

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**ELRC CAUSE NO. 435 OF 2017**

**VINCENT            ANDATI            ATIRIANO.....**  
**CLAIMANT**

**VERSUS**

**PRIME                    STEEL                    MILLS                    LIMITED.....**  
**.....RESPONDENT**

**JUDGMENT**

The suit was filed by a Memorandum of Claim on 6<sup>th</sup> March 2017 in which the Claimant seeks the following reliefs against the Respondent: -

- (a) A declaration that the Respondent's dismissal of the Claimant's employment was illegal, unlawful, unfair and harsh and that the Claimant is entitled to payment of her due terminal benefits and damages.
- (b) A declaration that the Claimant is entitled to payment of his terminal dues and compensatory damages as pleaded in paragraphs 8 and 9 of the Claim.
- (c) An order for the Respondent to pay to the Claimant the total sum of Kshs. 521,864.80 as pleaded in paragraph 8 and 9 above.
- (d) Interest on (c) above from date of filing suit until full payment
- (e) Costs of the suit

The Claimant adopted a witness statement dated 6/3/2017 as his evidence in chief. He testified that he was employed by the Respondent as a casual

labourer in March 2013 and worked in night shift. That he served diligently and was paid Kshs. 2,500.00 per week amounting to Kshs, 10,000.00 per month.

That the night shifts commenced at 7 p.m. and ended at 7:00 a.m. in the morning from Monday to Sunday amounting to 4 hours overtime daily. That the overtime was not paid.

That on or about 10<sup>th</sup> February 2016, the Claimant was summoned by a foreman of the Respondent Mr. Kombo who verbally dismissed the Claimant from employment for having allegedly reported to work late. The Claimant denied having reported late at all.

The Claimant states that the dismissal was unlawful and unfair and claims maximum compensation equivalent to 12 months' salary for the said dismissal.

The Claimant stated that he was being underpaid between the period May 2013 to April 2015, since the minimum statutory wage (General) order provided a minimum wage of Kshs. 10,911.70 but was paid only Kshs. 10,000.00 per month and claims Kshs. 10,940 underpaid for the period. The Claimant further stated that between May 2015 to February 2016, he should have been paid Kshs. 12,221.10 per month but was paid Kshs. 10,000.00 per month contrary to the General Wage Order of 2015 and received Kshs. 22,211.00 less during the period.

The Claimant claims underpayment of house allowance for the entire period of 35 months being  $(15/100 \times \text{Kshs. } 12,221.10 \times 35 \text{ months})$  in the sum of Kshs. 64,160.70.

The Claimant claims one month salary in lieu of notice in the sum of Kshs. 12,221.10.

The Claimant stated that despite issuance of demand notice, the Respondent did not pay the terminal dues and compensation claimed hence the suit.

The Claimant was cross-examined by Mr. Simiyu for the Respondent and he stated that though he was paid a daily wage on a weekly basis he was not a casual. The Claimant said he never received any contract of employment and was not given any other document by the Respondent. The Claimant said he was not paid house allowance and was underpaid. That he worked as a pusher and dealt with metal. The Claimant said he relied on his NSSF statement dated 27/11/2015 which he produced to show that the Respondent paid NSSF dues for him for the period 1/10/2014 to 31/10/2015. The Claimant insisted he worked from Monday to Sunday and did not work only when the machine was faulty. Claimant said the Respondent was the first to pay NSSF for him.

The Claimant called one Gilbert Ombati Oyale (CW2) who testified that he worked for the Respondent and adopted a witness statement dated 14/1/2025 as his evidence in chief and produced as exhibit, NSSF statement showing that between the year 1/10/2012 to 30/6/2016 he worked for the Respondent and the company paid NSSF dues for him

whereas from 1/7/2015 to 31/8/2015 a company called Jokali Handy Services paid the NSSF dues on behalf of the Respondent company. CW2 stated that the Claimant and himself worked for the Respondent initially and later on Jokali Handling Services outsourced employees for the Respondent as indicated in his NSSF statement. CW2 said he did not know what arrangement was there between the Respondent and Jokali since he did not see the Agreement between them.

CW2 denied that he was employed by Jokali and insisted that the Respondent employed both the Claimant and CW2.

CW2 also produced Casual Labour Card dated 14/10/2011 given to him by the Respondent but the card bore the name Evans Kimera and CW2 also produced Casual Employees Payment Sheet for the Respondent for the period 18/9/2014 to 24/9/2014. The same did not have the name of CW1 and CW2.

## **Defence**

The Respondent called Godfrey Oduor in defence of the case. RW1 testified that he was a supervisor of the Respondent from the year 2012 and acted as a Human Resource Officer.

RW1 adopted witness statement dated 25/9/2023 as his evidence in chief. He testified that the Claimant was never employed by the Respondent. That Claimant's name does not appear in the records of the Respondent for the period claimed by the Claimant and CW2.

That all the claims brought by the Claimant are false since the Claimant was a total stranger to the Respondent. The Claimant was never employed

by the Respondent therefore did not work any overtime nor was he underpaid as claimed or at all.

Under cross-examination RW1 said the Respondent did not file any documents since the Claimant was a stranger to the Respondent.

## **DETERMINATION**

The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1, CW2 and RW1.

The issues for determination are:

- (i) Whether Claimant has proved an employment relationship between the Claimant and the Respondent.
- (ii) If the answer to (i) above is in the affirmative, whether the Claimant's dismissal was lawful and fair.
- (iii) Whether the Claimant is entitled to the reliefs sought.

Where the Respondent denies that there was an employment relationship between it and the Claimant, the burden of proving that there was an employment relationship between the parties is on the Claimant in terms of section 107 and 108 of the Evidence Act Cap 80 Laws of Kenya.

Furthermore, in terms of section 47(5) of the Employment Act 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."

In **Zarika Obudo versus Tai Shunjuu and another [202] eKLR**, it was held;

***“It has been stated time and again by this court that where the Respondent does not participate in the hearing and has not admitted the employment relationship the Claimant must prove the same as a preliminary point as without proof the whole claim is anchored on quick sand”.***

In **Casmin Nyankau Nyabati versus Mwaliko Agencies Limited [2016] eKLR**, it was also held;

***“The jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited by the existence of an employment relationship as defined in law and the court must always satisfy itself on this account before proceeding any further”.***

In the present matter the Respondent filed a reply to the statement of claim in which it pleaded’

***“The Respondent disputes the whole claim as made out in the statement of claim and avers that the Claimant has no cause of action against itself being a stranger to the Respondent”.***

The Claimant did not file any reply to the Respondent’s reply to the statement of claim filed on 26/11/2019 to traverse the contents thereof and join issues with the Respondent placing it on strict proof thereof.

The Claimant (CW1) and CW2 testified that they both worked as weekly paid casuals for the Respondent between the period 1<sup>st</sup> October 2014 and February 2016. CW2 testified that he knew the Claimant at work and they had become friends and they both worked night shift. CW2 testified that he stopped seeing the Claimant in February 2016 and the Claimant informed him that he was verbally dismissed by Mr. Kombo, a foreman on 10/2/2016.

The court notes that the NSSF statement dated 27/11/2015 produced by the Claimant to prove that he was an employee of the Respondent did not identify the name of the employer who contributed NSSF dues for the Claimant for the period October 2014 to October 2015. The Claimant did not produce any other document to show that he had any relationship at all with the Respondent including any pay slip or payment voucher or a bank statement.

CW2 who testified in support of existence of the employment relationship between the Claimant and the Respondent produced NSSF statement for the period 1/10/2012 to 31/8/2016 which statement shows that the Respondent paid NSSF dues for him from the period 1/10/2012 to 30/6/2015 and for the period 1/7/2015 to 31/8/2016 a company called Jokali Handling Services remitted NSSF dues for him.

The statement did not provide any proof of relationship between the Claimant and the Respondent since the Claimant's name does not appear at all on that statement. CW2 also produced casual employees' payment sheet for the period 18/9/2014 to 24/9/2014. This payment sheet did not show the name of the Claimant as one of the casual employees paid by the Respondent and therefore did not take this case any further.

The Respondent testified that it did not have any documents at all related to the Claimant as he was a stranger to the Respondent and it was incumbent on the Claimant to prove that he was at any one time employed by the Respondent on a continuous basis as alleged or at all.

Upon a careful analysis of this evidence, the court is not satisfied that the Claimant discharged the onus of proving on a balance of probability that he was an employee of the Respondent entitled to protection in terms of the provisions of the Employment Act between the period March 2015 and 10<sup>th</sup> February 2016 as pleaded in the Memorandum of Claim and per the bare evidence adduced by CW1 and CW2.

Further the Claimant did not produce any tangible evidence to show that he was paid any salary by the Claimant in the sum of Kshs. 2,500.00 per week for the period alleged in the statement of claim.

The Claimant has therefore not proved that an employment relationship was terminated by the Respondent as alleged or at all. The Claimant having not discharged the initial onus set under section 47(5) of the Employment Act, 2007 the burden of proof to justify the termination did not shift to the Respondent.

The court therefore finds that the Respondent had no obligation to prove that it had a valid reason to terminate the employment of the Claimant in terms of sections 43 and 45 of the Act.

Equally the Claimant failed to demonstrate that he was entitled to any payment of salary by the Respondent as prayed or at all. Therefore, the claims of underpayment of basic salary and house allowance fails.

The claims for payments of notice pay and compensation for unlawful dismissal were not proved and have and are not merited also.

**Accordingly, the court finds that there was no employer and employee relationship between the Claimant and the Respondent as alleged or at all. The court therefore lacks jurisdiction to hear and determine this case so as to grant the Claimant the reliefs sought which reliefs in any event have not been proved in the first place.**

For completeness, the entire suit has failed for lack of proof and is dismissed with no order as to costs.

Dated at Nairobi this **9<sup>th</sup> day of February 2026**



**Mathews Nduma**

**JUDGE**

**Dated, signed and delivered in open court at Nairobi this 16<sup>th</sup> day of February 2026**

**J. W. KELI**

**JUDGE**

**In the presence of:**

Mr. Wachakana for claimant

Mr. Mbogo for Respondent

Mr. Kemboi – Court Assistant

ORIGINAL