



**Limera v Prime Steel Mills Limited (Cause 161 of 2017)
[2024] KEELRC 878 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 878 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 161 OF 2017**

L NDOLO, J

APRIL 24, 2024

BETWEEN

EVANS OLOO LIMERA CLAIMANT

AND

PRIME STEEL MILLS LIMITED RESPONDENT

JUDGMENT

1. The Claimant's claim brought by a Memorandum of Claim dated 31st January 2017, is for compensation for unlawful termination of employment. The Respondent filed a Reply dated 4th November 2019.
2. At the trial, the Claimant testified on his own behalf and thereafter called Vincent Andati Atiriano. The Respondent called its Senior Supervisor, Godfrey Owuor. Both parties also filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent on 28th June 2011, as a Mould Setter. He claims to have earned a daily rate of Kshs 513 making a monthly pay of Kshs 15,390. He further claims that he worked on night shift from 7.00 pm to 7.00 am from Monday to Sunday.
4. The Claimant avers that on 4th January 2016, he fell sick shortly after reporting to work, upon which he sought leave from the Respondent's supervisor, one Christopher Katana, to seek medical attention, which leave was granted.
5. The Claimant states that upon reporting to work the following day, the Respondent's general supervisor, one Kelvin Ochieng Omondi ordered him out of the Respondent's premises, instructing him not to report to work again.



6. The Claimant lays a claim of unlawful and unfair termination of employment and therefore claims the following:
 - a. 1 month's salary *in lieu* of notice.....Kshs 15,390
 - b. Overtime compensation for 4 extra hours daily.....155,824
 - c. House allowance for 54 months.....124,659
 - d. 12 months' salary in compensation.....184,680
 - e. Costs plus interest

The Respondent's Case

7. In its Reply dated 4th November 2019, the Respondent disputes the entire claim and avers that the Claimant has no cause of action against it.
8. The Respondent asserts that the Claimant is a stranger to it and states that there was no employment relationship between the parties, upon which the Court can grant any orders.
9. The Respondent denies the Claimant's averments that he fell sick, sought and was granted sick leave and that he was ordered out of the Respondent's premises. The Respondent further denies that the Claimant was wrongfully dismissed.

Findings and Determination

10. The first issue for determination in this case is whether there was an employment relationship between the Claimant and the Respondent, capable of enforcement by the Court.
11. In its final submissions dated 19th February 2024, the Respondent cited the decision in *Casmur Nyakuru Nyaberi v Mwakikar Agencies Limited* [2016] eKLR where this Court stated as follows:

“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.”
12. The Respondent questions the authenticity of the documents produced by the Claimant in support of his case being; a casual labour card, provisional National Social Security Fund statement of account and casual employees pay sheet.
13. Significantly, the casual labour card produced by the Claimant only covers a single day, while the casual employees' pay sheet covers a one-week period from 18th September 2014 to 24th September 2014. Additionally, the provisional National Social Security Fund statement of account does not link the Respondent as the Claimant's employer.
14. The Claimant did not move the Court for production of documents he believed to be in possession of the Respondent that would aid his case. What is more, the witness called by the Claimant to corroborate his own testimony did not offer any factual evidence to support his case.



15. Considering the evidence adduced by the parties and applying the standard of balance of probability, I have come to the conclusion that the Claimant has failed to establish the existence of an employment relationship between himself and the Respondent.
16. For the foregoing reasons, the Claimant's entire claim, which is premised on the existence of an employment relationship, which was not proved, fails and is dismissed.
17. Each party will bear their own costs.
18. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY APRIL 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Omamo for the Claimant

Mr. Muchiri for the Respondent

