



**Odiwor v Lexis International Limited & another (Cause 596 of 2016)
[2023] KEELRC 1846 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1846 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 596 OF 2016
BOM MANANI, J
JULY 31, 2023**

BETWEEN

COLLINCE ODIWOR CLAIMANT

AND

LEXIS INTERNATIONAL LIMITED 1ST RESPONDENT

SHYAM GENERAL MERCHANTS LIMITED 2ND RESPONDENT

JUDGMENT

1. This is an action for wrongful termination. The claimant alleges that he was employed by the respondents on casual basis in July 2014. He avers that he worked under this arrangement until March 2015 when his contract was converted into a permanent one. However, he was not issued with a formal letter of appointment.
2. The claimant further avers that the respondents used to pay his salary on weekly basis before they stopped. That at the tail end of their relation, the respondents begun paying him Kshs 500.00 after every two weeks. That this continued until sometime in January 2016 when the respondents' agents allegedly told the claimant that there was no more work for him.
3. When the matter was initially presented to court, the claimant had sued the 1st respondent alone. It was his initial position that the 1st respondent was his employer and that it is the 1st respondent who terminated the contract of service between the parties.
4. The 1st respondent entered appearance and filed a defense denying knowledge of the claimant. It was the 1st respondent's position that it had no employment relation with the claimant. The 1st respondent averred that the claimant was an employee of the 2nd respondent with whom the 1st respondent had a business relation.



5. Upon service of the defense by the 1st respondent, the claimant applied to amend his pleadings to include the 2nd respondent in the matter. The court record shows that the application was allowed on June 4, 2019 and the 2nd respondent brought into the cause.
6. In the amended statement of claim, the claimant now described the two respondents as his employers. He appeared to suggest that the two had jointly employed him and subsequently terminated his contract of service.
7. When the matter came up for trial, the claimant reverted to his earlier position. He now averred that it was the 1st respondent and not the 2nd respondent who was his employer. However, he was not able to provide any proof of his assertions.
8. The claimant stated that his salary was sometimes paid by one Michael Okoth. To prove this assertion, the claimant produced an Mpesa statement which shows that the said Michael Okoth had sent him cash on two occasions. However, there was no evidence to link the said Michael Okoth to the 1st respondent. It is unclear whether when he made the two payments to the claimant, the said Michael Okoth was acting as an agent for the 1st respondent or was acting in his own right. Not evidence was tendered on this issue.
9. On its part, the 1st respondent maintained its position that it had no employment relation with the claimant. It was the 1st respondent's case that the claimant had been engaged by the 2nd respondent who was doing some construction works for the 1st respondent.
10. If he hoped to succeed in the claim, it was up to the claimant to provide proof that he was an employee of the 1st respondent. In my humble view, this evidence was not provided. Although the claimant suggested that Michael Okoth was the agent of the 1st respondent, there was no cogent evidence to support this assertion. It is unclear why the claimant could not call a co-employee to affirm his story.
11. Absent evidence of existence of an employment relation between the claimant and the 1st respondent and having regard to the consistent denial by the 1st respondent that there was such a relation between the parties, I am unable to hold that the claimant was an employee of the 1st respondent.
12. Despite bringing action against the 2nd respondent, it is clear from the record that during his testimony, the claimant denied that this respondent was his employer. Accordingly, the court cannot make a finding that there was an employment relation between the two.
13. Importantly, even if there was such a relation between the two, this respondent was brought into the suit more than three (3) years from the date that the cause of action is said to have arisen. Consequently, the suit would in any event have been time barred against this respondent.

Determination

14. The upshot is that I find no merit in the claimant's action against the two respondents.
15. Accordingly, the claim against the respondents is dismissed with costs to the 1st respondent who defended the matter.

DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF JULY, 2023

B. O. M. MANANI

JUDGE

In the presence of:



..... for the Claimant

.....for the 1st Respondent

.....for the 2nd Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

