



**Karanja v ADN Security Ltd (Appeal E012 of 2023)  
[2024] KEELRC 1902 (KLR) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1902 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
APPEAL E012 OF 2023  
ON MAKAU, J  
JULY 19, 2024**

**BETWEEN**

**BEATRICE NJOKI KARANJA ..... APPELLANT**

**AND**

**ADN SECURITY LTD ..... RESPONDENT**

*(Being an appeal against the Judgment of Hon. F.Muguongo , Principal  
Magistrate delivered on 26th July, 2023 in Nyeri MELRC No.E28  
of 2020 Before Hon. Justice Onesmus Makau on 19th July, 2024)*

**JUDGMENT**

**Introduction**

1. By a Statement of Claim dated 10<sup>th</sup> November 2020, the appellant sued the respondent seeking declaration that her employment had been terminated unfairly and unlawfully through summary dismissal. She also prayed for payment of Kshs.454,266 made up of compensatory damages plus accrued benefits.
2. The respondent denied liability and the suit went to full trial. After considering the evidence and submissions, the trial court (Hon F.Muguongo, PM) concluded that the appellant did not prove a case for summary dismissal and dismissed the entire suit with costs. The basis of the said conclusion was because the appellant had admitted that she left employment without notice.
3. The Appellant was aggrieved and filed this appeal seeking to vary or set aside the impugned judgment and urged the court to grant any other relief as it may deem necessary. The appeal stands on the following six grounds: -



- a. That the learned Trial Magistrate erred in law and fact by applying the wrong principles of law and thus erroneously dismissing the Appellant's claim entirely thereby occasioning a miscarriage of justice.
- b. That the learned Trial Magistrate erred in law and fact by applying the wrong principles of law and thus erroneously dismissing the Appellant's claim under the head of unpaid leave days, unpaid rest days, service pay and housing allowance, thereby occasioning a miscarriage of justice.
- c. That the learned Trial Magistrate erred in law and fact by applying the wrong principles of law by failing to make a finding that the Appellant was not accorded due process towards her termination of employment, thereby occasioning a miscarriage of justice.
- d. That the learned Trial Magistrate erred in law and fact taking into account extraneous and irrelevant considerations thus arriving at erroneous findings in the Judgment, thereby occasioning a miscarriage of justice.
- e. That the learned Trial Magistrate failed to address her mind to the pleadings on record and the evidence by the parties, thereby occasioning a miscarriage of justice.
- f. That the learned Trial Magistrate erred in law and fact in failing to evaluate the entire evidence as well as submissions as presented by the Appellant, thereby occasioning a miscarriage of justice.

### **Submissions in the Appeal**

4. The appellant submitted that the trial court erred in law and facts by applying the wrong principles when she dismissed the entire suit and occasioned a miscarriage of justice. She submitted that according to the Certificate of service, her services were terminated on 20<sup>th</sup> February 2020 before her compulsory leave ended on 22<sup>nd</sup> February 2020. Therefore, she submitted that the deployment letter dated 5<sup>th</sup> March 2020 was an afterthought. She also contended that the said letter also demoted her without affording her a chance which amounted to unfair termination contrary to section 45 of the [Employment Act](#).
5. The appellant further submitted that trial court fell into error by failing to analyse the claim for unpaid rest days, service pay/gratuity, House allowance, and thereby occasioning miscarriage of justice. She further urged that the trial court fell into error by failing to award her salary in lieu of notice and compensation for unfair termination.
6. Finally, the appellant submitted that the trial court erred by failing to evaluate the entire evidence and submissions and instead took into account extraneous and irrelevant consideration and thus arriving at erroneous finding and occasioning miscarriage of justice. She contended that the disagreement signed on 30<sup>th</sup> June 2020 did not discharge the respondent from liability in relation to termination. For emphasis, she relied on Thomas De La Rue (K) Ltd v David Opondo Omutelema (2013) eKLR and Bernard Juma Oyieyo v Karia Supermarket Limited (2018) eKLR where the court discussed the issue of settlement Agreement.
7. In view of the above matters, the appellant urged this court to interfere with the impugned judgment and award the reliefs sought in the statement of claim amounting to Kshs.454,266.
8. The respondent opposed the appeal and supported the impugned judgment. It urged that the appellant admitted in her testimony that she decided to quit employment after her demotion and



deployment as a day guard. She admitted further that she terminated her employment without notice to the employer. Consequently, it submitted that the issue of unlawful termination does not arise since the appellant resigned voluntarily from employment. For emphasis, it relied on *Kennedy Obala Oaga v Kenya Ports Authority (2018) eKLR* where it was held that there is no requirement for the employer to accept a notice for it to take effect.

9. The respondent further submitted that the trial court did not act on wrong principle while dismissing the suit, the principle of unfair termination under section 45 of the *Employment Act* were followed. It also submitted that the trial court properly analysed the pleadings, evidence and submission before dismissing the suit. Consequently, it prayed for the suit to be dismissed with costs.

### **Analysis and determination**

10. This being a first appeal, my mandate is to re-evaluate the evidence on record and make my own independent conclusions, but warn myself that I did not see the witnesses while giving their evidence. (See *Selle v Associated Motor Boat Company Ltd (1968) EA 123*).
11. Having considered the record of appeal and the submissions by both sides, the following issues fall for determination: -
  - a. Whether the appellant was summarily dismissed by the respondent or she resigned.
  - b. If the answer to (a) is that the appellant was dismissed, whether the same was unfair and unlawful.
  - c. Whether the reliefs sought in the suit are merited.

### **Dismissal or Resignation**

12. The appellant pleaded that she was summarily dismissed by the respondent in March 2020. During cross examination, she stated that: -

“I haven’t brought any termination letter. Redeployment is different from termination...

I never went to Kamakwa as per redeployment letter. I never appealed the redeployment ...

I quit work. I didn’t give any notice to the employer before quitting.”

13. DW1 confirmed the above evidence stating that the appellant was redeployed by letter dated 5<sup>th</sup> March 2020 but she failed to report to the new place of work.

Having considered the rival contentions, its clear as the day that the appellant was not summarily dismissed from employment but rather she absconded from her work. She quit employment without prior notice to the employer. She never pleaded constructive dismissal. Consequently, I find that the trial court was right in concluding that the appellant did not prove a case of summary dismissal.

### **Unfair termination**

14. In view of the foregoing conclusion, it is obvious that the alleged unfair and unlawful termination of employment does not arise.



## Reliefs

15. In consideration of the foregoing, the appellant is not entitled to declaration that her employment was unfairly terminated. She is also not entitled to salary in lieu of notice and compensatory damages. As such I am satisfied that the trial court was right in disallowing that claim.
16. However, I agree with the appellant that the trial court failed to analyse the pleadings and evidence fully and as such, left out a bigger part of the claim undetermined. The court did not consider and determine the claim for unpaid leave, rest days, house allowance, service pay and unpaid salary. The court did not show that the failure of the claim for unfair dismissal was fatal to the other claims based on accrued benefits.
17. It was submitted that there was an Employee Settlement, Release and Discharge Agreement signed after the separation whereby the appellant discharged the respondent from any claims whatsoever. I have considered the said agreement which partly states as follows: -

“I Beatrice Njoki Karanja have cleared with A.D.N Security Unit. I have received all my dues and therefore I have no claim whatsoever with the Archdiocese of Nyeri.”
18. The appellant admitted that she signed the above settlement agreement and returned her uniform. The claimant did not indicate that she signed the agreement involuntarily. However, during the hearing she stated that no dues were paid to her and the respondent did not adduce an evidence to ascertain payment. I have noted that the said documents comprise several pages which were signed between June and July 2021. No explanation was given for that. I decline to treat the said document as valid settlement agreement. Consequently, I find and hold that the appeal has merits and enter judgment as follows: -
  - a. The appeal is partially allowed.
  - b. The suit is remitted back to the Lower Court for determination of the undetermined matters highlighted above by a Judicial Officer other Hon.F.Muguongo-PM.
  - c. Costs of the appeal to the Appellant.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF JULY, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

**Order**

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

