



**Ziro v Doshi & Company (Hardware) Limited & another (Cause 418 of 2016) [2022] KEELRC 1742 (KLR) (24 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1742 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 418 OF 2016  
B ONGAYA, J  
JUNE 24, 2022**

**BETWEEN**

**HASSAN BOHORA ZIRO ..... CLAIMANT**

**AND**

**DOSHI & COMPANY (HARDWARE) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**DOSHI ENTERPRISES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on May 31, 2016 through I R B Mbuya & Company Advocates and Mr Mwanzia advocate acted in that behalf. The claimant's case is pleaded as follows. The respondents employed him from April 2012 to March 28, 2015 as a welder. He was initially employed by the 2<sup>nd</sup> respondent who rebranded the business in the names of the 1<sup>st</sup> respondent. His daily wage was kshs 650.00 as at the time of termination. He alleges his employment was wrongfully and unfairly terminated in late March 2015 when respondent's Mr Hussein Chuka claimed the respondent had no materials. The termination was abrupt and the reason given not genuine. He was not registered with NSSF and he claims service pay at 15 days for each year served and terminal dues as follows:
  - a. One-month notice pays kshs 650.00 x 26 days = kshs 16, 900.00.
  - b. Payment in lieu of 3 years' annual leave 21 x 650 x 3 =kshs 40, 950.00.
  - c. 12 months' maximum compensation under sections 49 and 50 of the *Employment Act*, 2007 kshs 16, 900.00 x 12 = kshs 202, 800.00.
  - d. 15 days' pay for each year served in service payment 15 x 650 x 3 =kshs 29, 250.00.
  - e. Punitive damages to act as a measure to curb employers from unilaterally and unfairly terminating employee without due regard of employment and labour laws.



2. The claimant prayed for judgment as claimed together with certificate of service, costs and interest.
3. The respondent filed the response to the memorandum of claim on July 12, 2016 and through C B Gor & Gor Advocates. The respondent prayed that the suit be dismissed with costs.
4. The respondent pleaded as follows. The respondent employed the claimant as a casual labourer from 2010 to 2014 and over that period the claimant worked for only 366 days. He was not employed continuously but had interrupted service from early 2012 to March 28, 2015. Further, he deserted work and his last day at work was on June 02, 2014 after collecting his wage of kshs 967.76 and thereafter, he never returned to the respondent's premises. He was registered with NSSF per section 13 of the [National Social Security Fund Act](#) cap 258 as a casual labourer and special contributions were remitted. He is not entitled to the claims and prayers.
5. The claimant testified to support his case and the respondent's witness (RW) was Elizabeth John Risambu, the respondent's human resource and administration assistant effective May 02, 2010. Final submissions were filed for the parties. The court has considered all the material on record and finds as follows.
6. To answer the 1<sup>st</sup> issue for determination the court returns that parties were in a contract of service and the respondent employed the claimant on casual basis. The dispute is about effective date of employment and last date at work; the last daily wage; and if the service was on continuous basis without a break. The respondent pleads the claimant worked sporadically on need basis from May 02, 2010 to June 02, 2014 when he collected his final dues for the day and was never seen at the respondent's premises again. The claimant pleaded that he worked from April 2012 to March 28, 2015 as a welder. The claimant testified that he was employed in 2012 and not 2010 and the register of attendance exhibited for the respondent and summary of his work attendance were wrong. The attendance summaries show the claimant worked 63 days in 2010, 127 days in 2011, 37 days in 2012, 81 days in 2013 and 58 days in 2014. The respondent has also exhibited the petty cash payment analysis signed by the claimant and showing he earned a daily wage of kshs 483.00 as at June 02, 2014. On a balance of probability there is no reason to doubt the claimant signed on June 02, 2014 and he was a sporadically engaged general casual labourer. The court finds that he must have worked for the period as pleaded for the respondent especially that there would be no benefit in the respondent stating that he had worked commencing an earlier year than was pleaded for the claimant. It is true that the summary of attendance was filed and also true that the claimant never served a notice for the respondent to produce the original attendance register. There is no reason to doubt the summaries of attendance as filed for the respondent. The Court returns he was a casual labourer whose last day at work was on June 02, 2014. The court finds the claimant's testimony not credible because he appears to have signed for payment on June 02, 2014 and yet testified in court, "I was paid kshs 650.00 daily. Summary of payments shows ksh 483.00. I am indicated to have signed. I did not. I was not paid kshs 650." The court finds that while pleading he was paid kshs 650.00 per day the claimant contradicted himself that the same was not the case - and at ago also denying his signature and that the daily wage was not kshs 483.00. That was incoherent and contradictory evidence about the terms of the oral contract of service and on a balance of probability, the Court upholds the respondent's account on the duration of the casual relationship, the daily wage, and that the claimant was a general casual labourer and not a welder as was alleged for him.
7. To answer the 2<sup>nd</sup> issue for determination the court having found that the claimant's last day at work was on June 02, 2014 and he was a casual labourer on sporadic hire by the respondent, the claims and prayers as made will collapse as unjustified. As submitted for the respondent, the [Employment Act](#) in section 2 thereof defines "casual employee" to mean a person the terms of whose engagement provide



for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time. The claimant was a casual employee and his contract of service was terminable at the end of each of the sporadic days he served the respondent. The claimant's case will therefore collapse. Considering all circumstances of the case including that the respondent appears to have even objected to the statutory entitlement of certificate of service, each party to bear own costs of the suit.

8. In conclusion, judgment is hereby entered for the parties and the suit determined with orders:
  - a. The respondent to deliver a certificate of service in 30 days per section 51 of the Act showing the claimant served as a casual general labourer from May 02, 2010 to June 02, 2014.
  - b. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 24<sup>TH</sup> JUNE, 2022.**

**BYRAM ONGAYA**

**JUDGE**

