



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU**

**COURT NAME: ELDORET LAW COURT**

**CASE NUMBER: ELRC.C/237/2018**

**CITATION: DANIEL MARUA CHACHA VS SANTRAM HARDWARE**

**JUDGMENT**

**ON 2021-10-29 BEFORE HON. JUSTICE J. N. ABUODHA**

1. The Claimants herein Daniel Maru Chacha, Solomon Wanyama Alaba and Boniface Odemo Lisusa pleaded that they were employees of the respondent. Daniel Chacha and Boniface Lisusa pleaded that they were employed as general workers while Solomon Alaba stated he was employed as a driver.
2. Daniel was employed on 13th April, 2015 and worked until 13th September, 2016 Solomon was employed August, 2013 to August, 2016 while Boniface was employed from 17th October, 2012 to August, 2016.
3. According to the Claimants the respondent terminated their service unlawfully and refused to pay their terminal dues. They claimed their trade union was never informed before their dismissal, no leave was paid and no payment in lieu of notice. They further stated that no severance pay was paid to them.
4. The Claimant's also pleaded that during the period they worked, they were grossly underpaid and further worked overtime without pay.
5. The respondent on its part pleaded that the Claimants were daily rate workers and not general workers. The respondent further denied that Solomon was working as a driver.
6. According to the respondent, the Claimants being daily rate workers, were paid weekly for work done and thus never earned monthly salaries. The respondent further stated that the respondents were never terminated but absconded duties forcing the respondent to get other daily rate workers. The respondent further denied underpaying the Claimants and that they were paid as per the Regulations of Wages (general amendment) Order.
7. At the trial, the Claimants adopted their witness statements filed with the claim and nominated Daniel Maru Chacha to give evidence on behalf of the rest.
8. It was Daniel's evidence that he was a general worker working as a loader at the hardware. He stated that they used to report to work at 8.00 am and could work until 9.00 pm at times although they were supposed to leave at 5.00 pm. It was further his evidence that they worked even on Sundays and Public Holidays.
9. He left work on 13th September, 2016. No reason was given for the termination of his service. He had previously been away for three days due to illness. He had asked for permission to be away.
10. It was his evidence that when he reported back to work, he was told to stay away and would be called but was never called. He further stated that he was never registered for NSSF and NHIF and that they were never paid house allowance. He was never taken through any disciplinary hearing nor issued with a termination letter.
11. Boniface was employed on 12th August, 2013 and was also a general worker performing some duties as himself. Later on he changed and became a driver. He used to drive goods truck supplying customers.
12. It was his evidence that Boniface left employment on 20th August, 2016 and was not issued with any termination letter.
13. Solomon was employed on 17th October, 2013 and was also a general worker performing same duties as himself. He left employment on 5th September, 2016. It was his evidence that Solomon was also terminated without reason.

14. In cross examination he stated among others that he used to serve customers and offload goods and any other duty he could be assigned. They were paid weekly and that he would be paid even if he did not report to work, provided he gave a reason. They used to sign for payment in a book and that they signed in and out of work.
15. It was further his evidence that he used to work beyond 5.00 pm and also on Sundays and Public Holidays. Further that they were not paid special rate for working on Sunday and Public holidays.
16. Regarding his allegations of sickness, he stated that he had no sick-off before the Court but was treated and discharged.
17. Regarding payment he stated the they were paid weekly. He denied deserting duties. Concerning Boniface, he said he used to work as a driver and that he worked for about five months.
18. It was his evidence that Solomon was not employed the same day as himself. By the time he joined, Solomon had worked for three years.
19. The respondent's witness Mr. Jactes Kiboi stated that he worked for the respondent as a supervisor and that he recorded a statement on 15th May, 2018 which he sought to adopt as his evidence in chief.
20. It was his evidence that Daniel was employed on 1st August, 2016 together with Solomon and that Bonface came in June, 2014.
21. He further stated that they kept employee records for both permanent and casual workers. The Claimants according to him were casuals paid daily for hours worked. Initially the payment was done daily but later changed to weekly for ease of management. They were paid Kshs. 480 per day.
22. Mr. Kiboi further informed the Court that the Claimants used report daily to check if there was work and that they decided to leave. No one dismissed them. Regarding leave, it was his evidence that because the Claimants were casuals, they were not entitled to leave and that the respondent never had overtime situations. The working hours were from 8.00 am to 5.00 pm and that in a week the Claimants worked for 6 days. They only used to come on Sunday to collect their money and that they would work for an hour as they waited for their money.
23. Regarding Boniface, he was a casual up to 25th July, 2016 when he came and said he had a driving License. He advised his boss to try him out. He was tested for three days but failed. When he was asked to return to loading, he refused and left.
24. It was his evidence that he had all the employees records and they were filed with respondents list of documents.
25. In cross-examination he stated that Solomon left on 5th September, 2016 and that he had worked for only a month. He further stated that the Claimants were not issued with letters of appointment and that Solomon never, worked from 2013. The Muster roll filed was form 2014 and that he never filed the muster roll for 2013 because he never had it.
26. Kiboi further stated that he joined the respondent in 2016. He further stated that he did not prepare the muster roll and that the same was prepared by Human Resource. He further denied Boniface ever worked as a driver.
27. It was common ground that the Claimants herein were working for the respondent as general workers. Solomon alleged he was working for the respondent as driver however the respondent stated that Solomon claimed he had a license and could drive however when tried he was unable to and therefore returned to general work.
28. The Court noted that the Solomon never produced a driving license to support his claim that he was authorized to drive.
29. Under section 43 of the Employment Act the burden of proof reason for termination of employment is on the employer. The respondent herein alleged that the Claimants absconded duties but did not produce any evidence to show any effort was made to reach the Claimants and asked to Show Cause why their service could not be terminated on account of absconding duties.
30. To sustain a defense that an employee absconded duties warranting dismissal an employer must show reasonable steps were made to contact the employee without success. To this extent the Court finds and holds that the claimants were unfairly terminated.
31. The Claimants were general workers and did not have any special skills which they could horn for career progression.
32. The Claimants alleged they worked overtime however they did not lead any evidence when and what they were doing that made them work overtime. The allegation therefore remained largely unproven. The Court therefore awards each of the claimants follows: -

KSHS

- (i) One month's salary in lieu of notice 10,107 (ii) Four months salary as compensation for Unfair termination 40,428
- 50,535
- (iii) Costs of the suit It is so ordered.

**DATED AT ELDORET THIS 7TH DAY OF JANUARY, 2022**

GIVEN under my hand and Seal of this Court on 2022-01-07 20:58:29

**SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)**

**THE JUDICIARY OF KENYA.**

**ELDORET ELRC**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**DATE: 2022-01-07 20:58:29**