



Adulo v Wassuna (Cause 1140 of 2015) [2025] KEELRC 2367 (KLR) (31 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2367 (KLR)

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

CAUSE 1140 OF 2015

K OCHARO, J

JULY 31, 2025

BETWEEN

KIPSON GWEYAN ADULO CLAIMANT

AND

AGGREY OMONDI WASSUNA RESPONDENT

JUDGMENT

Background

1. By a Memorandum of Claim dated 13th August 2015, the Claimant sued the Respondent for the following reliefs;
 - I. KShs. 2 397,440.
 - II. Damages for wrongful dismissal.
 - III. Costs of the suit.
 - IV. Interest on [a], [b] and [c] above at court rates until payment in full.
2. The Respondent resisted the Claimant's claim through a Response to Claim dated 11th February 2016. He denied the Claimant's cause of action against him and his entitlement to the reliefs sought.
3. At the trial, the Claimant and the Respondent utilised their respective witness statements filed herein as their evidence in chief. They relied on the documents they submitted in this matter as their documentary evidence.

The Claimant's case

4. It was the Claimant's that an employee for the Respondent for (8) years who doubled up as a gardener, a dog handler and a guard. The Respondent contracted him privately from Radar Security in 2004.



5. Initially, he was employed by the Respondent as a guard, but later on, the latter started and continued to assign him more duties, i.e., a gardener and a dog handler. Despite this, the Respondent never increased his salary to be aligned with the increased tasks.
6. On or about 1st May 2012, the Respondent unlawfully terminated his services without any notice or at all.
7. He contended that the Respondent's decision to terminate his services was solely because of the request he made to him, to be allowed to work at night as opposed to daytime. The request didn't sit well with the Respondent.
8. He further asserted that the termination was not with any justifiable cause. It was not in accord with procedural fairness. As such, it was contrary to the stipulations of the *Employment Act*.
9. Without a justifiable reason, the Respondent withheld his salary for April 2012.
10. Cross-examined by Counsel for the Respondent, the Claimant asserted that he was initially working for Radar Security. He left them in March 2004. He has no document from which it can be discerned that he ceased being their employee and how.
11. He admitted that all the pay slips he presented indicated Rader Security as his employer.
12. He reiterated that the Respondent dismissed him on 1st May 2012, and went ahead to acknowledge that his claim herein was filed on 17th August 2015, therefore outside the three-year limit.
13. From the photos tendered in evidence by him, one cannot tell when they were taken.

The Respondent's Case

14. The Respondent stated that it is untrue that the Claimant was ever his employee, and his allegation that he employed him is a blatant lie, misconceived and ill-advised. He [the Respondent] outsourced the services of Radar Security Company to provide security at his home.
15. The Claimant was, as evidenced by his statement, employed by Radar Security Company, which was an independent contractor he engaged to provide security services. As such, any employer/employee relationship could only exist between the Claimant and the said Company.
16. The Payslips attached to the Memorandum of Claim clearly identify the Claimant's employer as Radar Security Limited, and they also include the Claimant's Employment Number with that company.
17. He asserted that, therefore, he does not owe the Claimant any duty to pay dues or terminal benefits because he did not and has never employed the Claimant. The Claimant's claim is therefore frivolous, baseless and brought in bad faith, whose sole intention is to enable the Claimant to enrich himself unjustly.
18. Cross-examined by Counsel for the Claimant, the Respondent testified that the uniform adorned by the Claimant, as revealed by the photos he tendered as evidence, wasn't supplied to him by the Respondent.
19. The Respondent's relationship with the Security firm was not anchored on any written contract. He used firm their dues; however, they were not issuing him with receipts. He ceased paying them in 2012, when the Claimant left his premises.
20. He stated that he ended the relationship between the security firm and himself, as his home became more secure with people building houses in the area.



21. He never assigned the Claimant any extra duties. He properly adhered to the terms and conditions of the agreement between himself and the firm. The Claimant only provided the contracted services, which involved guarding the Respondent's compound.

Analysis and Determination

22. From the outset, I hesitate not to state that, considering the respective pleadings and evidence presented by the parties, this is a claim that must fail. It must fail for two reasons: the claim was filed out of time, and the Claimant failed to demonstrate sufficiently or at all the existence of an employer-employee relationship between the Respondent and himself.
23. Section 47[5] of the *Employment Act* places legal burdens both on the employee and the employer to discharge in a dispute regarding an alleged unfair termination of an employee's employment or wrongful summary dismissal. The employee must first demonstrate that the employer employed them at the relevant times and that an unlawful or wrongful termination or dismissal occurred. It is essential to note that all the employee needs to do to discharge the burden is to present a prima facie case to that effect.
24. It is only where the employee discharges the burden, that the evidential burden shifts to the employer to justify the termination or summary dismissal by demonstrating, that the termination or summary dismissal was in accord with the dictates of procedural fairness [section 41 of the Act], the reason[s] for the termination/summary dismissal [section 43], and that the reason[s] was fair and valid [section 45]. See also, Pius Isindu Machafu v Lavington Security [2017] eKLR.
25. It isn't difficult to point out that where the employee fails to discharge their legal burden, their case shall fail at that hurdle.
26. I have carefully considered the Claimant's Memorandum of Claim, his witness statement turned evidence in chief, and his oral testimony in court under cross-examination, and conclude that the same do not reveal the Claimant as an employee of the Respondent at the material time, or at all. They present him as an employee of Radar Security Limited.
27. Consequently, I find that the Claimant failed to establish that there was in existence an employer-employee relationship between the Respondent and him. As such, he failed to discharge his burden under section 47[5]. His case must fail, therefore.
28. Section 89 [formally section 90] of the *Employment Act* provides;
- “Notwithstanding the provisions of section 4[1] of the *Limitation of Actions Act*, no civil action or proceedings based on or arising out of this Act or contract of service generally shall lie or be instituted unless it is commenced within three years next after the Act, neglect or default complained of or in the case of continuing injury or damage within twelve months next after the cessation thereof.”
29. Undeniably, and the Claimant did admit, the claim herein was filed out of time. The same should be dismissed on this count.
30. In the upshot, the Claimant's claim is hereby dismissed with costs.

READ, SIGNED AND DELIVERED THIS 31ST DAY OF JULY 2025.

OCHARO KEBIRA

JUDGE

