



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI

CAUSE NUMBER 1070 OF 2013 (Consolidated with Cause No.1075 of 2013)

JOSHUA MOGIRE OSINYO.....1ST CLAIMANT

NICHOLAS MWITHUI WILLY.....2ND CLAIMANT

VERSUS

AMRIT PLAST LIMITED.....RESPONDENT

JUDGMENT

1. This cause was consolidated with cause number 1075 of 2013 therefore this judgment is in respect of the two cause.
2. The claimant in this cause testified in Court that he was an employee of the respondent having been employed on 1st November, 101`0 as a general worker. He further stated that he was put on shift in 2014 when he could work from 7.15 am to 3p.m on day shift and from 3.45 p.m. to 7.00 a.m. for night shift. His pay per day was stated at Kshs.950 for night shifts and 421/- per day shift. Every week they were allowed one day off.
3. On 24th October, 2014 he reported to work as usual but was not allowed to enter by the security guard. He was instead told to wait for one of the managers. It was further his evidence that one of the managers took him to Mater Hospital to collect his medical documents in respect of an injury he received in the course of his employment. It was his evidence that he never got the documents and was told to go home and wait to be called. He was never called so he considered his services terminated and reported the issue to the Ministry of Labour.
4. In cross-examination he stated that he was initially employed as a casual worker but later hired as a shift worker. He further stated that their pay was made weekly upon their request.
5. The second claimant testified that he was employed by the respondent in August, 2005 as a machine operator. He was however never given an appointment letter. He was earning Kshs.225/= per day but payable weekly. He also stated that he used to work on shifts.
6. H stated that on 1st May, 2013 a Mr. Amrit refused him entry to work and was told to wait at the reception. He was later asked by a security guard to wait outside the gate. He was later told that work had reduced and his services were no longer needed.
7. In cross-examination he stated that he used to be paid for leave and that he used to get one day off

each week. He further stated that they had to be paid service at the end of each year. He further stated that he waited to be called to work for two months before he filed the present suit.

8. The respondent on the other hand called 3 witnesses. Mr. Kuto (DW 1) testified that the claimants were initially hired as general workers who could perform general duties. They were later hired as shift workers who could be called to work when work was available. According to him the claimants were terminated but were asked to stay away from work due to unavailability of raw materials to keep the machines running. He stated that it was normal to tell workers to go home and wait to be called when there was work. He stated that all the respondent's workers were paid leave and service at the end of each year. In cross-examination he stated that the claimants have never been called back to work.

9. The respondent's second witness Mr. Josephat Induba stated that the nature of the respondent's operations were such that at times workers were told to go home and wait for work when there were no raw materials.

10. From the evidence, it would seem that the claimants were respondents' regular workers. Their services were called when there was sufficient raw materials.

11. The respondent has denied dismissing the claimants from employment but has stated that they have never been called back to work.

12. In the circumstances the Court orders that the claimants be reinstated to their employment on similar terms as before. That is to say the respondent shall regard the claimants as its employees who will be called from time to time when work is available.

13. In the alternative the Court orders that the respondents do pay the claimants as follows:-

- (a) One month's wages in lieu of notice of termination of services
- (b) Six months wages as compensation for unfair and unprocedural termination of services.
- (c) Costs of the suit.

14. The parties to make an election between the two alternative within 30 days of this judgment and appear before the Deputy Registrar of the Court to record such election.

15. It is so ordered.

Dated at Nairobi this 7th day of May 2015

Abuodha J. N.

Judge

Delivered this 7th day of May 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge