



**Ongoya v Shivling Supermarket Ltd (Cause 172 of 2018)
[2022] KEELRC 72 (KLR) (25 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 72 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 172 OF 2018**

**S RADIDO, J
MAY 25, 2022**

BETWEEN

JULIUS OUMA ONGOYA CLAIMANT

AND

SHIVLING SUPERMARKET LTD RESPONDENT

JUDGMENT

1. The Cause was heard on 31 January 2022 and 14 March 2022. Julius Ouma Ongoya (the Claimant) and a Director with Shivling Supermarket Ltd (the Respondent) testified.
2. The Claimant filed his submissions on 22 April 2022, and the Respondent on 13 May 2022.
3. The Court has considered the pleadings, evidence, and submissions.

Employment Relationship

4. The Claimant testified that the Respondent employed him as a security guard in March 2003, and that he served until October 2016. He stated that he was initially based in Homa Bay before transfer to Awendo.
5. The Claimant did not produce any primary or secondary documentary evidence to back up the testimony that the Respondent employed him.
6. In the Response to the Statement of Claim, the Respondent pleaded that the Claimant was employed by a company called Blueguard Security Ltd which it had contracted to provide it with guarding services.
7. The Respondent's Director reiterated the plea in his oral testimony. However, he did not place before the Court any documentary evidence of a guarding contract with Blueguard Security Ltd.



8. The Claimant was under an evidential burden to prove that he was an employee of the Respondent. He did not produce any primary evidence to prove the same.
9. Where primary documents to show an employment relationship do not exist, the employee may rely on secondary documentary evidence such as records from the National Social Security Fund or National Hospital Insurance Fund.
10. The Claimant did not provide any such secondary evidence to show an employment relationship.
11. Lacking both primary and secondary documentary evidence, the Claimant should have done a little bit more and led corroborative oral testimony such as from a colleague or any person privy to the employment relationship. He did not.

Conclusion and Orders

12. The Court finds that the Claimant failed to prove he was an employee of the Respondent, and therefore the question of unfair termination of employment or breach of contract cannot be sustained or stand.
13. The Cause is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25TH DAY OF MAY 2022.

RADIDO STEPHEN

JUDGE

Appearances

For Claimant K'Bahati & Co. Advocates

For Respondent P.R. Ojala & Co. Advocates

Court Assistant Chrispo Aura

