



**Obala v Kibos Sugar & Allied Industries Ltd (Cause 178 of 2018)  
[2022] KEELRC 14675 (KLR) (29 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 14675 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 178 OF 2018  
S RADIDO, J  
JUNE 29, 2022**

**BETWEEN**

**ISAYA ONYANGO OBALA ..... CLAIMANT**

**AND**

**KIBOS SUGAR & ALLIED INDUSTRIES LTD ..... RESPONDENT**

**JUDGMENT**

1. Isaya Onyango Obala (the claimant) sued Kibos Sugar & Allied Industries Ltd (the respondent), alleging unfair termination of employment and breach of contract.
2. The respondent filed a response on February 25, 2020, and the claimant filed a reply on March 6, 2020.
3. The cause was heard on April 28, 2022. The claimant and the respondent's Human Resources Manager testified.
4. The claimant's submissions were not on file (should have been filed and served before May 20, 2022) and the respondent on May 16, 2022.
5. The court has considered the pleadings, evidence and submissions and will adopt the issues set out in the submissions.

**Nature Of Employment**

6. The respondent contended that the claimant was a casual employee.
7. On the other hand, the claimant contended that he was engaged through an oral contract by the respondent from August 4, 2014, that he was on a daily rate and that he served until April 30, 2017.
8. The claimant produced a casual employees summary from February 20, 2017 to February 26, 2017 to support the contention that he was not a casual employee.



9. The *Employment Act*, 2007 recognises various types of contracts, including casual employment. The Act also contemplates oral contracts under/on certain conditions.
10. The claimant was on an oral contract. He acknowledged that he was earning Kshs 300/- per day.
11. The casual employees summary he produced in court indicated that he was paid at the end of each day worked.
12. Despite asserting that he served the respondent from August 2014, the claimant did not place before the court any corroborative evidence, either through records or oral from any colleagues he worked with, to demonstrate that he served beyond the periods contemplated by section 9(1) of the *Employment Act*, 2007 to warrant a written contract or the coming into play of the deeming provisions of section 37 of the Act.
13. The court, therefore, agrees with the respondent that the claimant was a casual employee. The casual contract lapsed automatically at the end of each day upon receipt of the day's wages.

### **Unfair Termination Of Employment**

14. The claimant pleaded that his employment was terminated on April 30, 2017. He did not plead the name of the person who terminated the contract.
15. In the filed witness statement, the claimant did not disclose the name of the respondent's manager, who informed him that his services were no longer required.
16. The claimant did not also give the particulars of the respondent's agent who terminated his employment during oral testimony.
17. Considering the above and the finding that the claimant was a casual employee whose contract lapsed at the end of the day, the court has no hesitation in finding that the claimant did not discharge the burden imposed on him by section 47(5) of the *Employment Act*, 2007, to prove an unfair termination of employment.

### **Breach Of Contract**

18. The claimant did not prove that he served the respondent from August 4, 2014 to 2016. The head of claim for breach of contract (underpayments, leave, overtime and house allowance) have no legal basis.
19. The claims are rejected.

### **Certificate of Services**

20. A certificate of service is a statutory entitlement, and the respondent should issue one to the claimant for the period served.

### **Conclusion and Orders**

21. Save for a certificate of service, the court finds no merit in the cause. It is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 29<sup>TH</sup> DAY OF JUNE 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**



**Appearances**

**For Claimant Mwakio Kirwa & Co. Advocates**

**For Respondent Onsongo & Co. advocates**

**Court Assistant Chrispo Aura**

