



**Odede v Guaca Stationers Limited (Cause 466 of 2018)
[2025] KEELRC 1189 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1189 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 466 OF 2018**

J RIKA, J

APRIL 28, 2025

BETWEEN

WILLIAM ODHIAMBO ODEDE CLAIMANT

AND

GUACA STATIONERS LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 5th April 2018.
2. He states that he was employed by the Respondent as a General Worker from March 2003 to 14th June 2017.
3. He was earning a daily rate of Kshs. 445, later adjusted from June 2012, to Kshs. 530.
4. He used to work for 6 days a week. He would rest for 1 day, without pay.
5. In June 2016, the Respondent unlawfully reduced the Claimant's working days weekly, to 2. This was after the Claimant refused to sign a fresh contract with another entity, as demanded by the Respondent's Director.
6. He continued to work for 2 days a week until 14th June 2017, when the Respondent locked him out.
7. He never went on annual leave. He was not issued a written contract. He worked diligently for 14 years. He prays for: -
 - a. Declaration that the Claimant was a permanent Employee of the Respondent.
 - b. Compensation for unfair termination.
 - c. 1- month salary in lieu of notice at Kshs. 12,720.
 - d. Annual leave at Kshs. 190,800.



- e. 12 months' salary as damages for unfair termination at Kshs. 152,640.
 - f. Unpaid house allowance at Kshs. 331,992.
 - g. Unpaid salaries at Kshs. 126,670.
 - h. Costs.
 - i. Interest.
8. The Respondent filed its Statement of Response dated 25th May 2018. Its position is that the Claimant was employed by the Respondent on various occasions, as a Casual Labourer.
 9. He failed to show up at the Respondent's premises, from 14th June 2017. The Respondent did not terminate his employment.
 10. The Respondent urges the Court to dismiss the Claim with costs.
 11. The Claimant gave evidence and closed his case, on 14th March 2024. Mercy Mumbi, the Respondent's Human Resource Manager, gave evidence on 31st July 2024, closing the hearing. The Claim was last mentioned on 26th November 2024, when the Parties confirmed filing and service of their submissions.
 12. The Claimant relied on his witness statement and documents [1-4]. He highlighted the contents of his Statement of Claim in his evidence. The Respondent's CEO, Shetan Shah, brought a new person to the workplace. He informed the Claimant that the new person, was going to be the Claimant's new Employer. The Claimant was required to sign a new contract which he refused to sign.
 13. Cross-examined, he told the Court that he had a contract with the Respondent, but had not exhibited it, before the Court. He was paid weekly. He did not have documents to show that he worked 6 days a week. There were times he worked 2 days a week. He did not have any document to show that the Director reduced the number of days. He was at the time of giving evidence, working for another Employer, Shinning Hope. This Employer paid his N.S.S.F contributions after the Respondent terminated his contract.
 14. He was working for Shinning Hope on 'kibarua' [informally], even while working for the Respondent. The N.S.S.F Statement shows that he was employed from 2012. Contributions were intermittent. He was not issued pay slips. He was turned back by the Manager on days he did not work.
 15. Mumbi too, relied on her witness statement, and exhibited documents filed by the Respondent, in her evidence. She told the Court that the Claimant started working for the Respondent in 2012 as a Casual Employee. He was paid daily, and later, upon his request, was paid weekly. His daily rate included the housing element. He stopped coming to work, in July 2017.
 16. Cross-examined, Mumbi told the Court she was employed by the Respondent, in October 2012. The Claimant was worked from 2003. The Respondent retained a pay voucher system. It did not issue pay slips. He was not locked out. Redirected, she told the Court that there was another company, indicated to have also employed the Claimant.
 17. The issues are whether the Claimant was a regular Employee of the Respondent; whether the Respondent terminated his contract unfairly and unlawfully, or at all; and whether he merits the prayers sought.



The Court Finds: -

18. The Claimant's pleadings and evidence have gaping holes, that do not establish his prayers, on a balance of probability.
19. He told the Court that there were times, he worked for only 2 days a week. At paragraphs 5 and 6 of his Statement of Claim, he states that he worked for 2 days in a week, from June 2016 to the time he ceased working, on 14th June 2017. This is a whole year, working 2 days in a week.
20. He also disclosed that he was working for another Employer, Shinning Hope, while still claiming employment at the Respondent.
21. He was not a regular Employee, but a Casual Employee, with the leeway to work for others.
22. When an Employee is working for more than 1 Employer on casual terms, it becomes difficult to justify a claim for conversion to regular terms. Regular terms require consistency of service and fidelity to 1 Employer. Regular employment is jealously inflexible. It would not allow the Claimant to simultaneously serve the Respondent, Shinning Hope and others. The Court is not able to declare that the Claimant was a permanent Employee of the Respondent.
23. There is no evidence that the Respondent terminated his contract. He had the leeway to walk off, and work elsewhere as he did with regard to Shinning Hope.
24. The claim for unfair and unlawful termination cannot be sustained, by an Employee who had this wide latitude on his days of work. He was not locked out, but opted to work for Shinning Hope.
25. The Claimant informed the Court that misunderstanding arose between him and the CEO, when the CEO asked him to sign a fresh contract, indicating that another person, not the Respondent, employed him. The Claimant was not clear in his evidence on this, but told the Court that he declined the instructions of his CEO, which prima facie, would cast him, as an Employee who engaged in an act of insubordination. He complains that he was not issued a written contract, while disclosing that the declined to sign a written contract, as instructed by his CEO. He appears to have had little regard for his CEO's instructions.
26. The prayers for declaration [a], compensation [b] which is repeated at [e], and notice [c] have no foundation and are declined.
27. It is unlikely that an Employee who worked for 2 days a week, for a whole year, and who even prior to June 2016 was not on duty consistently, is granted a prayer for annual leave days, claimed at Kshs. 190,800.
28. There is no evidence to support the prayers for house allowance and unpaid salary. Daily wage rates are designed to include the housing element. The Claimant cites the Wage Order of 2012 which adjusted his daily rate. The daily rate is inclusive of the housing element. He did not elaborate when unpaid salaries accrued.

It is Ordered: -

- a. The Claim is dismissed.
- b. No order on the costs.

DATED, SIGNED AND RELEASED ELECTRONICALLY AT NAIROBI, THIS 28TH DAY OF APRIL 2025.



JAMES RIKA
JUDGE

