law provides recourse through discovery and applications for production. The Claimant did not invoke these procedures, leaving the Court without evidence linking him to either of the Respondents as his employers.
40. Accordingly, the Court finds that the Claimant failed to discharge the burden of proving that he was employed by either of the Respondents as the evidence on record is insufficient to support a finding that an employment relationship existed between the Claimant and either or both of the Respondents.
41. Having resolved the first issue, the remaining issues are rendered moot and require no further consideration.
42. Consequently, the Claimant's suit against the Respondents is hereby dismissed, with an order that each party shall bear its own costs.

**DATED, DELIVERED AND SIGNED THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**

**JUDGE**

