



Koech & another v Jalaram Limited (Shiv Krupa) (Employment and Labour Relations Cause 205 of 2017) [2025] KEELRC 520 (KLR) (20 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 520 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 205 OF 2017
MA ONYANGO, J
FEBRUARY 20, 2025**

BETWEEN

JOSEPH KIPROP KOECH 1ST CLAIMANT

JAMES MAIYO 2ND CLAIMANT

AND

JALARAM LIMITED (SHIV KRUPA) RESPONDENT

JUDGMENT

1. Vide a Statement of Claim dated 17th February 2017, the Claimants aver that the Respondent terminated their employment unfairly and unlawfully.
2. The Claimants averred that they were orally employed by the Respondent as general laborers in February 2015 and May 2016 respectively, and that as at the time of termination of their employment they were each earning a gross salary of Kenya shillings Kshs.10,107/=.
3. The Claimants averred that they served the Respondent with loyalty, diligence and with full dedication until 15th August, 2016 when the Respondent wrongfully and unlawfully terminated their employment orally and refused to pay their terminal benefits.
4. They averred that the termination of their employment was without due regard to the procedure laid down in the *Employment Act*. On this basis, they alleged that the termination was unfair because the Respondent did not act in accordance with justice and that the Respondent failed to prove that the reasons for termination were valid.
5. The Claimants sought compensation for the unfair and unlawful termination of their employment and terminal dues which they itemized as hereunder:

1st Claimant



- i. One month pay in lieu of notice.....Kshs. 10,107
- ii. Leave dues.....Kshs 10,107
- iii. Overtime.....Kshs 5053.5
- iv. Service pay.....Kshs 5053.5
- v. Underpayments of wages.....Kshs 70,091
- vi. Unpaid rest days.....Kshs 45,818.4
- vii. Public holidayKshs. 6,738
- viii. Compensation for unfair termination ...Kshs. 139,476.7
- Total Kshs. 398,401.5

2nd Claimant

- i. 7 days' notice Kshs. 2358.3
- ii. Overtime.....Kshs. 8394
- iii. Unpaid rest days.....Kshs 8085.6
- iv. Underpayments of wagesKshs 12,369.15
- v. Leave pro rataKshs 1,768.73
- TotalKshs. 32,975.78

6. The Claimants averred that the termination of their employment was unlawful, unfair for reasons that:

- a. The Respondent terminated Claimants employment without following the laid down procedures in the *Employment Act*
- b. The Respondent dismissed the Claimants without proofing that the reason for the termination was valid.
- c. The Respondent did not give the Claimant's termination notice as required under Section 35(b) of the *Employment Act*.
- d. The Respondent denied the Claimants their lawful leave days contrary to the *Employment Act*.
- e. The Respondent failed to pay the Claimants for premature breach of contract of the *Employment Act*.
- f. The Respondent underpaid the Claimants contrary to the law.
- g. The Respondent failed to pay the Claimants service benefit contrary to the law.
- h. The Respondent failed to regulate the Claimants working hours as required under section 27(1) of the *Employment Act*. The Claimant worked overtime without pay.

7. The Claimants contended that owing to the unfair and unlawful termination of their employment, they are entitled to the following reliefs:



- a. Declaration that the Claimants termination from employment was unlawful, unprocedural and unfair and in the circumstance the claimant is entitled to compensation as prayed
 - b. The sum of Kshs. 398,401.5 and Kshs. 32,975.78 for the 1st and 2nd Claimant respectively as set out above;
 - c. Cost of this suit and Interests on at court rates from time of filing suit until payment in full;
 - d. A certificate of service as per Section 51 of the Employment Act and
 - e. Any other further and better relief the Honourable Court may deem just and fit to grant.
8. In reply, the Respondent filed a Reply to Memorandum of Claim dated 14th October 2022 denying that the Claimants were its employees. The Respondent contended that it never entered into any form of employment or contractual relationship with the Claimants, nor ever made payments in form of salary payments to the Claimants as alleged.
 9. The Respondent denied that the Claimants are entitled to any of the prayers they are seeking in their Statement of Claim as they were neither employees of the Respondent nor were they dismissed unfairly by the Respondent as alleged by them.
 10. The Respondent urged the court to dismiss the claim with costs.
 11. At the close of hearing the court directed parties to file written submissions. From the record, it appears that only the 1st Claimant's submissions were filed on 11th December 2023.
 12. In his testimony, CW1 stated that he was employed orally by the Respondent as a general worker and was paid on a weekly basis in cash. That his employment was terminated in August 2016 without any reason. He was never invited to a disciplinary hearing before the termination of his employment. It was his evidence that he used to report to work from 6:30am to 6:30pm, 7 days a week and was not paid overtime. The 1st Claimant also testified that he never went on leave during the course of his employment and that he worked during public holidays and was not paid overtime.
 13. On cross-examination by counsel Oyaro, CW1 stated that he was paid Kshs 1500 weekly and the Respondent did not deduct NSSF and NHIF dues.
 14. The 2nd Claimant's case was closed on 4th October 2023 after he failed to attend court on several occasions to advance his case.
 15. The Respondent called Amin Nital Kiritbhai, one of its directors who testified as RW1 on 9th November 2023. RW1 adopted his witness statement recorded on 14th October 2022 as his evidence in chief.
 16. On cross examination, RW1 stated that he was the custodian of the Respondent's employee records. He stated that the Respondent outsources employees from a third party and the said employees are usually engaged on a short term period of three months.
 17. According to RW1, the outsourcing company keeps the register of the outsourced employees and the Respondent only kept records for its permanent employees. It was his evidence that the Respondent never employed the Claimants.

The submissions

18. The 1st Claimant identified the issues for determination to be:



- i. Whether or not the Claimant was an employee of the Respondent,
 - ii. Whether the Claimant was unlawfully, unprocedurally and unfairly terminated from employment by the Respondent,
 - iii. Whether the Claimant is entitled to compensation for unlawful, unprocedural and unfair termination from employment as prayed for in the Statement of Claim,
 - iv. Whether the Claimant is entitled to an award of Certificate of Service,
 - v. Who should pay costs and interests of this suit.
19. On the first issue, the 1st Claimant submitted that he was orally employed by the Respondent as a general labourer with effect from February, 2015. It was the 1st Claimant's submission that although RW1 stated in court that it outsourced workers from a third party, he did not avail any document or contract to show that there was an agreement between the Respondent and the third party to provide labour for the Respondent. The 1st Claimant submitted that the absence of such evidence was an indication that the 1st Claimant was employed by the Respondent and not by any other party. Further, the 1st Claimant submitted that the Respondent did not avail records such as the muster roll of all its employees for the years 2015 and 2016 for the court to determine whether or not the 1st Claimant was the Respondent's employee.
20. According to the 1st Claimant, having worked continuously for 1 year and about 6 months before his services were terminated unfairly, his service converted to permanent terms in accordance with the provisions of section 37(1)(a) of the *Employment Act*.
21. On the second issue, the 1st Claimant submitted that the Respondent did not explain the reason for the termination of his employment. It is the 1st Claimant's submission that he was asked to leave the Respondent's premises without being given explanations of his wrongdoing while on duty. Further, the 1st Claimant submitted that he was not subjected to a disciplinary hearing before termination of his employment as stipulated by section 45 of the *Employment Act*. It is therefore the 1st Claimant's submission that the termination of his employment was unfair for want of both substantive justification and procedural fairness.
22. On who should pay costs and interest of the suit, the 1st Claimant urged the court to award costs and interests to the Claimants.
23. In the end, the 1st Claimant submitted that having demonstrated that he was unlawfully, unprocedurally and unfairly terminated by the Respondent, he is entitled to compensation as enumerated in the Statement of Claim.

Determination

24. From the pleadings, the oral testimony of the parties and the submissions on record, the issues that fall for determination are:
- i. Whether there was any employment relationship between the Claimants and the Respondent,
 - ii. Whether the Claimants were terminated from employment unfairly,
 - iii. Whether the Claimants are entitled to the remedies sought.



Whether there was any employment relationship between the Claimants and the Respondent

25. The Claimants in their Statement of Claim pleaded that they were orally employed by the Respondent as general labourers in February 2015 and May 2016 respectively. The 1st Claimant in his testimony reiterated that he was employed by the Respondent earning a salary of Kshs 1500 weekly and that he worked until 15th August 2016 when his employment was unfairly terminated. The Respondent on its part denied that it employed the Claimants at any point and maintained that it outsourced its casual employees from a third party.
26. In the case of *Casmur Nyankuru Nyaberi v Mwakikar Agencies Limited (2016) eKLR*, the court stated;-
- “8. 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.
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.”
27. RW1 on cross examination stated he was the custodian of the Respondent’s employee records. However, he did not produce the said employment records to confirm who the said employees were. Further, RW1 contended that the Respondent outsourced casual workers from a third party whom the Respondent had contracted to supply them with workforce. When asked about the name of the said outsourcing company, RW1 stated that he could not remember its name. It is also worth noting that the Respondent did not produce any documents in court to prove that indeed there existed a contract between itself and a third party for outsourcing of employees.
28. Casual employment is recognized by law. The nature of casual employment is such that employees rarely have any documents to prove that they are in employment. It is thus the duty of an employer who denies that there was any such employment relationship between it and an employee to produce its employment records in court to controvert the averments of the employee. The duty to produce records is provided for in section 10 and 74 of the *Employment Act*.
29. In the instant case RW1 stated that there was an outsourcing contract with a third party. In the absence of evidence of the existence of such contract between the Respondent and the alleged third party, the court finds that the Respondent did not controvert the averment of the Claimants that they were employed by the Respondent.
30. the 1st Claimant was able to demonstrate to the satisfaction of the court that he was indeed in the employment of the Respondent. during cross examination he was able to give names of the Respondent’s representatives he worked with. On a balance of probabilities, it is the finding of this court that the Claimants were indeed employees of the Respondent.



Whether the Claimants were terminated from employment unfairly

31. In his testimony before court, the 1st Claimant stated that his employment was terminated on 15th August 2016 without a valid reason and that he was not taken through a disciplinary hearing. The Respondent did not rebut this evidence, only insisting that the 1st Claimant was not its employee. It is the finding of this court that the employment of the 1st Claimant was terminated unfairly.

Whether the Claimants are entitled to the remedies sought.

32. From the record, only the 1st Claimant testified in court in support of his case. The 2nd Claimant's suit was closed as he failed to appear in court to prosecute his case despite being granted several opportunities to appear in court to testify.

33. The 1st Claimant sought one months' pay in lieu of notice which I allow at Kshs 10,107 being the minimum pay for the relevant period as the Respondent did not demonstrate that any notice was issued to the 1st Claimant prior to termination of his employment.

34. On the claim for overtime, it was the 1st Claimant's evidence that he worked from 6.30 am to 6.30 pm for 7 days a week. It is my view that the Claimant did not prove that he worked any overtime. That prayer is dismissed.

35. On the claim for service pay, the Respondent did not tender any evidence that it deducted and remitted NSSF contributions for the 1st Claimant. In the absence of proof that the 1st Claimant was a member of NSSF, I award the 1st Claimant Kshs. 5053.50 as service pay.

36. On the claim for underpayment of wages, the 1st Claimant pleaded that he was underpaid by the Respondent which evidence was not rebutted. The claim for Kshs. 70,091, being salary underpayment, is allowed.

37. On the claims for unpaid rest days and public holiday, I decline to make any award as the 1st Claimant did not tender sufficient evidence to prove the same to the satisfaction of the court.

38. On the prayer for compensation for unfair termination, having found that the 1st Claimant's employment was unfairly terminated, I award him 2 months' salary as compensation taking into account the factors in section 49(4) of the Act.

39. In summary, the Claimant is awarded the following:

- a. One months' pay in lieu of notice Kshs. 10,107.00
 - b. Service pay Kshs. 5,053.50
 - c. Underpayment of wages Kshs. 70,091.00
- Total Kshs. 85,251.50

40. The 1st Claimant is awarded costs of the suit and interests from date of judgment.

41. The 2nd Claimant's case is dismissed.

42. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

