



**Shikoli v Denova Chemicals Limited (Cause 1385 of 2016)  
[2023] KEELRC 1373 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1373 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1385 OF 2016**

**J RIKA, J**

**MAY 31, 2023**

**BETWEEN**

**VINCENT ANGWEYE SHIKOLI ..... CLAIMANT**

**AND**

**DENOVA CHEMICALS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on July 15, 2016. It is not clear from his Pleadings and Evidence in what position the Claimant was employed. He states that he was employed in the Respondent's Technical and Production Department. He states that he was employed from August 6, 2014. He earned a monthly salary of Kshs 12,000.
2. On December 10, 2015, the Managing Director, Cedric Njagi, told the Claimant to go home on account of diminished work. He was told that he would be recalled later, but was not recalled.
3. He considered the Respondent to have terminated his contract unfairly, because the Labour Officer was not notified of the intention to declare the Claimant's position redundant; no notice issued to the Claimant; there was no severance pay; and due process under the Employment Act was not followed.
4. He prays for Judgment as follows: -
  - a. 1-month salary *in lieu* of notice at Kshs 12,000.
  - b. Salary for the month of October, September and November at Kshs 36,000.
  - c. Overtime for the entire period of employment at Kshs 105,300.
  - d. House allowance in arrears over the same period at Kshs 28,080.
  - e. Annual leave at Kshs 28,000.



- f. Public holidays worked at Kshs 11,400.
  - g. Gratuity at Kshs 7,800.
  - h. 12 months' salary in compensation for unfair termination at Kshs 144,000.  
Total...Kshs 356,620.
  - i. Costs and Interest.
5. The Respondent filed a Statement of Response, dated February 20, 2023. It is denied that the Claimant was employed by the Respondent. It is the position of the Respondent that the Claimant was an unskilled casual worker, who was contracted by the Respondent on need to need basis. It is not true that he was paid a monthly salary of Kshs 12,000. He was paid through petty cash voucher, depending on the number of days worked. The Respondent was struggling to break even, and the Claimant was advised not to come back, because there was insufficient business. The period worked did not equate to 12 months. There was no termination instigated by the Respondent. The Claimant was on casual employment.
  6. The Claimant and the Respondent's Director Cedric, gave evidence for the respective Parties, and closed their cases, on March 10, 2023.
  7. The Claimant adopted his Witness Statement and 2 Documents on record, in his evidence-in-chief. There was no written contract. He worked in continuity from 2014. He worked from 7.00 a.m. to 7.00 p.m. He mixed raw products with chemicals, which were then packaged for sale. He was told by Cedric not to report to work, because work had diminished. He did not think this was correct. There was an order placed by a military barracks for the Respondent's products at the time.
  8. He reported the dispute to the Labour Office. The Respondent was invited for conciliation but did not honour the invitation. Petty cash voucher exhibited by the Respondent did not relate to payment of salary. His salary was Kshs 12,000 monthly. The Employees were paid an extra Kshs 200, when they worked from 6.00 p.m. to 8.00 p.m. He was not paid salary for the period the Respondent complained about diminished work; he was not paid house allowance; he was not paid for holiday work; he did not take annual leave and was not compensated; and NSSF obligation was not met by the Respondent.
  9. Cross-examined, the Claimant told the Court that he was employed on August 6, 2014 by Cedric. He was promised by Cedric that he would be availed employment documents. None was availed. He was paid in cash at the office. He worked for 16 months. He was not issued a letter of termination. Termination was communicated by word of mouth. Redirected, he told the Court that he requested to be supplied with employment documents, but none was supplied.
  10. Cedric told the Court that the Claimant was his worker. He would contact him whenever work was available. The Respondent distributed hygiene products. Cedric worked from his residence in 2014. He started manufacturing in 2017. He bought and repackaged materials. The business did not mix any chemicals. The Claimant was introduced to Cedric by another casual worker. The workers were paid a daily rate. Work was sporadic. The Claimant did not work in continuity. He was paid Kshs 250 daily. He would deliver products on motorbike, clean or arrange the store, or package materials. The Respondent did not have a technical department. The Claimant worked on scattered days, as shown in the payment vouchers. Cedric did not terminate the Claimant's contract. There was no reduced workload. There was no contract with any military barracks. There was no communication to Cedric from the Labour Office. The Claim comprises made-up stories.



11. Cross-examined, Cedric told the Court that his business is currently producing sodium chloride. At the time the Claimant worked, the Respondent repackaged and sold materials. The Claimant worked on need basis as shown by the payment vouchers. Payment is for days worked. The Respondent did not dismiss the Claimant. The Respondent pleaded that due process was followed. It was not necessary to issue letter to show cause. Casual workers are not entitled to disciplinary hearing. The Claimant was not at work for the months he claims arrears of salary. He last worked in the month of June 2015. He did not work in September, October and November 2015. He was not entitled to house allowance and annual leave. Cedric did not pay NSSF contributions. The Claimant would at times work on Public Holidays. Cedric did not employ the Claimant, or terminate his contract by word of mouth as alleged.
12. The issues are whether the Claimant was a regular Employee of the Respondent; whether his contract was terminated by the Respondent unfairly or at all; and whether he merits the terminal benefits and compensation as pleaded.

**The Court Finds: -**

13. The payment vouchers exhibited by the Respondent indicate that the Claimant was paid wages for work done on specific days. He signed these vouchers. He did not present evidence to establish that he was a regular Employee of the Respondent, earning a monthly salary of Kshs 12,000. He could have, in lieu of documents to establish regular employment, marshalled the evidence of any worker who worked with him for the Respondent.
14. He only exhibited his demand letter before action, and a letter from the Labour Office dated January 15, 2016 addressed to the Respondent. The letter states that a complaint had been lodged with the Labour Office against the Respondent, but gives no details of the complaint. It does not mention redundancy, unfair termination or non-payment of terminal benefits.
15. The Claimant, as mentioned elsewhere in this Judgment, was not even clear on his role. The Respondent appears to have been a small start-up, operating from its promoter's residence, at the time the Claimant was introduced to the business, by a fellow casual worker. He was not continually in employment. He did odd 'vibarua' here and there for the start-up, which included deliveries, cleaning and arranging merchandise in the Respondent's store. His relationship with the Respondent did not crystalize into an employer-employee relationship, over which the Respondent could be called upon to account, as an Employer.
16. The Claimant did not establish that he was employed by the Respondent. He did not establish unfair termination under Section 47 [5] of the Employment Act, or demonstrate, that there was a redundancy situation, calling into operation, Section 40 of the Employment Act.
17. The Claim has no merit.

**It Is Ordered: -**

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

**DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF MAY, 2023.**

**JAMES RIKA**  
**JUDGE**

