



**Lupao v Prime Steel Mills Limited (Cause 213 of 2018)
[2023] KEELRC 1183 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1183 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 213 OF 2018**

L NDOLO, J

MAY 18, 2023

BETWEEN

WILLY SIMIYU LUPAO CLAIMANT

AND

PRIME STEEL MILLS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The issues in dispute as stated by the claimant in his memorandum of claim dated January 12, 2018 are; unlawful dismissal and non-payment of terminal dues. The respondent filed a response on September 12, 2019.
2. At the trial, the claimant testified on his own behalf and the respondent called its Human Resource Officer, Godfrey Oduor.

The Claimant's Case

3. The claimant states that he was employed by the respondent on September 16, 2012, as a basket charger. He claims to have been subsequently deployed as a furnace charger and later moved to the position of mould setter. He earned a daily wage of Kshs 485, translating to a monthly salary of Kshs 14,550.
4. The claimant claims that his employment was terminated verbally in the month of August 2016, by the respondent's manager, one Mr Peter.
5. The claimant lays a claim for wrongful dismissal on the following grounds:
 - a. The claimant had done absolutely nothing wrong to warrant the dismissal;
 - b. No notice of intention to dismiss the claimant from employment was served upon him;



- c. No plausible reasons were given for dismissing the claimant from employment and the allegation that there was no more work for him to do was far-fetched and unsubstantiated;
 - d. No hearing ever took place before the decision to dismiss the claimant was reached;
 - e. Due process was not followed in dismissing the claimant;
 - f. The decision to dismiss the claimant was extremely harsh, unwarranted and unjustified, considering that he had served the respondent without blemish.
6. The claimant's claim against the respondent is as follows:
- a. Payment *in lieu* of notice.....Kshs 14,550
 - b. Overtime on weekdays (4 hours).....453,960
 - c. Overtime on weekends (4 hours).....93,120
 - d. House allowance for 48 months.....104,760
 - e. 12 months' salary in compensation.....174,600
 - f. Costs plus interest

The Respondent's Case

- 7. In its response dated September 10, 2019 and filed in court on September 12, 2019, the respondent states that it engaged the claimant as a casual employee from May 10, 2015 until May 16, 2015.
- 8. The respondent further states that the claimant voluntarily quit his employment on May 16, 2015, after which he took up casual employment with the respondent's labour services subcontractor, Jokali Handling Services.
- 9. The respondent denies terminating the claimant's employment and states that the claimant was paid for all days and hours worked.
- 10. In response to the claim for house allowance, the respondent states that the claimant was paid an all-inclusive daily wage, in accordance with the Regulation of Wages (General) Order.

Findings and Determination

- 11. There are three (3) issues for determination in this case:
 - a. The nature of the claimant's engagement with the respondent;
 - b. Whether the claimant has made out a case of unlawful termination of employment;
 - c. Whether the claimant is entitled to the remedies sought.

Nature of the Claimant's Engagement

- 12. The claimant claims to have been employed by the respondent from September 16, 2012 until August 2016, when his employment was terminated. The respondent on the other hand states that the claimant was engaged as a casual employee from May 10, 2015 until May 16, 2015.



13. Section 2 of the *Employment Act* defines a casual employee as:
“a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time.”
14. The claimant himself produced a single payment voucher dated May 16, 2015, evidencing payment of his wages for seven (7) days. This documentary evidence accords with the respondent’s averment that the claimant was engaged as a casual employee for one week.
15. The claimant was unable to account for his engagement for the rest of the period he claims to have been in the respondent’s employment. He could not even tell the date of the alleged termination of employment.
16. On a balance of probability, I find and hold that the claimant was a casual employee engaged on a daily basis for a period of 7 days. He was therefore not entitled to any other benefit apart from his daily wage for the days worked and there is evidence on record that he received his due wages.
17. As a result, the claimant’s claim which is premised on an employment relationship that was not proved, is without basis and is dismissed.
18. Each party will bear their own costs.
19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 18th DAY OF MAY 2023

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JUDGE

Appearance:

Miss Nyakowa h/b Mr. Namada for the Claimant

Mr. Mutoro for the Respondent

