



**Anirita Poultry Farms Ltd v Juma (Appeal E269 of 2023)  
[2024] KEELRC 2487 (KLR) (11 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2487 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E269 OF 2023  
NJ ABUODHA, J  
OCTOBER 11, 2024**

**BETWEEN**

**ANIRITA POULTRY FARMS LTD ..... APPELLANT**

**AND**

**BROWN VINCENT JUMA ..... RESPONDENT**

*(Being an appeal arising from the Judgement & Decree of Honourable G. OMODHO of the CHIEF MAGISTRATES COURT MILIMANI COMMERCIAL COURTS delivered on 30th November 2023 in CMEL NO 273/ 2020)*

**JUDGMENT**

1. Through the Memorandum of Appeal dated 22<sup>nd</sup> December, 2023, the Appellant appeals against the Judgement and Decree of Honourable G. OMODHO delivered on 30<sup>th</sup> November 2023.
2. The Appeal was based on the grounds that:
  - i. The Learned Magistrate erred in law and fact in holding that the Respondent had proved the required standard that he had been dismissed unfairly.
  - ii. The Learned Magistrate erred in law and fact in failing to acknowledge and to render herself on the fact that the Respondent herein wilfully tendered in his resignation vide his letter dated 20<sup>th</sup> July 2019 on the said 20<sup>th</sup> July 2019 as opposed to being dismissed from employment. The Respondent admitted in his witness statement that he wrote the resignation letter while under the impression that he would be recalled to work after one month.
  - iii. The Learned Magistrate erred in law and fact in making a finding that the signatures on the payment voucher and the ones on the apology letters were not similar whereas the Respondent neither contested the fact that he signed the said documents in his pleadings nor did he specifically prove/give evidence that he was not the author of the said signatures.



- iv. The Learned Magistrate erred in law and fact in holding that the Respondent was suspended from the 16<sup>th</sup> July 2019 to 23<sup>rd</sup> July 2019 whereas the Respondent never provided evidence that he was suspended during the aforesaid period of time nor did he prove that he was suspended at any other time during his tour of duty which contradicted the witness statements and evidence provided by both parties.
  - v. The Learned Magistrate erred in law and fact in making contradictory findings in the impugned judgement by making a contrary finding in the terms that the Respondent was never notified of the charges/offences he had committed when he was accused by his employer of organising an illegal industrial action at the work place.
  - vi. The Learned Magistrate erred in law and fact in holding that the Respondent was not present during the disciplinary hearing whereas the said Respondent admitted in his own pleadings that he attended the said disciplinary meeting.
  - vii. The Learned Magistrate erred in law and fact by focusing, addressing and rendering herself on extraneous issues that the Respondent's un-procedurally sneaked into the proceedings through their submissions.
  - viii. The Learned Magistrate erred in law and fact in awarding the Claimant 12 months' salary as compensation for unfair dismissal without giving the justification for the said award.
  - ix. The Learned Magistrate erred in law and fact in awarding the Respondent service pay whereas the Respondent directly providing the employer with NSSF number the Appellant herein dutifully proceeded to contribute to the NSSF scheme on his behalf as provided by law.
  - x. The Learned Magistrate erred in law and fact in awarding house allowance whereas the Appellant had already provided Muster roll in which the court adopted in declining to award the claim for leave days and which muster roll equally demonstrated the Respondent's salary breakdown and which showed that the Respondent was paid House Allowance.
  - xi. The Learned Magistrate failed to appreciate that when the parties agreed to dispose of the suit by way of written submissions on the basis of pleadings and documents on record without raising any objection on the validity of any of the documents filed then he was estopped from later raising any objections to the evidence on record through his submissions.
  - xii. The Learned Magistrate erred in law and fact in failing to evaluate and consider all the evidence that the Appellant herein tendered in support of its Defence against the Claimants claim.
  - xiii. The Learned Magistrate erred in law and fact in failing to fully consider the submission that were filed in court by the Appellant.
  - xiv. The Learned Magistrate erred in law and fact in upholding the Respondent's claim while dismissing the Appellants well explained defence.
  - xv. The Learned Magistrate displayed open bias in the manner she determined the dispute.
3. The Appellant prayed that:
    - a. The Judgment and decree of the lower court in MCELRC /278/2020 be set aside and instead the Claimant's case be dismissed with costs.
  4. The Appeal was disposed of by written submissions.



## **Appellant's Submissions**

5. The Appellant's advocates Gideon Nakhone & Associates Advocates filed written submissions dated 5<sup>th</sup> June, 2024. On the issue of whether the Respondent was dismissed or he resigned and/or signed any documents under duress, Counsel submitted that whereas the Respondent claimed before the trial court that he was summarily dismissed by the Appellant, he neither presented before the court a dismissal letter nor did he plead constructive dismissal because neither the two occurred.
6. Counsel submitted that the Respondent in his witness statement confirmed that he wrote with his own hand the letter resigning and admitting that he had caused an unlawful industrial action and that he would be considered for employment after one month. The Claimant however seemed to imply that he was either duped or coerced into writing the said resignation letter on the promise that he will be recalled back to duty after one month.
7. Counsel relied on the case of Mutiso v Endmore steel Millers [2023] KEELRC 3042 (KLR) and submitted that the Respondent neither pleaded nor proved that he was coerced, induced and or duped into rendering the hand written resignation letter.
8. Counsel further relied on the case of Chengo Kitsao Chengo v Umoja Rubber Products Limited (2016) eKLR in submitting that the fact that the Respondent herein urged the court that his claim be disposed of by way of written submissions meant that he had no objections to the authenticity of any of the documents that the Appellant relied in the trial.
9. It was the Counsel's submission that the Respondent's complaint to the labour officer was clear that the Respondent never mentioned that he had been forced, duped or coerced to sign or author any of the apology letters or resignation letter. The issue only popped up in the Respondent's submissions as an afterthought.
10. On the issue of whether the magistrate was right in concluding that the signatures in the apology letter and payment voucher did not match, it was Counsel's submission that the implication in the finding was that either of the documents were forgeries which findings were anchored on the Respondent submissions that the Appellant falsified and forged the apology and resignation letters.
11. Counsel submitted that the Respondent has not been consistent with the dates when the events leading to his parting ways with the Appellant occurred. The discrepancies demonstrate that the Respondent's claim that he was dismissed on 23<sup>rd</sup> July 2019 was an afterthought and a ploy to disown the letters dated 20<sup>th</sup> July 2019.
12. Counsel relied on among others the case of Daniel Toroitich Moi v Mwangi Stephen Muriithi & another [2014] eKLR in submitting that submissions cannot take the place of evidence. Counsel submitted that the accusations of fraud, forgery and falsification of documents was a weighty issue that could attract criminal law sanctions therefore could not just be thrown around. That an accuser must distinctively plead the fraud and then prove the occurrence of the fraud/forgery. That in this case he accusations of fraud and forgery first appeared in the submissions. Counsel relied on the case of Demutila Nanyama Pururmu v Salim Mohamed Salim(2021) eKLR where court of Appeal stressed the seriousness of allegations of fraud.
13. Counsel submitted that the Respondent never pleaded the coercion/fraud/forgeries in the manner provided for in law or at all. That he also never proved the same as required in the law and he avoided a formal hearing and decided to dispense the matter by written submissions to the detriment of the Appellant.



14. On the issue of whether the Respondent was ever suspended, it was Counsel's submission that the finding by the trial court that the incident took place between 11<sup>th</sup> and 13<sup>th</sup> July 2019 thereafter the Claimant was on suspension for a week from 16<sup>th</sup> July and came back to work on 23<sup>rd</sup> July was neither supported by any evidence adduced in the case nor the pleadings by both the Appellant and the Respondent. That the trial court relied on dates given by the Respondent in his submissions without relying on the pleadings before the court.
15. On the issue whether the magistrate was right in reaching the conclusion that the Respondent never attended the disciplinary hearing, Counsel submitted that was in variance with the admission by the Respondent that he attended a meeting where charges were read to him and was asked to respond. That the Respondent stated that his supervisor was present in the meeting and that he did not know the other people who were in the meeting.
16. On the issue of whether the magistrate erred in holding that the Respondent was never accorded notice for any disciplinary hearing, Counsel submitted that the Respondent all through his pleadings demonstrated that he was conscious of the fact that he was being accused of masterminding an illegal industrial action at the Appellant's work place.
17. On the issue of whether the magistrate justified awarding 12 months' salary for wrongful termination, Counsel submitted that the trial court never even attempted to give reasons and justification for awarding the maximum 12 months salary pay as compensation for wrongful termination.
18. Counsel relied on the cases of Kenya Ports Authority v Munyao & 4 Others (2023) KESC 112 (KLR) and Simba Corporation t/a Acacia Premier Hotel v Kirui [2024] KEELRC 413(KLR) in submitting that the Respondent contributed to his dismissal and had not proved a case for maximum compensation. That the Respondent admitted that he presided over an illegal kamukunji and that he left work without permission and also failed to go to work for a number of days without permission.
19. On the issue of whether the Court erred in awarding service pay while the Appellant contributed to the NSSF on behalf of the Respondent, Counsel submitted that under section 35(6) the Respondent being a member of NSSF was not entitled to service pay and relied on the case of Hassanath Wanjiku v Vanela House of Coffees (2018) eKLR.
20. On the issue of whether the trial Court contradicted itself, it was Counsel's submission that among other instances in the trial Court Judgment the court recorded that the Claimant had admitted to having signed under duress and contradicted saying the signatures on apology letters and discharge vouchers were not from the same person. That the court noted that the Claimant admitted being accused of go slow at the work place and then the court proceeded to make a finding that the disciplinary proceedings took place without the respondent being charged and that he was not present in the meeting because he did not sign the minutes.
21. Counsel submitted that the Respondent admitted in his witness statement that he attended a disciplinary hearing where charges were read out to him and he was asked to respond which contradicts the above assertions. That the trial court relied on Muster roll to deny the Respondent leave days but still relied on the same to award the Respondent house allowance.
22. On the issue of whether the court addressed itself on issues that were extraneous and did not form part of the issues from the pleadings, Counsel submitted that forgery of signatures was never pleaded in the pleadings hence was extraneous.
23. It was the Counsel's submission that the Claimant was equally vague on the dates and chronology of events.



## Respondent's Submissions

24. The Respondent's Advocates Mokaya Omwoyo & Associate Advocates filed its submissions dated 1<sup>st</sup> July 2024 and on the issue of whether the termination was unfair, counsel relied on section 45 of the [Employment Act](#) on what amounts to unfair termination and submitted that the Magistrate correctly held that indeed the Respondent was unfairly terminated with the reasons for termination stemming from the issuance of two warning letters.
25. It was the Counsel's submission that the Respondent was entrusted with the responsibility of taking the indisposed employees to Mama Lucy Hospital and allegations that he forcefully accompanied the patient was false as they would not have sent him Kshs 3000 to settle the Hospital Bill.
26. Counsel submitted that the issue of the Respondent clandestinely making calls with supervisor's phone without permission as in the warning letter contradicts the witness statement of Evans Murungi the Supervisor whose phone was allegedly used. The letter introduces Sikander Ali who does not appear anywhere in the witness statements as the manager not supervisor.
27. Counsel relied on the case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014]eKLR while submitting on the need for valid reasons before termination and a fair procedure to be followed. That invalid reasons made the termination unfair. That an employee who has not breached any contractual obligations should not be subjected to a disciplinary hearing.
28. Counsel submitted that the Appellant did not produce any document in the lower court to show that they served the Respondent with a show cause notice nor notice to attend any disciplinary hearing. Neither the Respondent's name nor his signatures appear on the minutes. That the procedure violated the dictates of section 41 and 45 of the [Employment Act](#).
29. Counsel submitted that the honourable Magistrate correctly held that the termination of the Respondent was unfair as the same was devoid of correct procedure and fairness. Counsel relied on the above case of *Mary Chemweno* on section 41 of the [Employment Act](#) being drafted in mandatory terms such that failure to follow the procedure makes the termination unfair.
30. On the issue of whether the Respondent resigned, Counsel submitted that the purported minutes for disciplinary hearing having been manufactured by the Appellant, the issue of resignation should not arise as it emanated from purported disciplinary hearing which never was.
31. Counsel submitted that a letter taking responsibility for conduct of the Respondent did not amount to resignation and the alleged resignation letter was not authored by the Respondent and hence a forgery.
32. It was Counsel's submission that comparing the signatures in the Respondent's verifying affidavit, witness statement and warning letter and those in the apology letter, payment voucher and alleged resignation letter, one does not need to be a signature expert to notice the difference. Counsel submitted that the Respondent never signed any document using his name.
33. On the reliefs awarded by the lower court counsel submitted that having established that the Respondent was unfairly terminated he was entitled to compensation under section 49 of the [Employment Act](#). Counsel submitted that the circumstances under which the Respondent was terminated were shameful. The Respondent was terminated on the basis of falsehood without paying him final dues. The circumstances of dismissal, the difficulty of securing another job and harassment suffered by the victim of unfair dismissal informed the 12 months compensation by the lower court.
34. Counsel submitted that the respondent was entitled to payment in lieu of notice, house allowance and service pay. That the Appellant did not provide itemized pay statement as per section 20 of the



Employment Act to show that the Respondent was paid house allowance. That the Appellant did not produce evidence of payment of NSSF before the court to prove that the Respondent was not entitled to service pay.

### **Determination**

35. This court has considered the pleadings and submissions filed by the parties herein and proceeds to analyse them as follows.
36. The principles which guide this court in an appeal from a trial court are now well settled. In *Selle And Another v Associated Motor Boat Company Ltd & Others*, [1968] EA 123, Sir Clement De Lestang, Vice President of the Court of Appeal for East Africa stated those principles as follows: -

“An appeal to this Court from a trial by the High Court is by way of a retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities, materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
37. In this case, the Judgment of the trial court was that judgment was entered in favour of the Claimant against the Respondent in the sum of Kshs 267,286.21 /= under the heads; house allowance, unfair termination, service pay and pay in lieu of notice with cost and interest.
38. The court finds that the issues placed by the parties for determination in the appeal are with regard to both substantive and procedural fairness before the termination of employment and the award by the trial court and frames the issues for determination as follows: -
  - a. Whether the trial learned Magistrate erred in finding that the Respondent was unfairly terminated.
  - b. Whether the trial learned Magistrate erred in awarding the Respondent maximum compensation of 12 months’ salary and other awards.

### **Whether the trial learned Magistrate erred in finding that the Respondent was unfairly terminated.**

39. The Appellant alleged that the Respondent had caused an industrial action in the name of fund raising for his sick colleague, absconded duty, claimed he was suspended and tendered a resignation on the premise that he would be considered for re-employment after one month while the Respondent alleged that he was unfairly and un-procedurally terminated from his employment and he was not subjected to a hearing to defend himself from the allegations levelled against him and the reasons were false and unreasonable.
40. The trial court on the other hand found that the Appellant did not prove the reasons for the dismissal. This court notes that the burden of justifying the grounds for termination lies with the employer under section 47(5) of the Act. The employer must prove the reasons for termination which must be valid and fair under section 43 of the Act which if not proved amounts to unfair termination under section 45 of the Act.



41. The court notes that the reasons given for unfair termination by the Appellant via the warning letters were deserting work and making calls with the supervisor's phone. The court further notes that on deserting duties, the Appellant was in fact aware that the Respondent had accompanied a fellow colleague in the company of another named Kennedy Macharia to Mama Lucy Hospital and in fact sent Kshs 3000/= to the Respondent to settle the hospital bill.
42. Appellant alleges resignation by the Respondent through a contested resignation letter whose signature was denied by the respondent. In the determination of this issue even without addressing the said forgery, it is questionable why the appellant did not have even a mere mention of the same in his witness statement and bundle of documents at first instance.
43. The Appellant from the foregoing failed establish that it had valid reasons for terminating the services of the respondent as was held in the case of *Nugi Kahiga v Access Kenya Group Ltd* [2022] EKLRL. The Court will therefore not disturb the finding of the trial court in this regard
44. The trial court also found that the Appellant did not follow the laid down procedure in dismissing the Respondent. The Appellant did not produce in the trial court any document showing that they served the Respondent with a show cause notice nor notice to attend disciplinary hearing.
45. The Respondent's version of the said disciplinary hearing being that after one week he came back to work and his supervisor and other people that he did not know were called and his charges were read to him. This does not amount to a disciplinary hearing. It is therefore no coincidence that the Respondent's name and signature was not among the members present in the said disciplinary hearing.
46. The court fully agrees with the trial court that due procedure was not followed as provided for under section 41 of the *Employment Act*. The courts have always held that even in cases of gross misconduct warranting dismissal an employee must be heard. This was the position in the case of *Prof. Macha Isunde vs Lavington Security Guards Limited* [2017] eKLR, where the Court of Appeal stated:

“There can be no doubt that the Act, which was enacted in 2007, places a heavy obligation on the employers in matters of summary dismissal (Emphasis mine) for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating (section 43) – prove that the grounds are justified (section 47 (5), among other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.”
47. The trial court also found that signatures on the payment voucher and the ones on the apology letters were not similar. This court finds that a quick glance and comparison of the signatures one would notice that there was a difference.
48. In conclusion the court finds that the Appellant had no valid reason to dismiss the Respondent and equally failed on the procedure under section 41 of the Act hence this amounted to unfair termination under section 45 of the Act. This ground of appeal therefore fails.

**Whether the trial learned Magistrate erred in awarding the Respondent maximum compensation of 12 months' salary and other awards.**

49. The trial court awarded the Respondent 12 months, compensation for wrongful dismissal which the Appellant faults because the trial court did not justify the reasons. The court as an appellate court can only interfere with the trial Court in exercising its discretion in awarding compensation if it is ably



shown that there was an error leading to erroneous decision as was held on the case of Kenya Revenue Authority & 2 others v Darasa Investments Limited (2018) eKLR where the court held;

The court ought not to interfere with the exercise of discretion unless it is satisfied that the Judge misdirected himself in some matter and as a result arrived at a wrong decision, or that it be manifest from the case as a whole that the judge was clearly wrong in the exercise of discretion and occasioned injustice.

50. The court will therefore disturb an award if it is proved that the trial court misdirected itself in some matter hence arriving at a wrong decision. It is noted that an award of 12 months compensation is discretionary to the court however the court should be guided by considerations set out under Section 49(4) of the *Employment Act* in making such award. The appellant complained that the trial court did not justify the reasons for the maximum compensation as was held in the Court of Appeal in Kenya Broad casting Corporation v Geoffrey Wakio(2019) eKLR that;

(22) This Court has established the rule that an award of the maximum 12 months' pay must be based on sound judicial principles. In Ol Pejeta Ranching Limited vs. David Wanjau Muhoro [2017] eKLR this Court categorically stated that the trial Judge must justify or explain why a claimant is entitled to the maximum award; that the exercise of discretion must not be capricious or whimsical.

51. In this case the trial court stated that the reason they were awarding the maximum compensation was because the Appellant terminated the Respondent unfairly both substantively and unfairly, was humiliated, the reasons for termination were false and securing another employment opportunity was hard.

52. The court takes note of the fact that the respondent was unfairly terminated but notes that though the Appellant's case was that the respondent contributed to his termination, the grounds for termination have been found not valid. The Court notes that the matter was dispensed by written submission and the trial Court did not have the opportunity hear evidence and observe witness demeanour of witness. The case for maximum compensation was therefore not adequately laid out besides the respondent was still in a position to secure another employment opportunity. The Court will therefore allow this ground of appeal and substitute the 12 months compensation with 6 months' salary due to unfairness of the termination and the fact that the Respondent had served the Appellant for around two years.

53. The Appellant did not challenge Notice pay payment hence this court will not dwell on the said issue.

54. On service pay, under Section 35(6) of the Act, an employee who is a member of NSSF is not entitled to service pay. The Appellant at page 35 of the record of appeal attached a payment details on behalf of the Respondent. This therefore meant that the respondent was registered with NSSF. The court therefore finds that the trial court erred in awarding service pay. This ground of appeal is therefore allowed.

55. On House Allowance, the court finds that the Appellant at page 35 of the record of Appeal attached the Respondent's payment details which showed that the Respondent was paid house allowance hence the lower court erred in allowing this prayer.

56. In the upshot the Appeal partially succeeds as follows; \_

- a. 6 Months' salary as compensation for unfair termination Kshs 93,600 /=
  - b. One-month salary in lieu of Notice Kshs 15,600/=
- Total Kshs 109,200/=



57. The appeal being partially successful hence each party shall bear their own costs of this Appeal.

58. It is so ordered.

**DATED AT NAIROBI THIS 11<sup>TH</sup> DAY OF OCTOBER, 2024 DELIVERED VIRTUALLY THIS  
11<sup>TH</sup> DAY OF OCTOBER, 2024**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

