



Mulwa & another v Bridge International Academies Limited (Cause 1096 of 2017) [2022] KEELRC 4042 (KLR) (29 September 2022) (Judgment)

Neutral citation: [2022] KEELRC 4042 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1096 OF 2017
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

- 1. PATRICK MUNYAO MULWA 1ST CLAIMANT
2. JACOB ASILA ATOLA 2ND CLAIMANT**

AND

BRIDGE INTERNATIONAL ACADEMIES LIMITED RESPONDENT

JUDGMENT

1. The Claimants filed an Amended Statement of Claim, indicated as having been amended at Nairobi on 19th October 2021.
2. The 1st Claimant states that he was employed by the Respondent as a Loader in February 2013, at a daily wage rate of Kshs. 450.
3. The 2nd Claimant states he was employed a month later, in the same position, earning the same daily rate.
4. They were not issued pay slips, and never went on annual leave. They were advised by their Manager Zaddock, on 7th July 2014, that their services were not needed. They were ushered out of the workplace by Respondent's security personnel.
5. They reported the existence of the dispute to the Labour Office. Conciliation meetings convened by the Conciliator were ignored by the Respondent.
6. They state that the Respondent did not notify the Labour Office about redundancy. Seniority in time, skill and reliability were not taken into account, in terms of Section 40 of the *Employment Act*, 2007.
7. The 1st Claimant seeks notice at Kshs. 15,525; accrued leave at Kshs. 10,867; house allowance for 2015 at Kshs. 10,867, 2013 at Kshs. 22,275, 2014 at Kshs. 24,300, 2015 again, at Kshs. 24,300, 2016 at Kshs.



12,150; and, 12 months' salary in compensation for unfair termination at Kshs. 186,300 – total Kshs. 306,585.

8. The 2nd Claimant makes the same prayers, which he has added up at Kshs. 300,510.
9. The Claimants pray for Certificates of Service to issue, costs and interest.
10. The Respondent filed its Statement of Response on 11th July 2017. It states that the Claimants were hired as casual workers, on a daily wage of Kshs. 450. It was payable after 2 weeks. No contracts were executable for casual workers. They were hired on need basis. Their workstation was closed down. They were advised that there was no more work. No notice was necessary. The Respondent denies that it terminated the Claimants' contracts unfairly. It is proposed to have the Claim dismissed with costs.
11. The Claimants gave evidence and rested their Claim, on 25th March 2022. Respondents' Human Resource Officer Samuel Odhiambo, gave evidence and rested the Respondent's case on the same date, 25th March 2022. The matter was last mentioned on 9th June 2022 when the Claimants confirmed filing and service of their Submissions.
12. The Respondent forwarded its Submissions to the Court Assistant, way out of time, when writing of this Judgment was already concluded
13. The Claimants adopted their Statements of Witness and Claim, together with their Documents on record, in their evidence-in-chief. Cross-examined, the 1st Claimant stated he was employed as a Labourer and paid daily. He was a Loader. He was paid his wages through m-pesa after 2 weeks. He did not have documents showing that the Respondent employed him. The documents were retained by the Respondent. He was not paid wages for the last month worked. This is not part of his Claim.
14. Cross-examined, the 2nd Claimant restated that he was employed as a Loader, and paid wages after 2 weeks. He similarly, did not have any document showing that he was employed by the Respondent. The documents were retained by the Respondent.
15. The Respondent's Human Resource Officer, Odhiambo, relied on his Witness Statement dated 23rd March 2022- 2 days before the hearing. He states that the Respondent operates a warehouse, where construction materials are stored. The Respondent engages casual workers there on need basis. The Claimants were engaged this way, in February and May 2013, on each occasion, for periods not exceeding 3 months. In July 2013, they were advised that their services were no longer required. The Respondent does not have employment records of the Claimants.
16. Cross-examined, Odhiambo told the Court that he was employed in 2014. The Claimants were already out of employment. He was briefed about their records. He is a qualified Human Resource Practitioner. The Respondent kept sign-in sheets, which were used on paying the Claimants. They were paid Kshs. 450 daily. Odhiambo did not have the sign-in sheets. They worked for 6 months, February 2013 to July 2013. They were entitled to written contracts. They did not work in continuity. The Respondent engaged casual workers on need basis. The Respondent filed a Statement of Response in 2017. Its position was that work diminished, and the Claimants could not continue working. It is true that they were advised that their services were no longer needed. Odhiambo was not aware of the documents from the Ministry of Labour on conciliation. He clarified on redirection that the Claimants worked for 2 periods of 3 months each, from February to July 2013. The Respondent does not pay house allowance to casual workers.



The Court Finds:

17. The Claimants' position is that they were employed by the Respondent as Loaders from the months of February and May 2013 respectively, to 7th July 2014 when they were advised by the Respondent that there was no more work.
18. The Respondent's position is that the Claimants worked for the Respondent as casual workers, discharging the roles of loading at the Respondent's warehouse, between February and July 2013.
19. The dates the Claimants state they were employed by the Respondent, are restated in their letter of demand before action, dated 5th April 2017. There was no response to the demand letter, disputing the dates given by the Claimants.
20. The matter was reported to the Labour Office and Parties called for conciliation. The same dates are captured in the report filed before the Labour Office as shown in the letter of that office, dated 21st July 2014. The Respondent did not participate in conciliation meetings or contradict any details given by the Claimants to the Conciliator.
21. The Court upholds the employment and termination dates, pleaded by the Claimants.
22. The 1st Claimant worked for about 1 year and 5 months. The 2nd Claimant for about 1 year and 2 months. There is no evidence to show that service was truncated. Under Section 37 of the [Employment Act](#), the Claimants would be considered regular Employees, entitled to full benefits and protection due to a regular Employee, under the Act.
23. They were paid a daily rate of Kshs. 450, which was paid fortnightly. The Court would find that less one rest day per week, they earned a monthly salary of Kshs. 11, 700.
24. Their rate of pay was daily, which would include the housing element. They have not established that they merit house allowance in arrears.
25. They had worked for over 12 months consecutively, and are entitled to annual leave for the period 2013-2014. They are granted a minimum of 21 days of annual leave, at Kshs. 9,450 each.
26. They are granted notice of 1 month each, at Kshs. 11, 700 each.
27. The Respondent did not establish valid reason or reasons, to justify termination. There was an opportunity to attend conciliation meetings, and advance reason or reasons for termination. Opportunity was availed again on the floor of the Court. It was squandered. Odhiambo, without elaboration, restated that the Claimants were advised their services were no longer required. The Respondent failed in showing reason or reasons, why it terminated the Claimants' contracts. The Claimants state that they were advised there was a redundancy situation. This was not sufficiently contradicted by the Respondent. It was for the Respondent to establish reason or reasons justifying termination. In the absence of such reason or reasons, the Court would conclude that termination was unfair.
28. The Claimants were not taken through a fair procedure on termination. They reported to work on 7th July 2014, and were confronted with a banner pronouncing, 'hakuna kazi.'
29. Termination was unfair on account of validity of reasons, and defective procedure.
30. The Claimants worked for slightly over 1 year. Their prayer for compensation equivalent of 12 months' salary is a little bit exorbitant. They are granted equivalent of 4 months' salary each, at Kshs. 46,800 in compensation for unfair termination.



It is ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent to pay each Claimant: annual leave at Kshs. 9,450; notice at Kshs. 11,700; and compensation equivalent of 4 months' salary at Kshs. 46,800 – total Kshs. 67,950.
- c. Certificates of Service to issue.
- d. Costs to the Claimants.
- e. Interest allowed at court rates, from the date of Judgment till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER 2022.

JAMES RIKA

JUDGE

