



**Indeche v Savannah Printers Limited (Cause 262 of 2018)  
[2022] KEELRC 4050 (KLR) (6 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4050 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 262 OF 2018**

**M MBARÚ, J**

**JUNE 6, 2022**

**BETWEEN**

**HUMPHREY INDECHE ..... CLAIMANT**

**AND**

**SAVANNAH PRINTERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The facts of the claim are that on August 1, 2010 the respondent employed the claimant as a machine operator at a wage of Ksh 16,000 per month. Work hours were 8am to 6pm without payment for work overtime. No annual leave was allocated and on 7<sup>th</sup> December, [not stated] the claimant was locked out and which resulted in unfair termination of employment.

The claimant is seeking the following dues;

- a. Salary underpayments in 2017 Ksh 17,365.80;
- b. Accrued leave for 7 years Ksh 123,244.80;
- c. Compensation for unfair termination of employment Ksh 209,364;
- d. Severance pay for 7 years Ksh 122,654.80;
- e. Accrued overtime;
- f. Notice pay ksh 17,477.80;
- g. An order of reinstatement; and
- h. Certificate of service.



2. The claimant testified in support of his case. Upon employment he was issued with an employment contract but was not issued with payment slips since his wages were paid through petty cash vouchers and he worked for 7 years and the respondent failed to pay his NSSF and NHIF dues.
3. The defence is that the claimant was never employed as a machine operator and it did not own any machine and the letter of appointment did not materialise and the purported employment agreement is *void ab initio* as it was not executed by the respondent who could not have acted on a non-existent position. The claimant has never been an employee and the particulars of damages alleged do not arise. The alleged letter of demand from Kenya Scientific Research International Technical and Institutions Workers Union does not indicate the dates of the alleged employment or the termination date is just but a fishing expedition and the claim should be dismissed with costs.
4. In evidence the respondent called Mwangi Gakumo a director of the respondent and who testified that in July, 2010 the respondent had the intention to buy a GTO printing machine and therefore looked for a machine operator to operate it and thereof sourced the claimant and offered him employment. Unfortunately the deal to buy the machine did not materialise since its owner increased the price and the respondent did not end up buying it. At The end of 2010 the respondent's bankers gave them a loan and bought the machine from SAI printers in Mombasa and was delivered in March, 2011.
5. The initial letter to the claimant did not materialise since the respondent did not have a machine. When the respondent finally got the machine, they would hire the claimant on a needs basis or anybody else who was available. Other machine operators are still being hired and paid per job done. The claimant was not a permanent employee and hence paid through petty cash vouchers for work done and not monthly and the agreement produced is not signed by the respondent. The respondent had only given an offer letter which did not materialise and the claims made should be dismissed.

The respondent filed bundle of documents.

### **Determination**

6. Both parties filed written submissions which have been put into account.
7. The respondent issued the claimant with letter of appointment dated July 26, 2010 for the position of machine operator with employment commencing on August 1, 2010. The claimant's case is that he worked for the respondent for 7 years save the date employment terminated or that he was locked out is not stated.
8. The respondent's case is that the claimant did not commence employment since the machine he was to operate was not purchased and employment did not materialise. Employment did not commence.
9. The suit herein was filed on March 5, 2018. No party addressed the glaring issues in this regard.
10. The respondent has produced records to the effect that the GTO52 machine they expected to buy for the claimant to have work, was not purchased and they obtained a loan from the bank and got a machine in March, 2011. Afterwards They would employ the claimant on a needs basis.  
These facts are not contested in any material way.
11. Following the letter of appointment dated July 26, 2010 any resulting frustration of employment was not addressed. The respondent as the appointing authority sat back and did nothing.
12. Where employment was frustrated by events facing the respondent, the letter of employment was not recalled. Where the claimant did not offer his labours as an employee, he cannot claim in employment benefits save, upon the frustration of the employment contract, the respondent had a duty to issue



notice to the claimant in this regard. Save for such notice, the claimant cannot claim where he never offered his labours as an employee.

13. The claimant has relied on an employment agreement that is not executed/signed by the respondent. such document cannot be relied upon.

In the letter of appointment, the payable wage is not stated.

14. Under the Wage Orders, *Regulation of Wages (General) (Amendment) Order*, 2010, in operation from May 1, 2010 and hence applicable for the period of July 26, 2010 a machine operator wage was Ksh 9,101 and provision for house allowance at Ksh 1,365.15 total gross per month being Ksh 10,466.15 which amount is due in notice pay pursuant to section 35 of the *Employment Act*, 2007.

15. Accordingly, the claims made are hereby found without merit save for notice pay all at ksh 10,466.15. Each party shall bear own costs.

**DELIVERED IN COURT AT NAIROBI THIS 6<sup>TH</sup> DAY OF JUNE, 2022.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

..... and .....

