



**Servicehub Global Enterprises Ltd v Juma (Appeal E083 of 2023)  
[2024] KEELRC 1369 (KLR) (6 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1369 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E083 OF 2023**

**AK NZEI, J  
JUNE 6, 2024**

**BETWEEN  
SERVICEHUB GLOBAL ENTERPRISES LTD ..... APPELLANT  
AND  
DANCAN OUMA JUMA ..... RESPONDENT**

*(Being appeal against the judgment and Decree of Hon. Harrison Adika  
Musa Sajide delivered on 2nd August 2023 in CM ELRC No. E132/2023)*

**JUDGMENT**

1. The Respondent herein was the claimant in Mombasa Chief Magistrate’s Court Employment Case No. E132 of 2023 whereby he had sued the Appellant claiming:-
  - a. 12 months’ compensation for unfair termination of employment .....kshs. 182,424.
  - b. Salary arrears (15 days worked in February 2023)...kshs. 7,601
  - c. Payment in lieu of notice.....kshs. 15,202
  - d. Service pay (kshs. 7,601x2 years).....kshs. 15,202
  - e. Accrued annual leave not taken (kshs. 15,202 x2)..kshs. 30,404
  - f. Certificate of service.
  - g. Costs of the suit and interest at Court rates.
2. The Respondent had pleaded that he had been employed by the Appellant, earning kshs. 15,202 per month, and that he retained continuous employment until 15/2/2023 when his employment was verbally terminated after the Respondent requested to be paid his January 2023 salary which had not



been paid. That the termination was effected without notice, without a valid reason, without following the laid down procedure and without giving the Respondent an opportunity to be heard.

3. It was the Respondent's further pleading that termination of his employment by the Appellant was unlawful and unfair, and contravened Sections 41,43 and 44 of the Employment Act; and that the Appellant did not act in accordance with justice and equity.
4. Documents filed by the Respondent alongside the memorandum of claim on 9/3/2023 included the Respondent's written witness statement dated 8/3/2023 and an evenly dated list of documents, listing 6 documents. The listed documents included M-pesa statements, NSSF Statement, a copy of a letter from Mombasa County Labour Office dated 20/2/2023, CR12 on the Appellant company and a demand letter, among others.
5. The Appellant filed Response to the claim, admitting having engaged the Respondent as a cleaner, but denying his claim. Documents filed by the Appellant alongside the memorandum of Response included written witness statements of Gregory Nyongesa and Jackline Khafeffe, both dated 24/4/2023, and a list of documents listing 3 documents. The listed documents were described as payment records for January, February and March.
6. At the trial, the Respondent adopted his filed witness statement, which replicates the averments made in the statement of claim, as his testimony. He further testified, under cross examination, that he had been employed in October 2021, but his supervisor (Jackline) kept the contract and never gave him a copy thereof, and that his salary was paid after he had instructed an Advocate.
7. The Respondent called 2 witnesses, Gregory Nyongesa (DW-1) and Jackline Khafeffe (DW-2), both of whom adopted their filed witness statements as their respective testimonies in Court. DW-1 testified that the Respondent had been employed by word of mouth and that there was no written contract.
8. In its judgment delivered on 2/8/2023, the trial Court made a finding that the Respondent was the Appellant's employee, and that his employment had been unfairly terminated. The trial Court awarded the claimant 12 months' salary for unfair termination of employment, notice pay and service pay. The trial Court made a finding that the M-pesa statements produced in evidence by the Respondent showed that he was being paid Ksh.13,002, and proceeded to use that figure to calculate the awards that the Court found to be awardable to the Respondent, and made the following award in favour of the Respondent:-
  - a. 12 months' compensation .....kshs. 156,024
  - b. Payment in lieu of notice .....kshs. 13,002
  - c. Service pay.....ksh. 6,936Total ksh. 175,962

The Respondent was also awarded costs of the suit and interest.

9. Aggrieved by the said judgment, the Appellant preferred the present appeal and set forth the following grounds of appeal:-
  - a. the learned magistrate erred in fact and in law in finding in favour of the Claimant that the termination of the Claimant's employment by the Respondent was unlawful, malicious, unprocedural and an infringement on his constitutional right.
  - a. the learned magistrate erred in fact and in law in finding in favour of the Claimant by awarding maximum compensation for wrongful dismissal.



- b. the learned magistrate erred in law and in fact by awarding the Claimant damages for wrongful dismissal
  - c. the learned magistrate erred in law and in fact by awarding payment in lieu of notice.
  - d. the learned magistrate erred in law and in fact by awarding the Claimant payment for service.
  - e. the learned magistrate erred in law and in fact by awarding the Claimant the prayers sought.
10. The Appellant sought the following reliefs on appeal:-
- a. that the appeal be allowed and the judgment entered in favour of the Respondent be set aside, and be substituted with an order dismissing the claim.
  - b. that the Court makes further and other orders as it deems just.
  - c. that the Respondent pays costs of the appeal.
11. I will handle the grounds of appeal together. This is a first appeal, and the evidence adduced in the trial Court is before this Court for fresh consideration; on questions of both law and fact. Having considered the pleadings filed by both parties in the trial Court and evidence presented before the said Court, issues that present for determination, in my view, are as follows:-
- a. whether termination of the Respondent's employment by the Appellant was unfair.
  - b. whether the reliefs granted by the trial Court were deserved.
12. It was a common ground that the Respondent's employment was terminated without notice. This contravened the provisions of Section 35(1) (c) of the [Employment Act](#). This alone rendered the termination unfair. Further, it was a common ground that the Respondent was not given any valid reason for the termination of his employment. The Respondent pleaded and testified that his employment was terminated by his supervisor, one Jackline Khafefe (DW-2) after the Respondent requested to be paid his January 2023 salary which had not been paid by 15/2/2023. This evidence was not rebutted by the Respondent, and it was not demonstrated that the Respondent's salary for January 2023 had been paid as at 15/2/2023 when the Respondent's employment was terminated by the Appellant. All that DW-2 told the trial Court was that she had no capacity to terminate the Respondent's employment.
13. The Appellant's allegation that the Respondent was not terminated and that he just stopped going to work must fall by the wayside. The Appellant did not tell the trial Court what disciplinary action it took after the Respondent allegedly stopped going to work. Under Section 44(4) of the [Employment Act](#), absconding of duty by an employee amounts to gross misconduct, for which the employee can be summarily dismissed, but not before adherence by the employer to the procedure set out in Section 41 of the [Employment Act](#). An allegation by an employer that an employee absented himself or herself from duty without demonstrating what action the employer took against the absconding employee is an hollow allegation with no anchor in either the law or fact.
14. I uphold the trial Court's finding that termination of the Respondent's employment was unfair.
15. On the second issue, I take cognizance of the fact that the Respondent did not file a cross-appeal. I will, therefore, limit the scope of this judgment to the reliefs made by the trial Court, but not those that the said Court declined to grant.
16. I find no fault in the trial Court's award of the maximum award of the equivalent of 12 months' salary being compensation for unfair termination of employment. It was within the trial Court's power



and jurisdiction to make the said award pursuant to Section 49(1) (c) of the Employment Act. The only thing that the trial Court did not do was to give its reasons for giving the maximum award. I have taken note of the circumstances in which the Respondent's employment was terminated. The Respondent was dismissed upon his request that his January 2023 salary be paid. Was it wrong for the Respondent to ask his employer or his superiors in the Respondent company that his wage/salary for the previous month be paid". Nay. The succeeding month (February 2023) was already two weeks gone. An employee's employment is the source of the employee's livelihood. Did the Appellant expect the Respondent to continue working without a salary, and not to request for payment." I uphold the award by the trial Court of the equivalent of 12 months' salary being compensation for unfair termination of employment.

17. I uphold the award of kshs. 13,002 being one month salary in lieu of notice pursuant to Section 35(1) (c) of the Employment Act.
18. The award of kshs. 6,936 being service pay is hereby set aside. It is clear from the documentary evidence produced by the Respondent that the Respondent was a member of, and/or a contributor to the NSSF. Section 35(6) (d) of the Employment Act disqualifies the Respondent from claiming service pay.
19. In sum, the Appellant's appeal partly succeeds, and for avoidance of doubt, judgment is hereby entered for the Respondent against the Appellant as follows:-
  - a. Compensation for unfair termination of employment ..... kshs. 156,024
  - b. Payment in lieu of notice..... kshs. 13,002Total kshs. 169,026
20. The Respondent is awarded interest on the awarded sum, to be calculated at Court rates from the date of the trial Court's judgment.
21. Each party will bear its own costs of the appeal, but the Respondent will have costs of proceedings in the Court below.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 6<sup>TH</sup> JUNE 2024**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Appellant

.....Respondent

