



REPUBLIC OF KENYA



KENYA LAW
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**Onchonga & another v One Way Cleaners (Cause 1259 of 2016)
[2023] KEELRC 201 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 201 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1259 OF 2016
J RIKA, J
JANUARY 31, 2023**

BETWEEN

ROBERT ONCHONGA 1ST CLAIMANT

ABRAHAM KAPULE 2ND CLAIMANT

AND

ONE WAY CLEANERS RESPONDENT

JUDGMENT

1. The claimants filed this claim on June 28, 2016.
2. They were employed by the respondent as supervisors for 3 years, earning a monthly salary of Kshs 16,500 and Kshs 18,150 respectively.
3. They state that their contracts of employment were unfairly and wrongfully terminated by the respondent. They claim 3 months' salary in lieu of notice; unpaid annual leave; house allowance; pro-rata leave; service pay; overtime; public holiday pay; off-duty days; and 12 months' salary in compensation for unfair termination.
4. The 1st claimant pleads a total of Kshs 611,911, while the 2nd claimant pleads a total of Kshs 676,401 under the various heads.
5. The respondent filed a statement of response dated August 17, 2016. It denies to have employed the claimants.
6. The claimants gave evidence, and closed their case on February 25, 2022, in the absence of the respondent. The respondent did not give evidence. Respondent's advocates were discharged from the proceedings upon their application dated May 3, 2021.



7. The 1st claimant testified that he was on a 3-year contract. It was to expire on February 28, 2016. He continued working in March and April 2016 after expiry. He was told by the director not to report on April 13, 2016. He adopted his documents and witness statement on record. The 2nd claimant testified that his contract was for 3 years. It was not terminated. It was constructively renewed after February 28, 2016. On April 13, 2016, he stopped working because he was not receiving a salary. He adopted his documents and witness statement.
8. The claim was last mentioned on October 12, 2022, when the claimants confirmed filing of their submissions.

The Court Finds:

9. The claimants executed contracts of employment on June 18, 2015.
10. The contracts were not for a period of 3 years as pleaded by the claimants, and as repeated in their evidence.
11. The contracts were for 1 year, commencing February 1, 2015, lapsing February 28, 2016.
12. This is confirmed in the witness statements filed by the claimants. It is misleading for them to state that their contracts were for a period of 3 years, while the contract documents and their witness statements indicate 1 year.
13. They also gave inconsistent evidence on termination. The 1st claimant stated that he stopped working, when he was told not to report by the director, on April 13, 2016. The 2nd claimant stated that his contract was not terminated, but that he stopped working because he was not being paid his monthly salary.
14. The court is of the persuasion that the claimants were on fixed-term contracts for a period of 1 year, which ended on February 28, 2016. The contracts were not renewed, and there was no mutuality of obligations after February 28, 2016.
15. The claimants have not established unfair and unlawful termination. Their prayers for notice pay and compensation have no foundation. They have not established the prayers for 2 months' unpaid salary; 2 years' leave; house allowance; pro-rata leave; service pay; overtime; holiday pay; and off-duty.
16. It is ordered:
 - a. The claim on the whole has no foundation and is dismissed.
 - b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID -19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA
JUDGE

