



**Kidusu v Sifa Investments Limited (Cause 813 of 2017)  
[2022] KEELRC 39 (KLR) (13 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 39 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 813 OF 2017**

**B ONGAYA, J  
MAY 13, 2022**

**BETWEEN**

**JOSEPART ISINGA KIDUSU ..... CLAIMANT**

**AND**

**SIFA INVESTMENTS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimants filed the memorandum of claim on 12.10.2017 through Munee Katu & Company Advocates. His case is that the respondent employed him verbally on 17.09.2014 as workshop storekeeper at Kshs. 12, 598.00. That on 01.09.2017 the respondent decided and terminated his employment verbally and without lawful cause. The claimant's advocates issued a demand letter dated 04.09.2017. The claimant claims and prays for judgment against the respondent for:
  - a. A declaration that the termination was unprocedural and unfair.
  - b. One-month salary in lieu of termination notice Kshs. 22, 895.90.
  - c. Underpayment under general order No.115 of 2015 for salary and house allowance from 01.07.2015 to 30.04.2017 being 24 months Kshs. 163, 326.20
  - d. Underpayment under general order of 2017 for salary and house allowance from 01.05.2017 to 30.08.2017 being 4 months Kshs. 36, 383.60.
  - e. 42 pending leave days Kshs. 56, 094.90.
  - f. Maximum termination for unfair termination Kshs. 274, 750.90.
  - g. Certificate of service.
  - h. Costs and interest against the respondent.



2. The respondent filed the response to the memorandum of claim on 29.11.2017. The respondent pleaded as follows. The claimant is a primary school leaver without professional qualifications and was employed verbally on 17.09.2014 and effective 27.10.2014 as a general labourer. Further, the claimant left employment in September 2017 at a last gross monthly payment of Kshs. 14, 886.00. The claimant had been suspended for 10 days by the letter dated 01.09.2017 on account of irregularities and improprieties touching on his fidelity and thereafter the claimant absconded subsequently launching the action. The respondent pleaded that the claimant's claim was contrived and untenable and ought to be dismissed with costs.
3. To answer the 1<sup>st</sup> issue, the Court returns that there is no dispute that the parties were in a contract of service. The dispute appears to be whether the claimant was a storekeeper or a general labourer. The respondent's witness testified and the claimant confirmed in his testimony that the claimant applied for employment as a general labourer, he was verbally employed as a general labourer, he was never promoted to position of a store keeper and the Court finds that throughout his service he was a general labourer. The Court finds that the claims and prayers for underpayment per wage orders were based on allegation that the claimant was a storekeeper. The claims for underpayment will collapse as unjustified.
4. To answer the 2<sup>nd</sup> issue for determination, the Court returns that the termination was not unfair or unprocedural. The evidence was that on 01.09.2017 allegations were levelled against the claimant for infidelity in payment of certain Kshs. 10, 000.00 whereby the claimant was required to pay the casual workers he had been authorised to recruit. The evidence was that the cash was paid out to the casuals by the respondent through the claimant on behalf of the contractor and to be deductible from the contractor's fees by the respondent. The claimant paid the casuals and is alleged to have again gone to the contractor to demand money for the same payment – essentially engaging in alleged fraud. The respondent imposed a suspension against the claimant per the letter dated 01.09.2017 but the claimant walked away refusing to accept delivery of the letter. The respondent then issued a letter to show cause dated 05.09.2017 and requested its other staff one Isaac Mwanzi to deliver to the claimant the two letters. The claimant in his own testimony confirmed that the said Isaac had visited him but he lacked knowledge of the two letters. The Court finds that the claimant's testimony cannot be trusted and the Court finds that he rejected the letters to avoid the ensuing disciplinary process. The respondent further issued a letter dated 15.09.2017 warning that the claimant had absented himself from duty effective 01.09.2017 and refused to cooperate in the initiated disciplinary proceedings. While the respondent has not exhibited postal certificate delivering the letter to the claimant's last known address P.O. Box 117 Vihiga, the Court has no reason to doubt the respondent's evidence that after the alleged misconduct on 01.09.2017, the claimant thereafter refused to participate in the initiated disciplinary process. The claimant's alleged unfair termination and unprocedural termination is found to be his own design to abort the due process. The Court finds that he was the sole author of the separation and fully contributed to the ending of the contract of service. His claim for declaration that the termination was unfair and for compensation must therefore fail.
5. The respondent conceded by evidence that the claimant had 18.5 pending leave days valued at Kshs 9, 168.00 now awarded. The claimant is entitled to a certificate of service per section 51 of the [Employment Act, 2007](#). Taking into account the claimant's conduct to defeat the initiated disciplinary process by refusing to accept delivery of the suspension and show-cause letters, each party to bear own costs of the suit.
6. In conclusion the suit is hereby determined with orders:
  1. The respondent to pay the claimant Kshs. 9, 168.00 by 02.06.2022 failing interest to be payable thereon at Court rates from the date of filing the suit till full payment.



2. The respondent to deliver the certificate of costs by 02.06.2022.

3. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS  
FRIDAY 13<sup>TH</sup> MAY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

