



**Inuka Africa Limited v Mokaya (Appeal E141 of 2023)
[2024] KEELRC 1952 (KLR) (18 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1952 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E141 OF 2023**

**M MBARŪ, J
JULY 18, 2024**

BETWEEN

INUKA AFRICA LIMITED APPELLANT

AND

GRAPHINE BOSIBORI MOKAYA RESPONDENT

(Being an Appeal from the Judgment by the Hon. D.O Mbeja delivered on 30 June 2023 (amended to 16 November 2023) in Mombasa CMELRC No. E544 of 2022)

JUDGMENT

1. The appeal arises from the judgment delivered on 16 November 2023 in Mombasa CMELRC No.E544 of 2022 and seeks a new trial be held and the evidence of the appellant be taken.
2. The appeal is on seven (7) grounds that the learned trial magistrate erred in failing to award general damages of Ksh.650, 000 which is manifestly high and the response filed was not considered. The appellant also challenges the judgment of the trial court on the grounds that the circumstances leading to the termination of employment were not considered including the fact that the respondent as the employee contributed to the termination of employment and that there was compensation. At the time the judgment was delivered, there was a pending interlocutory application by the appellant seeking to be heard in the matter and hence was denied a hearing.
3. Before the trial court, the respondent filed the claim on 22 September 2022 seeking terminal dues following the alleged unfair termination of employment. Her case was that employment was terminated unfairly for want of valid reasons and hence claimed the following;
4.
 - a. One month's notice pay Ksh.25,000;
 - b. 12 months compensation Ksh.300,000;



- c. Unpaid salary for days worked Ksh.25,000;
- d. Unpaid leave days for the duration of employment Ksh.125,000;
- e. Bonuses amounting to Ksh.300,000; and
- f. Costs.

The total claim was for Ksh.775, 000.

- 5. The appellant was served and filed a response. The matter came up for mention on November 1, 2022 and a hearing date was allocated for 23 January 2023 when the appellant applied for more time to file its documents. The trial court allocated a hearing date for June 21, 2023.
- 6. On the hearing date, the appellant applied for adjournment and 7 days to file documents which was declined. The respondent testified and closed her case. The appellant noted that there was a response filed but had not been able to file documents.
- 7. The trial court invited parties to file written submissions and mention on 12 July 2023. Only the respondent complied.
- 8. Judgment was delivered on 16 November 2023 with a finding that there was unfair termination of employment. The claims made were allowed save compensation for unfair termination of employment was awarded at 6 months and judgment entered in the sum of Ksh.625, 000.

The appellant is seeking a new trial.

- 9. Both parties attended on 9 April 2024 to take hearing directions on the appeal and agreed to address by way of written submissions and a mention on 17 May 2024 to confirm compliance. On the due date, the appellant had not complied and requested for 7 days and the matter was placed for mention on 10 June 2024 when the appellant remained absent and no submissions had been filed.

There is nothing to support the appeal save for the Record of Appeal.

- 10. Being a court of record, and this being a first appeal, the role of the court is to look at the entire record, analysis and make its conclusion taking into account that the trial court had a chance to hear both parties in evidence.
- 11. The case by the respondent before the trial court was that she was employed by the appellant on February 1, 2017 as a Loan Officer and then promoted to Branch Supervisor and Regional Manager in Mombasa and finally as Branch Manager where she worked for 5 years until 6 June 2022 when her employment was unfairly terminated. At the time, she was earning a wage of Ksh.25, 000 per month. On 6 June 2022, the appellant held a disciplinary hearing and then decided not to renew her contract on alleged poor performance but her contract had not been renewed since inception from the year 2020 to 2022. The act of non-renewal of contract was prejudicial leading to unfair termination of employment.
- 12. The appellant's case was that termination of employment resulted from discriminatory treatment. Sometime in July 2021, the appellant learnt that she was pregnant and hence began treating her differently to which she lost the same. She asked for 14 days of sick leave but was denied leading to psychological problems mental torture and eventually termination of her employment.
- 13. In response, the appellant's case was that the respondent was an employee from February 2017 to 30 June 2022 but grossly underperformed as reflected in various audits conducted in March 2022. In a letter dated 10 March 2022, these matters were brought to the attention of the respondent and there



were financial losses. It was also alleged that she was involved in similar trade businesses which was a conflict of interest amounting to misconduct. The claim that there was a bonus of Ksh.300, 000 was not correct and due to underperformance, employment was terminated fairly and the claims made are not justified.

14. The learned Magistrate analyzed the facts and made a general award of all claims save to cap the compensation claimed at 6 months instead of 12 months. There are reasons given for such an award of compensation on the findings that there was an unfair termination of employment that lacked due process. There are no written submissions on the appeal that the trial court applied this discretion to award compensation wrongly.
15. However, the other claims should have been gone into and a similar analysis done with the findings.
16. On the claim for notice pay, upon the finding that there was a lapse in due process, this is correctly awarded. On the claim for unpaid salary for June 2022 at Ksh.25, 000 the appellant under paragraph (3) of the response confirmed that employment terminated with effect from 30 June 2022. The due salary is correctly awarded.
17. On the claim for leave days not taken for the entire duration of employment, the trial court awarded Ksh.125, 000. Section 28(4) of the *Employment Act* caps untaken leave days at 18 months' worth of annual leave days and a total being 33. In this case, at a wage of Ksh.25, 000 for 33 days, the respondent's untaken leave days amount to Ksh.27, 500.
18. On the claim for a bonus of Ksh.300, 000 this is at the discretion of the employer and as a special claim must be based on written approval. Despite the appellant not calling any witness, the respondent did not submit any evidence as to how such a benefit accrued at the end of employment. No evidence was found in this regard. The award was not given any basis or a foundation and hence not justified.
20. Before conclusion, the respondent addressed the matter of discriminatory treatment due to her pregnancy which she lost. She testified to the fact that she lost her pregnancy because of the words of my supervisor. In the witness statement, the respondent noted that she was denied sick leave after she lost her pregnancy leading to psychological and mental torture. However, there is no specific prayer as to how the court should address such matters. In this appeal and before the lower court, there are no particular submissions in this regard.
21. On the question of costs, upon the lower court judgment, the appellant filed this appeal and moved with haste to secure its rights and an application seeking stay was filed and a ruling herein delivered on 9 April 2024. Soon thereafter, the appellant did nothing to prosecute this appeal. As outlined above, there are no written submissions or attendance subsequently to urge the appeal. The sole reason for the appeal appears to be to seek a stay of execution. The matter that a fresh trial should be conducted is left bare. The appellant is to pay costs for the lower court and this appeal.
22. Accordingly, the appeal analyzed above, the judgement in Mombasa CMELRC No.E544 of 2022 is hereby reviewed and the following awards issued;
23.
 - a. Compensation at 6 months Ksh.150,000;
 - b. Notice pay Ksh.25,000;
 - c. Unpaid salary for days worked Ksh.25,000;
 - d. Leave pay Ksh.27,500;



e. Costs of the appeal and the lower court proceedings.

DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF JULY 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

