



**Shikanga v G4S Kenya Limited (Appeal E054 of 2023)
[2024] KEELRC 1335 (KLR) (5 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1335 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E054 OF 2023**

S RADIDO, J

JUNE 5, 2024

BETWEEN

SOLOMON SHIKANGA APPELLANT

AND

G4S KENYA LIMITED RESPONDENT

(Being an Appeal from the judgment of Hon. E.N. Mwenda delivered on 15th September 2023 in the Chief Magistrates Court in Kisumu CMELRC No. E033 of 2022)

JUDGMENT

1. Solomon Shikanga (the Appellant) sued G4S Kenya Ltd (the Respondent) before the Principal Magistrate's Court alleging unfair termination of employment.
2. In a judgment delivered on 15 September 2023, the Principal Magistrate found that the Respondent had unfairly terminated the Appellant's employment and awarded him the equivalent of 1-month salary as compensation.
3. The Appellant was aggrieved and he lodged a Memorandum of Appeal with the Court on 11 October 2023, contending that:
 - i. The Learned Trial Magistrate erred in law by partially allowing the Claimant's claim.
 - ii. The Learned Trial Magistrate acted on the wrong principles and misdirected himself in considering irrelevant issues while arriving at his finding on the award due to the Claimant.
 - iii. The Learned Trial Magistrate erred in law in failing to consider the Appellant's submissions and authorities thus leading to resultant miscarriage of justice to the Appellant to the extent of the award.



- iv. The Learned Trial Magistrate erred in not sufficiently taking into account evidence presented to him in totality and in particular the evidence presented on behalf of the Appellant on the sums due in compensation for wrongful termination.
- v. The award of Kshs 17,463/- was too low under the circumstances.
4. The Record of Appeal was filed on 17 April 2024, and the Court gave directions on 7 May 2024.
5. The Appellant filed his submissions on 16 May 2024, and the Respondent on 31 May 2024.
6. The Court has given due consideration to the Record of Appeal and submissions.

Role of the Court on a First Appeal

7. The role of a first appellate Court on appeal was discussed in *Kamau v Mungai* (2006) 1 KLR 150, where it was held that:

this being a first appeal, it was the duty of the Court.... To re-evaluate the evidence, assess it and reach its own conclusions remembering that it had neither seen nor heard the witnesses and hence making due allowance for that.
8. This Court will bear in mind the interdict on its role.

Award of compensation

9. The Principal Magistrate found that the Respondent had unfairly terminated the Appellant's employment and awarded him the equivalent of 1-month salary as compensation.
10. The Appellant challenged the award because it was too low and that the Principal Magistrate had failed to give reasons or explain the factors he considered in making the award.
11. The Appellant cited the judgment of the Court of Appeal in *Kenya Broadcasting Corporation v Geoffrey Wakio* (2019) eKLR to buttress the argument that it was an error of principle for the Principal Magistrate not to give reasons for the award.
12. The Appellant urged the Court to enhance the award to the maximum 12 months gross salary contemplated by section 49(1)(c) of the *Employment Act*, 2007.
13. The Respondent on the other hand cited *Kenfreight (EA) Ltd v Benson K. Nguti* (2019) eKLR to contend that the Principal Magistrate judiciously exercised his discretion because he considered the conduct of the Appellant in awarding compensation.
14. Section 49(4) of the *Employment Act*, 2007 has enumerated some 13 factors the Court should consider in awarding compensation. The Court is enjoined to take into account any or all of the factors.
15. The Principal Magistrate in awarding the compensation rendered himself:

The Claimant has proposed general damages of 12 months based on a gross salary of Ksh 25,540.00 from the payslip this salary due to overtime earned. The gross salary is Kshs 17,463.00 as is conceded by the Respondent in their submissions. It is my finding that because of the failure in the disciplinary process, there was no justifiable grounds for summary dismissal. However, there was reasonable suspicion that the Claimant's conduct was incompatible with the Respondent's needs and therefore they could terminate the contract of employment with the requisite notice for cause.



16. One of the factors a Court ought to take into consideration in awarding compensation is outlined in section 49(4)(b) of the [Employment Act](#), 2007 and it is the circumstances in which the termination of employment took place.
17. The Principal Magistrate considered that single factor and the applicable statute allowed him to take that route.
18. Technically, the Principal Magistrate was right. But there was also evidence that the Appellant had been employed in 2007 and was dismissed in 2021. He separated from the Respondent after about 14 years of service. He did not have an adverse disciplinary history.
19. The Principal Magistrate should have put into consideration the length of service and disciplinary history of the Appellant to bring himself within the tenets set out in section 45(4) of the [Employment Act](#), 2007 which requires an employer to act in accordance with justice and equity.
20. The Appellant's copy of the pay slip introduced into evidence showed a gross salary of Kshs 25,540/-. The Principal Magistrate did not use the gross salary in computing compensation because it included overtime.
21. Section 49(1)(c) of the [Employment Act](#), 2007 sets out the gross salary as a dominant factor in computing compensation and gross salary includes overtime. The Principal Magistrate, therefore erred in law and fact.
22. Considering the above, the Court is of the view that compensation equivalent to 4 months' gross salary would have been just and appropriate.

Conclusion and Orders

23. Flowing from the above the Appeal succeeds to the extent that the award of 1-month compensation is vacated and set aside and substituted with an award of Kshs 102,160/- as compensation.
24. The Appellant to have costs of the Appeal.

Delivered virtually, dated and signed in Kisumu on this 5th day of June 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Bruce Odeny & Co. Advocates

For Respondent Hamilton Harrison & Mathews Advocates

Court Assistant Chemwolo

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