



Lintons Place Ltd v Kamau & 2 others (Employment and Labour Relations Appeal E211 of 2024) [2025] KEELRC 2743 (KLR) (8 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2743 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E211 OF 2024**

NJ ABUODHA, J

OCTOBER 8, 2025

BETWEEN

LINTONS PLACE LTD APPELLANT

AND

STANLEY KARANU KAMAU 1ST RESPONDENT

DANIS ONYANGO WAGA 2ND RESPONDENT

JOB NYAMBANE MOTAROKI 3RD RESPONDENT

(Being an appeal from the whole Judgment of Hon. Rawlings Liluma Musiega at the Chief Magistrate's Court at Milimani, Employment Case No. 908 of 2019, Nairobi delivered on 26th July 2024)

JUDGMENT

1. Through the Memorandum of Appeal dated 30th July 2024, the Appellant appeals against the whole of the Judgment of Honourable R.L Musiega.
2. The Appeal was based on the grounds that: -
 - i. The Learned Magistrate erred in fact and in law in holding that termination of employment due to outsourcing was a form of redundancy.
 - ii. The Learned Magistrate erred in law by departing from a binding Court of Appeal authority in Abyssinia Iron & steel Limited v. Kenya Engineering Workers Union & Jokali Handling Services Limited (Civil Appeal 67 of 2015) that held that termination of employment due to outsourcing was not a form of redundancy.
 - iii. The Learned Magistrate erred in law and in fact by awarding housing allowances to the Respondents yet their housing allowance was consolidated in their gross salaries.



- iv. The Learned Magistrate erred in law and in fact by awarding the Respondents leave pay contrary to the evidence adduced showing that the Respondents took their leave days.
 - v. The Learned Magistrate erred in law and in fact by awarding the Respondents leave pay without appreciating whether the said claim was stale and therefore statute barred under section 28(4) of the *akn ke act 2007 11 Employment Act*.
 - vi. The Learned Magistrate erred in law and in fact by awarding five (5) months' pay as compensation to the Respondents for unfair termination when the termination was in all circumstances of the case a fair one.
 - vii. The Learned magistrate erred in law and in fact by entering judgment in favour of the 2nd and 3rd Respondents who did not testify at the hearing of the case.
 - viii. The Learned Magistrate erred in law by failing to consider the Appellants submissions and thereafter failed to give reasons for disagreeing with the legal issues raised in the written submissions.
 - ix. The Learned Magistrate erred in law and fact in his failure to exercise his discretion judicially.
 - x. The Learned Magistrate erred in law and fact in applying the wrong principles of law.
 - xi. The Learned Magistrate erred in law and fact in his failure to consider relevant facts and evidence and erred by considering extraneous matters and facts.
3. The Appellant prayed that the Appeal be allowed and the Respondents' suit be dismissed with each party bearing their costs.
 4. The Appeal was disposed of by written submissions.

Appellants' Submissions

5. The Appellant's Advocates E.K Mutua & Company Advocates filed written submissions dated 11th June, 2025. Counsel submitted on the role of the first appellate court by relying on the case of *Selle and Another Vs Associated Motor Board Company and Others (1968) EA 123*.
6. On the issue of whether the trial court erred in holding that termination of employment of the Respondents from an outsourcing of the security services at the Appellant's beauty shops was a form of redundancy counsel submitted that the trial court fell in to error because two court of appeal cases had clearly held that outsourcing of service was not tantamount to redundancy. Counsel relied on the case of *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union (2016) KECA 510 (KLR)* which quoted the case of *Kenya Airways Limited vs Aviation Workers Union Kenya & 3 Others (2014) eKLR*.
7. Counsel further submitted that the Appellant led evidence that its director had reasons to outsource security services at its shops to another firm. That the said reasons were well within the accepted reasons for outsourcing services as per the above Court of Appeal authorities which were brought to the attention of the trial court yet the trial court held that outsourcing amounted to a redundancy without citing any authorities in support. Counsel contended that the trial court ought to have given reasons for departing from the established authorities and relied on the case of *Khushbir Harjeet Singh Chadha vs Wesley Maranga Robinson Gichaba(2020) eKLR* in support of the submission.
8. Counsel further submitted that if the termination was a redundancy, then the procedural steps were well stipulated under section 40 of the *akn ke act 2007 11 Employment Act* and if it was not



redundancy but the accepted business practice of outsourcing the procedural steps of redundancy were inapplicable. It was Counsel's argument that there were no law on outsourcing as the government was yet to pass them. Regarding house allowance, leave pay and respondent's failure to testify, counsel urged the Court to go by the submissions filed in the lower court.

Respondents' Submissions

9. The Respondents' Advocates Lemmy Regau & Company Advocates filed written submissions dated 1st July 2025. Counsel submitted on the role of the first appellate by relying on the case of Abok James Odera t a Odera & Associates v John Patrick Machira t a Machira & Co. Advocates [2013] eKLR.
10. On the issue whether the trial magistrate erred in holding that the Respondents were unfairly terminated due to redundancy, counsel submitted that the Appellant pleaded that termination of employment due to outsourcing was not a form of redundancy and that the Appellant heavily relied on the court of appeal authority in Abyssinia Iron and Steel Limited v Kenya Engineering Workers Union & Jokali Handling Services Limited (Civil Appeal 67 of 2015) which held that in principle, outsourcing of employees was not illegal or untoward, provided that it was carried out in accordance with fair labour practices, and the process adopted was not aimed at rendering an employee redundant.
11. Counsel submitted that the Abyssinia case was not applicable to the circumstances of this case since the Respondents were issued with termination notices effective (one month's notices) due to the company's decision to fully outsource security services while in the Abyssinia case, none of the employees were issued termination letters and there was no evidence of job loss as a result of the outsourcing arrangement.
12. Counsel submitted that the Abyssinia case was also not applicable because in the present case, the dispute centered on the recognition of union membership and whether the outsourced workers were still effectively under the control of Abyssinia Steel while in the present case, the key issue was not recognition or control but rather the termination of employment resulting directly from the outsourcing decision which raises question of redundancy and whether the employer followed due process and fair labour practices.
13. Counsel relied on the *akn ke act 2007 11 Employment Act's* definition of redundancy under section 2 to submit that the Respondents were unfairly terminated due to redundancy. That the Appellant did not adhere to any established procedure set out in section 40 of the *akn ke act 2007 11 Employment Act* in declaring the respondents redundant. Further that the trial court did not err by finding that the Respondents were declared redundant and that no procedure was followed.
14. On the issue of whether the trial magistrate erred in awarding the Respondents house allowance, leave pay and 5 months as compensation for unfair termination, counsel on the award of house allowance relied on section 31 of the *akn ke act 2007 11 Employment Act* and the case of Ayanna Yonemura v Liwa Kenya Trust (2014) eKLR to submit that that the employer owed the Respondents housing allowance as the Respondents were only paid a basic salary with no indication that a house allowance was included or paid separately.
15. Counsel on the award of leave pay relied on the case of Anyasi v El-Casa Suite Nyali (Appeal E086 of 2022) [2023] KEELRC 2854 (KLR) which cited section 74(f) of the *akn ke act 2007 11 Employment Act* on duty of employer producing employment records to submit that the Appellant only produced legible leave rosters for the 3rd Respondent for the year 2018 whereas no records were produced to show leave taken or payment for unutilized leave days for other years, or for the 1st and 2nd Respondents.



16. Counsel on the award of five months compensation for unfair termination submitted that the trial court found that the Respondents were unlawfully terminated and awarded the Respondents compensation pursuant to Section 49(1)(c) of the *akn ke act 2007 11 Employment Act 2007*.
17. Counsel submitted that the court in exercise of its discretion, awarded five month's compensation which was equitable and just considering the Respondents had been employed for approximately three and a half years.

Determination

18. The court has considered the Appeal, the record of appeal and submissions filed by the parties and observes as already appreciated by counsel that the duty of the first appellate court is to re-evaluate the evidence in the subordinate court both on points of law and facts and come up with own findings and conclusions as held in Court of Appeal for East Africa in *Peters –vs- Sunday Post Limited [1958] EA 424*. The appropriate standard of review established in cases of appeal can be stated in three complementary principles:
 - i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.
19. The Judgment was entered as against the Appellant in the trial court by a finding that the Respondents were terminated on account of redundancy without complying with the procedure laid down in the *akn ke act 2007 11 Employment Act*. The Respondents were awarded a total Kshs 1,292,206 = which consisted of notice pay, leave pay, house allowance and five months compensation for unfair termination.
20. Having considered the appeal, the evidence on the Record of Appeal and the submissions by counsel, the Court identifies the issues for determination in this appeal to be:-
 - a. Whether the trial court erred by finding that the Respondents were unfairly terminated on account of redundancy
 - b. Whether the trial court erred in awarding the reliefs sought by the Respondents.Whether the trial erred by finding that the Respondents were unfairly terminated on account of redundancy
21. It is not in dispute that the Respondents were employees of the Appellant. What was disputed was the nature of separation. That is to say whether it was a redundancy or outsourcing of employment
22. The Respondents maintained that they were declared redundant when the Appellant outsourced its security services while the Appellant maintained that they outsourced the Respondents services which act was not illegal and redundancy did not apply in their case. The trial court found that the Respondents were declared redundant and did not address itself much on the issue of outsourcing of services by the Appellant.



23. The court has looked at the termination letters issued to the Respondents which state that the services of the Respondents were terminated after the company reached a decision to outsource security services.
24. The concept of outsourcing was delved into in the case of Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR, per Murgor JA the Court observed that:
- “ Outsourced services is one such widely accepted business concept, which enables a company to focus on core business, reduce overheads, increase cost and efficiency savings, and manage cyclical resource demands. It is not designed to deprive Kenyans of their jobs.”
25. The court went to state as follows: _
- In principle therefore, outsourcing of employees is not illegal or untoward, provided it is carried out in accordance with fair labour practices, and the process adopted is not aimed at rendering an employee redundant.
26. This was the position in Superform Limited v Olwanda & 7 others (Appeal E007 of 2022) [2022] KEELRC 4028 (KLR) (12 May 2022) (Judgment) where the court held as follows: -
- “...Whereas outsourcing labour is now an accepted labour concept, such should not be applied to allow for unfair labour practices”.
27. The court therefore is of the opinion that even though the outsourcing of services is not illegal the above cited decisions stipulate that the same should not be used to foster illegal labour practices or cause an employee to be declared redundant. The court further notes that in this case the Respondents lost their employment in the process of outsourcing by the Appellant who never adhered to redundancy procedures. The authorities are clear that the process should not lead to redundancy of employees which happened in this case when they were issued with termination letters.
28. The court therefore, agrees with the trial court that the Respondents were put to redundancy disguised as legal outsourcing by the Appellant. The court also notes that despite stating in the termination letters that their terminal dues would be tabulated and paid to them the same was not done.
29. This court is guided by section 2 of the *Kenya Employment Act 2007* on definition of redundancy which is a termination of employment through no fault of the employee. In the event an employer deems an employee redundant section 40 of the Act comes in to play on the procedures to be taken by such an employer.
30. In Kenya Airways Limited VS. Aviation and Allied Workers Union of Kenya and 3 Others (2014) eKLR, the Court of Appeal pronounced itself as follows: -
- “Thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with a fair procedure. As Section 43(2) provides, the test of what is fair reason is subjective. The phrase “based on operational requirements of the employer” must be construed in the context of the statutory definition of redundancy.
- What the phrase means, in my view, is that while there be underlying causes leading to a time redundancy situation such as reorganization, the employer must nevertheless show that the termination is attributable to redundancy – that is that the services of the employee has been



rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment.”

31. The court therefore agrees with the trial court that the Appellant never followed the procedures set out under the Act in declaring the respondents redundant. The termination was therefore unfair.
Whether the trial court erred in awarding the reliefs sought by the Respondents.
32. The Appellant faults the reliefs of house allowance, leave pay and the five months compensation for unfair termination. On compensation for unfair termination the court affirms that the Respondents were entitled to compensation in terms of section 49(1) (c) of the Act as read with sub section 49(4) after finding that they were unfairly terminated.
33. In awarding five months’ salary as compensation for unfair termination, the trial court took into consideration the fact that the Respondents had worked for three and a half years hence the award was properly justified.
34. On the awards of house allowance and leave pay which are continuing injuries this court notes that the Respondents were terminated in March,2019 and the claim filed in May 2019 hence within the stipulated period under section 90 of the *akn ke act 2007 11 Employment Act* of 12 months.
35. On the claim for house allowance the court agrees with the trial court that the Respondents were entitled to the same since the payslips recorded both basic pay and gross pay but made no provision for house allowance. This is an entitlement under section 31 of the *akn ke act 2007 11 Employment Act*.
36. The court also agrees with the trial court on the award of leave pay since the Appellant as the custodian of the employment records under section 74 of the *akn ke act 2007 11 Employment Act* only produced records for 2018 for the 3rd Respondent and there were no records for the rest of years for 1st and 2nd Respondents or proof of payment of the same. This is an entitlement under section 28 of the *akn ke act 2007 11 Employment Act*.
37. Accordingly, the appeal is found unmerited and is hereby dismissed with costs to the Respondents.
38. It is so ordered.

DATED AT NAIROBI THIS 8TH DAY OF OCTOBER 2025

DELIVERED VIRTUALLY THIS 8TH DAY OF OCTOBER 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

