



Geoffrey v Robinson Investment Limited (Employment and Labour Relations Cause 389 of 2019) [2025] KEMC 36 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEMC 36 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE 389 OF 2019
PA NDEGE, SPM
MARCH 13, 2025**

BETWEEN

MAIRURA MWABE GEOFFREY CLAIMANT

AND

ROBINSON INVESTMENT LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed this suit against the Respondent alleging unfair termination. The Memorandum of Claim is dated 19/11/2019 and is supported by a verifying affidavit sworn on even date and filed on 19/11/2019. It is his case that he was employed by the Respondent on 05/12/2015 as a day watchman, until 16/09/2018 when his employment was unfairly terminated by the Respondent herein. That he was retained at an initial monthly salary of Kshs. 6,249/- in December, 2015 which was increased to Kshs. 7,690/- in July 2016 and that finally in August, 2017, it was further increased to Kshs. 8,190/-. That whilst working for the Respondent herein, he would start his shift at 6.00am till 6.00pm. That on 16/09/2018, during a weekly parade, the Claimant requested for salary increment and that the Respondent's supervisor, Mr. Mathew Wekesa, approached him after the parade and requested him to hand over his uniform. He pleaded the particulars of unfair dismissal at Paragraph 11 of his Memorandum of Claim. That the respondent owes him monies in respect of 1 month's salary in lieu of notice being the last monthly salary at the time of termination of employment in line with the *Employment Act*, 2007. That further, the Respondent did not pay him for the 16 days he worked in September, 2018 before he was unfairly terminated. That the Respondent did not also pay him any house allowance for the entire period worked which was contrary to the provisions of the Regulation of Wages (General Amendment) Orders on minimum wages. He is praying for the following: -
 - i. A declaration that the Claimant's termination was unfair and unjustified as the same was not within the ambits of the *Employment Act* 2007, and other employment laws.



- ii. 12 months compensation for unfair and unjustified termination as provided for under section 49 (c) of the [Employment Act](#) 2007 at Kshs. 150,272.40
 - iii. 1 month's pay in lieu of notice as provided in the [Employment Act](#) 2007 totaling to Kshs. 12,522.70
 - iv. Salary for the 16 days worked in May, 2019 totaling to Kshs. 9,600.00
 - v. House allowance totaling to Kshs. 54,754.35
 - vi. Underpayments totaling to Kshs. 144,845.30
 - vii. Normal overtime dues totaling to Kshs. 275,724.38
 - viii. Unpaid Off days/ rest days totaling to Kshs 38,761.54
 - ix. Unpaid public holidays totaling Kshs 49,422.93
 - x. Annual leave dues totaling Kshs. 28,657.72
 - xi. Certificate of service
 - xii. Costs and interest on all the claims
2. The Respondent on 03/03/2021, filed a Memorandum of Response dated 23/10/2020 where it denied the Claimant's claim of unfair termination and insisted that it employed him as a casual day guard earning a mutually agreed daily rate over different periods he worked. That the Claimant deserted his duties as from 16/08/2018 when he simply failed to show up and that efforts to reach him were futile as none of his colleagues knew of his whereabouts until when the Respondent received the summons to attend to this cause.
3. Alongside the pleadings, parties herein also filed their lists and further list of documents and witness statements. This matter eventually came up for hearing on 17/05/2022 when the Claimant testified as CW1. He was then cross-examined before closing his case. the Respondent's case was heard on 15/10/2024 when the Respondent called RW1, MOGUSU STEPHEN, its human resource manager as its witness. The parties then filed their submissions.

Issues for determination.

- 4. The main issue for determination herein is what was the nature of the employment relationship between the Claimant and the Respondent, whether there was unfair termination and whether the claimant is entitled to notice pay or any of the reliefs sought.
- 5. The claimant submitted in his submissions asserting that he was employed by the Respondent and was unfairly dismissed without any notice. The Respondent submits that the claimant was a day guard on availability of work basis and that the allegation that he was employed verbally is false and misleading and truly shows the claimant's untruthfulness.
- 6. Under section 10 (7) of the [Employment Act](#), where a dispute arises on the terms of a contract of service that is required to have been reduced into writing in terms of section 9 of the Act, the burden is on the employer to prove or disprove the disputed term by either producing the written contract or written particulars of the disputed term. Thus, the burden of proving that the Claimant was a casual employee and the terms thereof rested with the Respondent employer.



7. In the Court of Appeal decision of *GRAIN PRO KENYA INC. LTD VRS ANDREW WAITHAKA KIRAGU* [2019] eKLR, the court emphasized that the primary contracting document in an employment contract is the contract itself.
8. The Court finds that the only evidence placed before this Court on the employment of the Claimant were the Contracts for Casual employments produced herein as REXH. Nos 11A, 11B and 11C. The evidence therein overrides any other verbal or oral evidence on the nature and terms of the employment relationship between the parties herein. I find the signatures therein to be similar to those in the Claimants pleadings and also the checklist produced as REXH. NO. 2 herein. The burden of disproving the authenticity of the contracts and more specifically, the signatures therein was on the claimant which he failed to discharge. Moreover, he has not raised any allegation of forgery or even made a report or complaint of forgery or uttering or making of a false document by the respondent.
9. The document had the name, signature and ID number of the Claimant. The checklist confirm that the claimant was not a permanent employee. He never worked throughout or continuously for 30 or more days. Having evaluated the evidence before me, I return that Claimant was an employee engaged as a casual worker for random days by the Respondent which therefore buttresses the Respondent's defence against the Claim herein.
10. Learned counsel for the Respondent relied on the provisions of section 47(5) of the *Employment Act* and Justice M. Nduma's interpretation of the same in *KENNEDY MAINA MIRERA VRS BARCLAYS BANK OF KENYA LIMITED* [2018] e KLR. The section provides for the burden of proof in claims for unfair dismissal as follows: -
 - (5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
11. Thus the employee has to discharge his burden of proving that an unfair termination of employment or wrongful dismissal has occurred after which the burden shifts to the employer to justify the grounds for the termination of employment or wrongful dismissal.
12. Did the claimant discharge his burden of proof? To address this question the issue of the employee-employer relationship again comes into play. I have already found herein that the Claimant was engaged as a casual employee.
13. The casual engagement of employees is recognized as a valid type of employment distinct from contractual employment under the *Employment Act*, with a casual employee being defined as:- 'casual employee' means a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time.¹
14. The records produced herein proved that the claimant did not work for a period or a number of continuous working days which amounted to in the aggregate to the equivalent of not less than one month under section 37 of the *Employment Act*. The records disclosed he worked randomly in each month. The evidence of his engagement did not qualify for conversion to term contract which would enable the Claimant be entitled to benefits under term contract.

¹ Section 2



15. I do therefore hold that the Claimant has failed to prove unfair dismissal as he has failed to discharge his burden of proof of allegation of continuous employment. Justice Ndolo in *CASMIR NYAKUNDI NYABERI VRS MWAKIKAR AGENCIES LIMITED* (2016) e KLR stated: -

11. This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice.

Whether the Appellant is entitled to notice pay or any of the reliefs sought.

16. Casual engagement does not last for more than 24 hours as it was confirmed that the Claimant would be engaged on a day to day basis whenever work is available. There was thus no need for a notice pay. I further do find that the other claims herein, such as underpayments, annual leave or rest days have not been substantiated to the required standards and are therefore not available in this case.

17. To summarize, the Court returns the burden of proof of termination of the engagement as casual employee, leave alone unfairness, was not discharged by the Claimant hence the burden never shifted to the Respondent to justify the termination. Evidence of work on random days in a week or month which was presented by the Respondent cannot be said to amount to anything else beyond casual engagement. The Court thus holds that the Claim is not proved on a balance of probabilities.

Conclusion and Disposition

18. In the upshot, judgment is hereby entered that the Claim herein is dismissed with costs to the Respondent.

It is so Ordered.

**DATED, SIGNED, AND DELIVERED ON THE ...13TH.....DAY OF.....MARCH..... 2025
IN OPEN COURT AT NAKURU**

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

IN THE PRESENCE OF

C/A – Janet

For Claimant: - Mburu S. K.

For Respondent: - Mwashu h/b Githiru

Githiru: Praying for a copy of the judgment

CT: Certified copy of the judgment be supplied to counsel upon payment of any necessary fee.

