



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ashiono v Majid & 2 others (Appeal E029 of 2022)  
[2025] KEELRC 2512 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2512 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E029 OF 2022  
S RADIDO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**VINCENT MAKULA ASHIONO ..... APPELLANT**

**AND**

**SELENA MAJID ..... 1<sup>ST</sup> RESPONDENT**

**PARES MAJID ..... 2<sup>ND</sup> RESPONDENT**

**ANWAR HUSSEIN ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the judgment and order of the Senior  
Principal Magistrates Court at Nairobi of Hon P. Muboli (SRM)  
delivered on 26th November 2021 in Nairobi CMEL No. 23 of 2019)*

**JUDGMENT**

1. In a judgment delivered on 26 November 2021, the Principal Magistrate found that Anwar Majid (the 3<sup>rd</sup> Respondent) had unfairly terminated the employment of Vincent Makula Ashiono (the Appellant) (the Appellant had sued the 3<sup>rd</sup> Respondent and Selena Majid and Pares Majid).
2. The Principal Magistrate awarded the Appellant:
  - i. Compensation Kshs 117,600.
  - ii. Earned wages Kshs 12,438/50.
  - iii. Pay in lieu of notice Kshs 29,400/-.
3. The awards were to attract interest and costs.
4. The Principal Magistrate also ordered the 3<sup>rd</sup> Respondent to issue a Certificate of Service to the Appellant.



5. The Appellant was aggrieved and he lodged a Memorandum of Appeal with the Court on 2 March 2022 (after securing leave), contending:
  - i. That the Learned Magistrate erred in fact and in law in failing to award the Appellant his salary for July 2018 & August 2018.
  - ii. That the Learned Trial Magistrate erred in fact and law by failing to award one month's redundancy notice, having found a case of wrongful redundancy.
  - iii. That the Learned Trial Magistrate erred in fact and law in being satisfied that the claim for house allowance was not proved and was for dismissal.
  - iv. That the Trial Magistrate erred in fact and in law in finding that the Appellant had not proved his case against the Respondent for annual leave, service pay, whereas there was overwhelming evidence to the contrary.
  - v. That the Learned Trial Magistrate erred in fact and law in failing to make a finding and or award on severance pay, having found that redundancy was unprocedural and the Claimant was not paid severance pay.
  - vi. That the Trial Magistrate erred in fact and in law by disregarding the Claimant's evidence, submissions, and authorities relied upon, thus arriving at an erroneous decision.
6. The Appellant filed a Record of Appeal on 11 April 2023.
7. The Court dismissed the Appeal on 4 June 2024, but upon application of the Appellant, it was restored to the docket on 12 February 2025.
8. The Court gave directions on 3 April 2025 and 2 May 2025. The Appellant filed his submissions on 8 April 2025, and the 3<sup>rd</sup> Respondent on 20 June 2025.
9. The Court has considered the Record of Appeal and submissions.

### **Role of the Court on a first appeal**

10. The Court of Appeal pronounced itself on the role of a first appellate Court in *Kenya Ports Authority v Kuston (Kenya) Limited (2009) 2 EA 212*, thus:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the Court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
11. The Court will keep in mind the caution.

### **Salary for July and August 2018**

12. In an Amended Statement of Claim, the Appellant prayed to be awarded Kshs 58,800/- as salary for July and August 2018.
13. In the witness statement, which was adopted as part of the evidence, the Appellant made no reference to unpaid salaries for July and August 2018.



14. During the hearing, the Appellant testified that he was not paid his wages for July and August 2018. The Appellant reiterated the testimony during cross-examination.
15. The Respondents did not lead or call any evidence to rebut the Appellant's testimony that he was not paid wages for July and August 2018.
16. Section 20 of the *Employment Act* requires an employer to issue an itemised pay statement to the employee. The Respondents did not produce any such statements, and considering section 10(7) of the *Employment Act*, 2007, the Court finds that the Principal Magistrate fell into an error of both fact and law in not allowing this head of the claim.
17. The Court will allow the head of the claim.

### **Redundancy notice**

18. The Appellant claimed both 1 month's salary in lieu of notice and 1 month's redundancy notice.
19. The Principal Magistrate awarded the Appellant 1 month's salary in lieu of notice without specifying whether it was in lieu of notice under section 40(1)(c) or section 35(1) of the *Employment Act*, 2007.
20. Before this Court, the Appellant asserted that he was entitled to the equivalent of 1 month's salary in lieu of notice under section 40(1)(c) of the *Employment Act*, 2007.
21. The parties and the Court acknowledged that the Appellant's employment was terminated on the ground of redundancy.
22. The Appellant seem to argue that in such a case, he was entitled to both notice pay as contemplated by section 35(1) of the *Employment Act*, 2007 and section 40(1)(c) of the Act.
23. The Court is of the view that such an award would amount to a double payment and would be untenable.
24. The Appellant left the services of the Respondent on the ground of redundancy and would therefore be only entitled to the notice pay contemplated under section 40(1)(c) of the *Employment Act*, 2007.
25. The Act does not envisage double payment of notice; otherwise, that would amount to unjust enrichment.

### **House allowance**

26. The Appellant sought Kshs 432,180/- as house allowance, and he testified that the salary he was earning did not include house allowance, nor did the Respondents provide him with accommodation. The Appellant served the Respondents for about 8 years.
27. Section 9 of the *Employment Act* requires an employer to cause to be drawn a written contract under certain circumstances. The circumstances under which the Appellant served required such a contract.
28. Under section 31 of the *Employment Act*, 2007, the Respondent should have provided accommodation to the Appellant or paid him an allowance to cover accommodation.
29. The Respondents had the option to reduce the contract with the Appellant into writing with a provision that the wage was consolidated and included a house allowance.
30. The Respondent contended in their submissions that the Appellant was getting a consolidated wage and that he was not underpaid.



31. As already stated, the Respondents did not reduce the contract into writing, and in light of sections 10(7) and 31(2) of the *Employment Act*, 2007, the Court finds that the Principal Magistrate fell into error in not allowing the head of the claim.
32. The Respondent did not interrogate the computations on house allowance, and the Court will allow the head of claim.

### **Severance pay**

33. It was common in the pleadings and evidence that the Appellant separated from the Respondents on account of redundancy. Statutorily, under section 40(1)(g) of the *Employment Act*, the Appellant was entitled to severance pay, and he claimed Kshs 156,046/-.
34. The Principal Magistrate fell into an error of law in not allowing the head of the claim for severance pay, and the Court will allow the head of the claim.

### **Service pay**

35. The Appellant has been awarded severance pay, and the Court declines to allow service pay as he did not lay an evidential or legal foundation to an award of this relief.

### **Annual leave**

36. The Appellant testified that he never went on annual leave during the duration of employment, and he prayed to be awarded Kshs 218,464/-.
37. The Principal Magistrate rejected this head of the claim on the basis that it was not proved.
38. The Principal Magistrate had the Appellant's unrebutted testimony on the issue of leave. The Respondents did not produce any employment records as envisaged by sections 10(3)(a)(i), 10(7) and 74 of the *Employment Act*, 2007.
39. The Principal Magistrate therefore fell into an error of fact and law in not granting relief.
40. However, section 28(4) of the *Employment Act*, 2007, circumscribes how much annual leave can be carried forward, and the Appellant would have been entitled to commuted leave pay for the last 18 months of the contract, amounting to one and a half months' salary.
41. The Court will allow this head of the claim in the sum of Kshs 44,100/-.

### **Conclusion and Orders**

42. Arising from the foregoing, the Court allows the appeal in the following terms (in addition to the awards by the Principal Magistrate).
43. The Appellant is awarded:
  - i. July/August 2018 wages Kshs 58,800/-
  - ii. House allowance Kshs 432,180/-
  - iii. Severance pay Kshs 156,046/-
  - iv. Accrued leave Kshs 44,100/-Total Kshs 691,126/-



44. No order on costs of the Appeal.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN MERU ON THIS 25<sup>TH</sup> DAY OF  
SEPTEMBER 2025.**

**RADIDO STEPHEN, MCIArb**

**JUDGE**

Appearances

For Appellant Omongo Gatune & Co. Advocates

For Respondents Githui & Co. Advocates

Court Assistant Wangu

