



Mutanyi & another v Western Steel Mills Limited & another (Cause 243 of 2018) [2025] KEELRC 1817 (KLR) (20 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1817 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 243 OF 2018
MA ONYANGO, J
JUNE 20, 2025**

BETWEEN

JOEL ASITHIRA MUTANYI 1ST CLAIMANT

VINCENT SIKUKU NYONGESA 2ND CLAIMANT

AND

WESTERN STEEL MILLS LIMITED 1ST RESPONDENT

JOKALI HANDLING SERVICES LIMITED 2ND RESPONDENT

JUDGMENT

1. The Claimants filed their respective Statements of Claim against the Respondents on 17th June 2016 through the firm of Kutto & Kaira Nabasenge Advocates.
2. In his Statement of Claim, the 1st Claimant averred that he was employed by the Respondents on 7th January 2014 as a General Worker and later on as an Assistant Tong's Machine Man 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 23rd September 2015 after he was involved in an industrial accident while in the course of duty.
4. The 1st 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 1st 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 2014 and 2015.....Kshs 66,150



- b. Annual leave dues 2014.....Kshs 18,900
 - c. Annual leave dues 2015.....Kshs 18,900
 - d. Service benefits.....Kshs 18,900
 - e. One month salary in lieu of notice.....Kshs 18,900
 - f. 12 months' compensation for
unfair termination.....Kshs 226,800
 - g. Unpaid public holidays.....Kshs 138,600
 - h. Unpaid days off.....Kshs 12,600
 - i. Overtime dues.....Kshs 186,044
 - j. NSSF remittance not remitted.....Kshs 4,700
 - k. NHIF remittance.....Kshs 5,460
 - l. Loss of future earnings.....Kshs 7,257,600
6. The 2nd Claimant in his Statement of Claim averred that he was employed by the Respondents on 3rd March 2015 as a General Worker and later as an Assistant Lathe Machine Operator at a monthly salary of Kshs 19,500.
7. He averred that he served the Respondents with dedication and commitment until on 25th April 2016 when the Respondents summarily dismissed him from employment after he was involved in an industrial accident while on duty on 12th October 2015.
8. The 2nd Claimant contended that the termination of his employment by the Respondent was unlawful, unprocedural, irregular, unfair and in total violation of section 45(2) of the *Employment Act*.
9. The 2nd Claimant particularized the terminal dues and damages owed to him by the Respondents as a result of the unfair and unlawful termination as follows: -
- a. Unpaid house allowance for the year
2014 and 2015.....Kshs 50,700
 - b. Annual leave dues 2014.....Kshs 23,400
 - c. Annual leave dues 2015.....Kshs 23,400
 - d. Service benefits.....Kshs 9,750
 - e. One month salary in lieu of notice.....Kshs 23,400
 - f. 12 months compensation for
unfair termination.....Kshs 280,800
 - g. Unpaid public holidays.....Kshs 85,800
 - h. Unpaid days off.....Kshs 7,800
 - i. Overtime dues.....Kshs 142,590.24
 - j. NSSF remittance not remitted.....Kshs 1,200



- k. NHIF remittance.....Kshs 3,380
 - l. Loss of future earnings.....Kshs 652,220.24
10. The Claimants prayed for judgment against the Respondents for:
- a. The declaration that summary dismissal was unfair and unlawful.
 - b. The declaration that the Claimants are entitled to house allowance.
 - c. A declaration that the Claimants are entitled to one-month salary in lieu of annual leave.
 - d. A declaration that the Claimants are entitled to National Social Security Fund deductions for the period worked.
 - e. A declaration that the Claimants are entitled to National Hospital Insurance Fund (NHIF), for the period Worked.
 - f. A declaration that the Claimants are entitled to their dues, compensation, damages, and benefits as a result of wrongful dismissal from the employment as calculated above.
 - g. A maximum compensation of 12 months as per Section 49 (c) of the Employment Act.
 - h. Damages and Terminal Dues as per the calculations above
 - i. Loss of Earning of salary for a period of 30 years that the Claimant would have worked until the statutory retirement age of 60 years.
 - j. A Certificate of Service as per section 51 of the Employment Act:
 - k. The claim be allowed in entirety.
 - l. Costs and Interests of this suit from the date of filing until its full determination.
 - m. Any other and/or further relief as the Honourable Court deems fit and just to grant.
11. The 1st Respondent entered appeared and filed a Response to Memorandum of Claim dated 14th March 2019 in each suit separately through the firm of Rioba Omboto & Co. Advocates. On 21st February 2020, the 1st Respondent again filed a Reply to Memorandum of Claim dated 5th December 2019 in respect of the 2nd Claimant through Triple K Advocates LLP Advocates. In both responses, the 1st Respondent denied that the Claimants were its employees and averred that the claims for unlawful termination are unfounded. The 1st Respondent urged the court to dismiss the Claimants' claims with costs.
12. The 2nd Respondent despite being served with summons to enter appearance dated 20th June 2016 did not file response or participate in this claims.
13. The suit was heard on 7th December 2023 when both Claimants testified in furtherance of their cases.
14. The 2nd Claimant testified as CW1. He relied on the bundle of documents he filed in court in support of his case. It was his testimony that the 2nd Respondent was an agent of the 1st Respondent. In his testimony, CW1 stated that he worked for the 1st Respondent from 7am to 7pm, six days a week, that he worked on public holidays and was not paid overtime. He also contended that he was never paid house allowance during the entire period he was in the 1st Respondent's employment.



15. On cross examination, CW1 reiterated that he was employed by the 1st Respondent who paid him his salary through his bank account at Diamond Trust Bank.
16. On re-examination, CW1 stated that all employees of the 1st Respondent were paid their salaries through bank transfer.
17. The 1st Claimant testified as CW2 and adopted his witness statement recorded on 17th June 2016 as his evidence in chief. He also relied on the bundle of documents he filed in court in support of his claim. CW2 told the court that the 2nd Respondent was an agent of the 1st Respondent. It was also his testimony that he worked for the 1st Respondent from 7am to 7pm, 7 days a week at a monthly salary of Kshs. 15,750. That he worked on public holidays and was not paid overtime. CW2 reiterated that he was not paid house allowance for the period he worked for the 1st Respondent.
18. The 1st Claimant contended that his supervisor was Mr Korir an employee of the 1st Respondent. He stated that he did not know Jackson Ominde who filed a witness statement in support of the 1st Respondent's case.
19. It was his evidence that he worked at the 1st Respondent's premises and his salary was paid by the 1st Respondent into his DTB bank account. On this basis, the CW2 maintained that he was an employee of the 1st Respondent and not the 2nd Respondent.
20. CW2 stated that on 23rd September 2015, he reported to work but was verbally terminated from employment without any reason or notice.
21. On cross examination, the CW2 maintained that the 1st Respondent was his employer. He also stated that he was not issued with an employment letter when he was employed or a termination letter upon being dismissed.
22. On re-examination, CW2 maintained that he worked for the 1st Respondent and was paid through the bank by the 1st Respondent.
23. The 1st Respondent did not call any witnesses and on 22nd February 2024, the 1st Respondent's counsel closed the 1st Respondent's case.
24. At the close of the 1st Respondent's case, the court directed parties to file written submissions. The Claimants filed their submissions dated 10th June 2024 and 1st Respondent's submissions dated 29th October 2024 were filed on 13th November 2024.

The Claimants Submissions

25. In their submissions, the Claimants framed the issues for determination to be:
 - i. Whether the Claimants were unlawfully, unprocedurally and unfairly dismissed from employment
 - ii. Whether the Claimants are entitled to compensation for unlawful and unfair termination from employment
 - iii. Who is liable for the unfair termination of the Claimants employment
 - iv. Whether the Claimants are entitled to an award of certificate of service



26. On the first issue, the Claimants submitted that the Respondents unfairly dismissed them from employment without following the due process stipulated under Section 35(1) of the [Employment Act](#) as their termination from employment was abrupt and without any notice.
27. The Claimants further submitted that they were terminated from employment without justifications. It was their submission that they were never given an opportunity to be heard before they were summarily dismissed from employment.
28. The Claimants urged the court to make a finding that they were unlawfully, unprocedurally and unfairly terminated from employment.
29. On the second issue the Claimants submitted that they are entitled to the same as they were summarily dismissed from employment without any justification. On the 3rd issue the Claimants urged the court to grant them service benefits arguing that they had claimed and pleaded service pay in their respective Statements of Claim. On the prayer for overtime, off days and holiday dues, the Claimants contended that they worked for the 1st Respondent from 7am to 7pm, every day of the week since they were employed and as such they are entitled to the reliefs they sought under these heads. On the prayer for NSSF and NHIF dues, the Claimants submitted that by dint of section 19 of the [Employment Act](#), the Respondents effected statutory deductions but did not remit the same. They prayed for refund of the said deductions. With regard to the prayer for house allowance, the Claimants submitted that in their claims, they pleaded that they were not paid house allowance during the entire period they were engaged by the Respondent and are therefore entitled to the same.
30. In sum, the Claimants maintained that they were entitled to the reliefs sought in view of the unfair and unlawful termination of their employment.
31. On the issue on who is liable for the unfair termination, the Claimants submitted that the 1st Respondent in its response to the Claimants Claims stated that it did not employ the Claimants and that the 2nd Respondent should be held responsible for the Claimants' claims. According to the Claimants, the 1st and 2nd Respondents had a principal/agent relationship and the 2nd Respondent being an agent of the 1st Respondent, it rendered the 1st Respondent liable and responsible for the actions of the 2nd Respondent.
32. The Claimants submitted that both the 1st and 2nd Respondents were jointly and/or severally liable and responsible for their unfair dismissal and it was immaterial whether the Claimants were employed by the 1st or the 2nd Respondent as they were liable jointly and severally for dismissing the Claimants.
33. In the end, the Claimants urged the court to grant them the prayers they sought in their respective statements of claim.

The 1st Respondent's Submissions

34. On its part, the 1st Respondent identified the issues for determination to be: -
 - i. Whether the Claimants were employees of the 1st Respondent
 - ii. What is the relationship between the 1st and the 2nd Respondent?
35. On the first issue, the 1st Respondent while citing the case of *Zarika Adoyo Obondo v Tai Shunjun & Another* (2020) eKLR and *Evans Oloo Limera v Prime Steel Limited* (2024) eKLR submitted that the Claimants did not provide documentation to this court to support their claim that they were its employees.



36. The 1st Respondent maintained that the Claimants could not have been unlawfully terminated by the 1st Respondent as they were never employed by the 1st Respondent, hence the claim for compensation for unlawful termination should fail.
37. On the second issue, the 1st Respondent in disputing the allegation made by the Claimants that the 2nd Respondent was its agent, submitted that the 2nd Respondent was an independent contractor whom it contracted for provisions of manpower services. That as an independent contractor the 2nd Respondent was responsible for its employees in terms of benefits and statutory deductions. In this regard, the 1st Respondent submitted that a person contracting an independent contractor cannot be responsible for terminal dues or any employee benefits of the employees of the independent contractor.
38. The 1st Respondent urged the court to dismiss the Claim against the 1st Respondent with costs.

Determination

39. Upon considering the pleadings herein, the evidence of the parties, the submissions and the authorities cited, I find that the issues for determination are: -
- i. Whether the Claimants were employees of the 1st or 2nd Respondent,
 - ii. Who between the 1st and 2nd 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 Claimants were employees of the 1st or 2nd Respondent

40. In their respective Statements of Claim, the Claimants pleaded that they were employed by the Respondents herein as principal and agent respectively. However, in their oral testimony before court and in their submissions, the Claimants contended that they were employed by the 1st Respondent. It was their testimony that they worked at the 1st Respondent's premises and that they were in fact paid by the 1st Respondent through their accounts in Diamond Trust Bank.
41. In support of their claim that they were employed by the 1st Respondent, the Claimants availed copies of their respective DTB Account Statements and NSSF Statements. However, neither the bank statements nor the NSSF statements identify either of the Respondents as the employer of the Claimants. The bank statements have some entries of salary payment credits but do not state who paid the salary. The NSSF statements do not indicate who the employer of the Claimants was.
42. The 1st Respondent on the other hand disputed the existence of an employment relationship between itself and the Claimants.
43. 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”.
44. 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”



45. 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.”

46. Although the court appreciates the position that it is the responsibility of an employer to document the employment relationship and that in certain respects the burden of proving or disproving a term of employment shifts to the employer, in an instance such as this, the Claimants were required to adduce evidence that indeed they were employed by either the Respondents before the Respondents can be called upon to provide their employment records. It is not enough to allege by word of mouth that an employment relationship existed where there is no concrete evidence to support the same.

47. In any case, where a party to a suit believes that the adversary, or any other party for that matter, has documents in its possession which would aid in supporting its case, which could include the bank in the instant case, such party is at liberty to carry out discovery and seek the production of such documents by notice, which the Claimants did not take advantage of.

48. The totality of the evidence on record is that the Claimants did not prove that they were employed by any of the Respondents and particularly by the 1st Respondent as alleged in their testimonies.

49. From the foregoing, it is the finding of the court that the evidence before it is not sufficient to justify a finding that the Claimants were employees of both the Respondents or either of them.

50. Having made a finding that the Claimants did not prove that they were employees of the Respondents, the claim by the Claimants has no legs to stand on.

51. Consequently, the Claimants suits against the Respondents are dismissed with an order that each party shall bear its costs.

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

MAUREEN ONYANGO

JUDGE

