



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ingati v Doshi & Company (Hardwares) Limited & another (Cause  
116 of 2016) [2022] KEELRC 1316 (KLR) (22 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1316 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 116 OF 2016  
B ONGAYA, J  
JULY 22, 2022**

**BETWEEN**

**RODGERS SIMIYU INGATI ..... CLAIMANT**

**AND**

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

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

**JUDGMENT**

- 1 The claimant filed the memorandum of claim on 15.02.2016 through I R B Mbuya & Company Advocates. The claimant claimed and prayed for judgment against the respondent for:
1. Notice payment Kshs. 13, 000.00.
  2. Payment in lieu of annual leave Kshs. 43, 680.00.
  3. Service pay Kshs. 31, 200.00.
  4. Overtime in unpaid rest days Kshs.110, 000.00.
  5. Maximum compensation for unfair termination under section 49 and 50 of the [Employment Act, 2007](#) Kshs. 156, 000.00.
  6. Punitive damages.
  7. Certificate of service.
  8. Any further entitlement or order the Honourable Court deems fit to grant.
  9. Costs of the cause.
  10. Interest.



- 2 The claimant's case is that he was employed by the respondents from early May 2009 to July 2013 as a Welder at the respondents' Miritini premises on casual basis but he served on continuous basis without a break. The respondents are sister enterprises having rebranded from the 1<sup>st</sup> respondent's to 2<sup>nd</sup> respondent's name. The claimant was paid Kshs.500.00 per day as at termination. The claimant's further case is that he was a good worker until the wrongful and unfair termination in late July 2013 when the respondent's head of production department Mr. Victor Okumu summarily terminated him without giving reasons. Further, prior to termination there was no dialogue or discussion between the parties. He was not a member of NSSF or alternative pension scheme and he had not been paid his final dues, now claimed.
- 3 The respondent filed the response to the memorandum of claim on 14.04.2016 through C.B. Gor & Gor Advocates. The respondent prayed that the claimant's case be dismissed with costs.
- 4 The respondent's case was pleaded as follows. The respondent admitted employing the claimant but as a casual labourer engaged to work on need basis. Between 2009 and 2012 he worked for only 548 days on need basis per exhibited summary of work attendance. He did not therefore work continuously from early May 2009 to July 2013 as alleged in the memorandum of claim. Further, his last day at work was on 31.05.2012 and after collecting his wages for that day, he never returned to the respondents' premises to be assigned on need basis. Further, he was offered a contract dated 28.02.2012 to sign but he declined to sign and did not return to work for the respondent. He was registered at NSSF and remittances made for the days he worked. The respondent denied owing the claimant as was claimed. The termination was in 2012 and the suit was time barred per section 90 of the Act when it was filed on 15.02.2016.
- 5 The claimant testified to support his case and the respondent's witness (RW) was Elizabeth John Risambu, the respondent's Human Resources Manager. Final submissions were filed for the parties. The Court makes findings as follows.
- 6 To answer the 1<sup>st</sup> issue the Court finds that the claimant was employed by the respondents on casual basis. The service was broken and not continuous as alleged for the claimant. The claimant testified thus, "In May 2009 I worked in flexible. If I missed job in one section, I was engaged in place of absent staff." By that evidence, the Court finds that the claimant was employed only on days a staff was absent suggesting on need basis. The claimant again testified, "We used to get into premises then supervisors would select casuals for the day. If not selected in first shift you go to 2<sup>nd</sup> shift and if not in the 3<sup>rd</sup> shift it was impossible. I say it was impossible not to get selected." By that evidence, again the claimant confirms a daily selection to work and on some occasions he did not get selected. The claimant introduces three shifts in his evidence but which were not pleaded at all. The Court finds that it was a daily relationship that was broken and ending on each day. The daily selection shows the previous day's service had ended and every new day came with a new contract. The claimant testified that termination was in July 2013 on a date he does not recall. The respondent says the claimant worked for 548 days between June 2009 to May 2012 per the filed summary of attendance. On balance of probability and taking into account the stated claimant's evidence, the Court finds that his service was casual and there is no reason to disturb the respondent's case that the last day at work was on 31.05.2012 when the claimant admitted to have signed for his daily wage of Kshs.500.00.
- 7 To answer the 2<sup>nd</sup> issue for determination the Court returns that the claimant is not entitled to any of the remedies as prayed for. First, the suit was time barred under section 90 of the [\*Employment Act\*](#) as three years had lapsed when it was filed on 15.02.2016, the claimant having signed for his last wage on 31.05.2012. Second, even if the termination had been in July 2013 per claimant's case, 12 months of limitation under section 90 Act had lapsed for the continuing injuries of payment in lieu



of annual leave, and, overtime – both of which no evidence was provided by the claimant to establish the claims. Third, the Court has found the relationship was casual and it never converted to one subject to minimum statutory terms and conditions of service per section 37 of the Act. The claims for notice pay, service pay, and compensation being based on minimum statutory terms and conditions of service, the same will collapse. The Court has considered all circumstances of the case including that the respondents failed to file all the documents including the primary record from which the summary of days worked was computed. Further, while pleading the claimant left on 31.05.2012, in contradictory fashion pleaded that he refused to sign the offered contract on 28.02.2012 and never returned. Thus, there will be no costs of the cause.

8 In conclusion, the claimant's suit is hereby dismissed with no orders on costs of the cause.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 22<sup>ND</sup> JULY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

