



**Odero v Guardian Coaches Limited (Cause 2467 of 2017)  
[2023] KEELRC 2382 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2382 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2467 OF 2017  
M MBARÚ, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**PATRICK ONYANGO ODERO ..... CLAIMANT**

**AND**

**THE GUARDIAN COACHES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant's case is that he was employed by the respondent as a mechanic in December 2016 earning a wage of Ksh. 20,000 per month and a daily allowance of Ksh.300. But on 5 August 2017 the respondent, through the workshop manager one Jackson Ramadhan Ondari terminated his employment without notice or payment of terminal dues.
2. The claim is that for 6 days each week the claimant would work for 14 hours without overtime compensation and in May, June and July 2017 his wages were not paid.
3. The claimant is seeking for judgment and payment by the respondent for;
  - a. Notice pay at Ksh. 20,000;
  - b. Unpaid salaries Ksh. 36,000;
  - c. Damages for wrongful dismissal Ksh. 240,000;
  - d. NSSF contributions Ksh. 3,600;
  - e. Overtime worked Ksh. 273,042;
  - f. Underpayments at Ksh. 8,000 for 9 months Ksh. 72,000; and
  - g. Costs.



4. The claimant testified that he was employed by the respondent and placed under Ramadhani the manager but no letter of appointment issued and for all payments made he would sign in a book. His monthly wages were Ksh. 20,000 and Ksh.3000 in allowances paid monthly and therefore he was not a casual employee working in a department with 12 others under Ondwari Jackson. He cannot recall any other his colleagues at work. He had trained with NYS. His employment was terminated unfairly and without payment of terminal dues and the claims made should be awarded.
5. In response, the respondent's case comprises mere denials and that the claimant ceased being available for work allocation and opted for other arrangements and without being promoted by the respondent or its agent. The claimant was not an employee in the sense presented in his claim and the payments he is seeking are fictitious having unilaterally opted out of his engagements unilaterally and on his own volition and the claim should be dismissed with costs.
6. In evidence, the respondent called David Henry Ongera the overseer and admitted that the claimant is well known to him as one of the persons employed on a needs basis as a mechanic who would be called to do maintenance of vehicles. These engagements were on casual basis and would be paid for each task in cash and all long term employees would be on a written contract. The claimant had no predictable terms of engagement and his payments would be agreed on and paid. for alleged unpaid wages for May, June and July, the claimant was not allocated any work to justify the claims made and his case should be dismissed.

### **Determination**

7. Employment and labour relations law has now crystallised to the effect that the employer has the duty to keep all work records for its total employees. such is a legal imperative in terms of Section 10(6) and (7) of the *Employment Act*, 2007 (the Act). such duty does not segregate the category of employees whose employment record should be maintained. This translates to all employees in the service of the employer, casual, piece-rate or as the case maybe.
8. Under paragraph 2 of the Memorandum of Response, the respondent maintains that;
 

... the respondent avers that the claimant rendered his services on need/ad hoc basis/on invitation by the respondent. the claimant ceased availability to render services. the claimant opted out of the arrangement; without being prompted by the respondent or its agent. ...
9. No records are submitted for the court to discern what kind of engagement, employment or relationship existed between the parties save for the claim that there was employment and the response that the respondent enjoyed the services of the claimant at a wage. the legal duty placed upon the respondent is not discharged and hence the court finds there was employment between the parties on oral terms secured under Section 8 and 9 of the Act and protected under Section 10 read together with Section 37 of the Act. with such protections, the claimant is entitled to claim as herein done.
10. In his pleadings, the claimant's case is that he was employed as a mechanic at a wage of ksh. 20,000 and a daily allowance of ksh.300. In his evidence in court, the claimant testified that his monthly wage was Ksh. 20,000 and an allowance of Ksh. 3,000.
11. For a general worker as mechanic, such was a generous wage and allowances viewed against the applicable Wage Orders for the year 2016/2017, the period of employment, the basic wage was Ksh. 10,954.70 and a house allowance of 15% thereof, the claimant was well compensated for his labours and any overtime he may have undertaken. To claim beyond the monthly wage of Ksh. 20,000 and daily allowances of ksh.300 or monthly allowance of ksh. 3,000 is without merit.



12. On the claim made, an employee who abandons work, is not available for work allocation places a burden on the employer to issue notice or serve the labour officer indicating that the employee cannot be traced and his employment has ceased in terms of Section 18(5)(b) of the Act that;
  - (b) by dismissal, the employer shall, within seven days, deliver to a labour officer in the district in which the employee was working a written report specifying the circumstances leading to, and the reasons for, the dismissal and stating the period of notice and the amount of wages in lieu thereof to which the employee would, but for the dismissal, have been entitled; and the report shall specify the amount of any wages and other allowance earned by him since the date of the employee's dismissal.
13. The rationale is that, unless an employee has tendered a resignation from his employment, the employer has a duty to terminate employment procedurally where the employee is deemed to have abandoned work as held in *Ayub Kombe Ziro v Umoja Rubber Products Limited* [2022] eKLR.  
In this case, employment terminated unfairly.
14. Taking into account the generous wages paid to the claimant each month together with allowances, only notice pay shall issue herein all at Ksh. 20,000 which is sufficient compensation for the unfairly procedure applied.
15. For the alleged unpaid wages for May, June and July the applicable years for such claims are not particularised with specificity and on the findings above on the wages paid over and above the legal minimum, the claimant was well compensated for his labours.
16. NSSF dues claimed are not to be paid to the claimant but to the statutory body. Such a claim is not justified.
17. The claims for overtime and alleged underpayment are lost in view of findings above.
18. Accordingly, the claimant is awarded compensation with notice pay all at ksh. 20,000 only. Each party to bear own costs.

The file shall be returned to ELRC Nairobi Registry.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF SEPTEMBER 2023.**

**M. MBARŪ**

**JUDGE**

