



REPUBLIC OF KENYA



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Wamutu t/a Taifa Auctioneers v H Young (EA) Ltd (Appeal 238 & 237 of 2024 (Consolidated)) [2025] KEELRC 2452 (KLR) (17 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2452 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 238 & 237 OF 2024 (CONSOLIDATED)
NJ ABUODHA, J
SEPTEMBER 17, 2025

BETWEEN

DAVID WANDERI WAMUTU T/A TAIFA AUCTIONEERS APPELLANT

AND

H YOUNG (EA) LTD RESPONDENT

(Being an appeal from the Ruling and Order of Hon. Rachel Njoki Ng'ang'a RM-Gatundu delivered on 16th July, 2024 in Gatundu)

JUDGMENT

1. This appeal was consolidated with appeal No. 237 of 2024 involving the same parties. The memorandum of appeal dated 15th August, 2024 is on the grounds *inter alia*:
 - a. The learned Magistrate erred in law and in fact by finding that the appellant proclaimed the respondent's moveable property on 26th January, 2024 and attached the respondent's moveable property on 27th January, 2024 despite clear evidence to the contrary.
 - b. The learned Magistrate erred in law and in fact by finding that whereas the appellant's attachment of respondent's moveable property on 27th January, 2024 was in execution of decrees which were issued in respect of other cases, the appellant managed to slip in the name of the claimant in the notification of sale and managed to attach Motor Vehicle registration number KCH 059B despite clear evidence to the contrary.
 - c. The learned Magistrate erred in law and in fact by finding that the appellant was not entitled to recover any costs from the respondent.
2. The Appellant therefore prayed that the appeal be allowed and the Ruling and Order of the learned Magistrate disallowing appellants Notice of Motion and Bill of Costs dated 20th March, 2024 be set



aside and be substituted with an Order reinstating and remitting the same lower court for hearing and final disposal by any magistrate other than Honourable Rachel Njoki Ng'ang'a.

3. The Appeal was disposed of by written submissions.

Appellant's Submissions

4. The Appellant's Advocate Mr. Njoroge submitted among others that on 24th January, 2024, Samuel Nyambane & Company Advocates instructed him to undertake execution in respect of costs for Kshs. 85,000/- which awarded to. The claimants in Gatundu Cmel No. E005 of 2002 and E006 of 2022 on 5th December, 2023. The appellant undertook proclamation and attachment of the respondent's property on 26th January, 2024 in execution of the decree. The proclamations were received by the respondent on the same day.
5. On 3rd February, 2024, the appellant seized the respondent's motor vehicle number KCH 959B in execution of the decree and booked the same at Pangani Auction Centre for safe custody. On 9th February, 2024, the respondent issued the appellant with an order from the ELRC requiring the appellant to release all respondent's motor vehicles which has been seized in execution. On 7th February, 2024, the respondent remitted costs in the sum of Kshs. 85,850/- to the firm of Samuel Nyambane Advocates.
6. According to Counsel, the trial Magistrate erred in dismissing the appellant's Bill of Costs even though the proclamation was uncontested. The fact that the appellant undertook proclamation was uncontested hence he was entitled to costs. Counsel in this respect relied on the case of [*ADC vs. James Onkundi Omakori t/a Lifewood Auctioneers*](#). According to Counsel, the trial magistrate in dismissing the Bill stated that the appellant proclaimed the respondent's property on 26th January, 2024 and issued notification for sale the next day yet there was evidence that the properties were seized on 3rd February, 2024 hence there was no basis for the trial magistrate in finding that the properties were seized the next day.

Respondent's Submissions

7. Counsel for the respondent Mr. Munyungu on the other hand submitted that the appellant never provided any evidence to contravene or disregard that the respondent was not employed continuously from August, 2015 to April 2022, February, 2016 to March, 2023 and August, 2015 to January, 2023 respectively. Counsel relied on the definition of casual employment as defined under section 2 of the [*Employment Act*](#). Counsel further relied on section 10 of the Act and submitted that it was the duty of the appellant to keep employment records and failure to keep and or produce the same meant they failed to prove the respondents were casual employees. In this regard counsel relied on the case of [*Abigael Jepkosgei Yator & Another vs. China Hanaan International Co. Ltd*](#) [2018] eKLR. Mr. Munyungu further submitted that under section 37 of the [*Employment Act*](#) the respondents automatically graduated to regular employment as they worked continuously for the appellant for an aggregate period of more than one year. In this respect counsel relied on the case of [*Nanyuki Water and Sewerage Company Ltd vs. Benson Mwiti Ntiritu & 4 Others*](#) [2018] eKLR. It was therefore counsel's submission that section 35(1)(c) applied to the respondents.
8. On the issue whether the respondents were unfairly terminated, counsel submitted that the trial court after listening to the evidence rightly came to the conclusion that the respondents were unfairly terminated. It was his submission that at the hearing the appellant's Human Resource Manager Agnes Kagwaria stated that having sent out letters to the claimants to show cause, return to work and disciplinary letters, she was not aware if the respondents received the letters. On the issue of substantive



fairness, counsel submitted that the respondents on or about 15th April, 2022, 2nd March, 2023 and 16th January, 2023 respectively, reported to work but were informed to go back home since the appellant was reducing the workforce due to reduced work and that they would be called back but the appellant never did so. The respondents were therefore not accorded a chance to be heard before termination and were never issued with termination notices as envisaged under section 41 of the Act. Counsel therefore submitted that the acts of the appellant therefore constituted unfair termination.

9. Mr. Munyungu further submitted that the appellant's claim that the respondents were subjected to disciplinary hearing was false as during the hearing, the appellant's HR Manager stated that she was not aware if the respondents received the letters allegedly sent to them further letters never bore any stamp or signature of the labour officer. Consequently no disciplinary hearing occurred. Further, the appellant alleged that it was unable to serve the respondents yet the Employment Act requires the employer to have personal details of its employees. The appellant did not show that it asked for the respondent's personal details and they failed and or refused to provide the same.
10. On the issue of quantum of the award Counsel submitted that the Court had discretion in making the award of up to 12 months' salary as compensation for unfair termination. Further, the claimants were dismissed in the most inhumane manner after a long period of dedicated service over unsubstantiated allegations. On the issue of severance pay, Mr. Munyungu submitted that under section 40 of the Act, an employee declared redundant was entitled to severance pay. On the issue of leave, Counsel submitted that the appellant never produced any leave records to counter the claim for leave pay by the respondents.

Determination.

11. The principles which guide this court in an appeal from a trial court are now more or less settled. In Gitobu Imanyara & 2 others v Attorney General [2016] eKLR, the Court of Appeal stated that;

“[A]n appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must 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 allowances in this respect”
12. This appeal revolves around the question whether the trial court erred in finding that the appellant wrongfully attached the respondent's named vehicle hence in breach Auctioneer Practice Rules and therefore not entitled to any fees.
13. As an appellate Court, the Court though required to analyse the evidence presented before the trial court *vis-à-vis* the finding of the trial court thereon, must refrain in that process from replacing its opinion of the judgment it could have arrived at if it was the one trying the matter in the first instance. The judgment or decision of the trial court if reasonably based on the evidence presented before the trial court will be upheld by this court regardless of any opinion that it could have arrived at a different judgment or decision.
14. The Court has carefully considered the application and the affidavit in support thereof and noted that the proclamation dated 26th January, does not include motor vehicle KCH 959B. It contains other motor vehicles except this one yet the same is the only one cited in the notification of sale dated 3rd February, 2024. Auctioneers Rules require that an attachment be carried out seven days after proclamation yet the appellant states that they took the vehicle on the same day of attachment to Pangani Auction Centre for safe custody without disclosing when the vehicle was proclaimed. This



was contrary to *Auctioneer Rules* which requires that goods be attached and carted away seven days after proclamation. The trial court was therefore justified in rejecting the appellant's Bill of Costs since the attachment was contrary to the *Auctioneers Rules*.

15. The Appeal is therefore found unmerited and is hereby dismissed with costs.

16. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF SEPTEMBER, 2025

DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

