



**Oduor v Ahero Girls High School (Appeal E052 of 2023)
[2024] KEELRC 1246 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1246 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E052 OF 2023**

**S RADIDO, J
MAY 15, 2024**

BETWEEN

GEORGE OCHIENG ODUOR APPELLANT

AND

AHERO GIRLS HIGH SCHOOL RESPONDENT

*(Arising from the judgment delivered on 26th September 2023, by Honourable J Wambilianga
in ELRC Cause No. E042 of 2020, George Ochieng Oduor v Ahero Girls Secondary School)*

JUDGMENT

1. George Ochieng Oduor (the Appellant) sued Ahero Girls Secondary School (the Respondent) alleging unfair termination of employment.
2. Apparently, the Senior Principal Magistrate delivered a judgment on 26 September 2023 and the Appellant was dissatisfied.
3. The Appellant lodged a Memorandum of Appeal with the Court on 9 October 2023, contending that:
 - i. The Learned Trial Magistrate erred in law and fact by failing to find that the Appellant was wrongfully and unlawfully terminated by the Respondent without reasonable cause or justification tendered.
 - ii. That the report made by the Appellant clearly shows that he was under threat from the Respondent's Chief Principal.
 - iii. The Learned Trial Magistrate did not appreciate the overwhelming evidence given by the Appellant at the trial.
 - iv. The Learned Trial Magistrate did not carefully evaluate and consider the provision of section 41(2) of the [Employment Act](#) which had been breached by the Respondent in the matter.



- v. That the decision was against the weight of the evidence.
 - vi. The Learned Trial Magistrate erred in law and in fact in failing to find that the procedure for summary dismissal under section 44 of the [Employment Act](#) was not followed and was grossly breached.
 - vii. The Learned Trial Magistrate erred in law and in fact in failing to find that the audit report clearly showed that there was financial impropriety and that the Appellant reported the same.
 - viii. That the unprocedural acts of the Respondent violated Article 47 of [the Constitution](#) in not providing the Appellant with opportunity to defend his case.
 - ix. That the Magistrate erred in law and in fact in not finding that the rights of the Appellant under Article 50 of [the Constitution](#) were breached.
 - x. That the Learned Magistrate was completely biased against the Appellant.
4. The Record of Appeal was filed on 22 March 2024, and the Court gave directions on 15 April 2024.
 5. The Appellant filed his submissions on 24 April 2024, and the Respondent on 2 May 2024.
 6. The Court has considered the Record of Appeal and submissions.

Competence of the Appeal

7. When the Court retreated to prepare this Judgment, it established that the impugned judgment of the Senior Principal Magistrate as well as a copy of the decree were not part of the Record.
8. Order 42(4)(f) of the Civil Procedure Rules require an Appellant to include a copy of the judgment/decree appealed against as part of the Record of Appeal. The Appellant did not include these primary documents in the Record of Appeal.
9. Without a copy of the judgment and/or decree, the instant Appeal is non-starter and the only logical thing the Court can do is to decline to assume jurisdiction.

Orders

10. Considering the failure to include a copy of the judgment and/or decree appealed from, the Court finds the Appeal incompetent and it is struck out with costs.

Delivered virtually, dated and signed in Kisumu on this 15th day of May 2024.

Radido Stephen, MCI Arb

Judge

Appearances

For Appellant MOA Advocates LLP

For Respondent Odinga & Khabuli Co Advocates

Court Assistant Chemwolo

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