



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Maina v Kariuki (Employment and Labour Relations Appeal  
29 of 2019) [2025] KEELRC 2890 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2890 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL 29 OF 2019  
MN NDUMA, J  
OCTOBER 23, 2025**

**BETWEEN**

**AURELLA MUTHONI MAINA ..... APPELLANT**

**AND**

**PURITY KARIUKI ..... RESPONDENT**

*(Being an appeal against the Judgment and Decree of the Honourable Mrs. A. M. Obura Senior Principal Magistrate on 21st June, 2019 and 7th December 2020 respectively in Nairobi, Chief Magistrate Employment and Labour Relations)*

**JUDGMENT**

1. The Appellant filed the appeal vide the memorandum of appeal dated 29/8/2019 being dissatisfied with the judgment of the trial court delivered on 21<sup>st</sup> June 2019 by Hon. A. M. Obura (Mrs.) – SPM.
2. The facts of the suit before the magistrate’s court is that the Respondent (PW1) was employed by the Appellant with no formal agreement as a house help at the Appellant’s hotel premises on 17/7/2009. The case by the Respondent is that she worked until 29/1/2018 when her services were terminated. That she earned a monthly salary of Kshs. 10,000.00 plus Kshs. 5,000.00 house allowance.
3. The Appellant’s case was that the Appellant ceased operating the hotel business in 2013 and let out premises to Kid parties at Kshs. 90,000/= per month. That the Respondent was therefore rendered redundant as a result of stoppage of the business.
4. That the Respondent and a friend hired the Appellant’s servants’ quarter at Kshs. 10,000/= per month to enable them look for work.
5. That the Respondent was paid terminal benefits including notice pay and severance pay amounting to Kshs. 50,000.00 upon termination in 2013 on grounds of redundancy.



6. The trial court found in its judgment that the termination of employment of the Respondent by Appellant occurred on 29/1/2018 but not 2013 as alleged by the Appellant. The court also found therefore the suit was not time barred. The court found that the Respondent had proved her case on a balance of probabilities and concluded that the Respondent was entitled to all reliefs sought in the sum of Kshs. 678,390.00 which included one month salary in lieu of notice; severance pay; under-payments and 12 months' salary being maximum compensation for unlawful and unfair termination.
7. The grounds of Appeal as set out in the memorandum of appeal dated 29/8/2019 are as follows:
  1. That the presiding trial Magistrate erred in fact and law in finding that the Claimant's/ Respondent's claim had merit even after evidence was adduced that the Claimant/Respondent was not an employee of the Appellant.
  2. That the presiding trial Magistrate erred in fact and law in finding that the Claimant was unlawfully and unfairly terminated from employment in disregard of the law and evidence before her.
  3. That presiding trial Magistrate erred in fact and law in awarding inordinately excessive damages for unfair termination and other terminal benefits in total disregard of well-established legal principles guiding the same.
  4. That the presiding trial Magistrate erred in fact and law in failing to find that the suit was statutorily time barred
  5. That the presiding trial Magistrate misdirected herself by completely disregarding the evidence, submissions and authorities tendered by the Claimant.
  6. That the presiding trial Magistrate erred in fact and law by failing to appreciate that the Claimant had not discharged the burden of proof placed upon her.
8. Guided by the Court of Appeal decision in Peter versus Sunday Post Ltd [1958] E.A. 424, this being a first appeal, the court is obliged to consider the evidence adduced before the trial court afresh, evaluate it and arrive at its own conclusion bearing in mind that this court had no opportunity to hear the testimony of the witnesses directly so as to assess the credibility and veracity of the same. The court is also guided that it does not have to upset the decision of the trial court just because it would have arrived at a different decision. The court is guided that it may only set aside the decision of the trial court on the merits if the trial court failed to consider material evidence before it and/or considered matters it should not have, leading to grave injustice. With regard to the quantum of award and special damages, the court is aware that it may only upset the same if the court failed to consider material factors or indeed put into consideration irrelevant matters and by so doing arrived at a grossly, lower, or exaggerated award.
9. From the record, Respondent testified that she was employed by the Appellant on 17/7/2009 at a guest house and her duties included cleaning and preparing breakfast. That she also attended to guests who arrived at night. That she was initially paid Kshs. 9,000/= per month without any house allowance. That the Respondent was housed within the premises.
10. That in the year 2017, the Appellant wanted to sell the guest house. That salary was paid cash or via MPESA and she had no payslips. That at times, guests paid her directly and she could pay herself and send the balance to the Appellant. The Respondent said that she was promised to be taken to a new premises after the guest house was sold in December 2017. That her last salary was paid in November 2017 and worked upto January 2018. That she was not aware that the premises had been leased to



someone else. That business had continued as usual until January 2018. Respondent said she never saw city council officers coming to inspect the premises but she lived there until 17/1/2018.

11. The Respondent said she was removed from the premises on 27/1/2018 and the Appellant told her that a new owner wanted to take over. The Respondent said she was offered Kshs. 40,000.00 on 27/1/2018 which she declined and denied having been paid Kshs. 50,000.00 terminal benefits.
12. The Appellant called DW1 Aurella Muthoni Maina, who relied on a witness statement dated 29/1/2019 as her evidence in chief. DW1 produced certificate of incorporation of the company and a sale agreement of the premises in question. DW1 said she employed the Respondent in 2009 as the Respondent stated. That she paid Respondent Kshs. 9,000.00 per month and she lived in the premises. That her colleagues who did not live in the guest house were paid Kshs. 10,000.00 per month and were paid Kshs. 5,000.00 as rent.
13. DW1 said she became very sick in 2013 and so was unable to run the business. That the Respondent and her colleagues pocketed the money they collected. DW1 said she gave the Respondent notice in 2013. That she did not operate the business between 2013-2017 and the Respondent and her colleagues were not her employees during that period. DW1 said she paid Respondent Kshs. 50,000.00 in 2017. That the Claimant declined to take Kshs. 40,000.00. The Respondent is not entitled to the reliefs sought.
14. DW1 denied that she terminated the employment of the Respondent in the year 2018. DW1 denied that she allowed the Respondent to stay in the guest house until 2018. DW1 said she visited the Respondent and her colleagues at the premises to give them farm produce for sale. That they sold the produce for her on commission basis. DW1 on re-examination said the Respondent was her tenant from December 2013 but were doing business and not employed by her.
15. The certificate of registration dated 7/8/1997 shows the guest house belonged to DW1. The sale agreement presented before court for sale of the premises by DW1 is dated 18/9/2017 at a consideration of Kshs 68 million. The sale agreement was executed by DW1.
16. The letter from Nairobi City County produced by the Appellant dated 8<sup>th</sup> August 2019, bears no official seal stamp of the Nairobi City County and was written after this suit had been filed. The letter was written upon request by advocates of the Appellant by a letter to the licensing officer of the Nairobi City County dated 5/2/2019 and received by the County Government on 11/2/2019. The purported response which is unstamped by the Nairobi City County was written more than six (6) months later.
17. Upon a careful evaluation of the evidence by PW1 and that by DW1, the court is satisfied that the veracity of the evidence by DW1 is questionable. DW1 admits that the Respondent remained in her guest house until 2017. There is no evidence that the Respondent remained in the premises as a tenant between the years 2013 and 2017. To the contrary, the court is satisfied that the Respondent remained in the premises as an employee of the Appellant until January 2018, when the Respondent and her colleagues were removed from the premises after it was evidently sold in the year 2017 as per the agreement of sale produced by the Appellant herself.
18. The court is therefore satisfied that the end of the contract of employment between the Respondent and the Appellant resulted from redundancy upon sale of the premises where the Respondent worked and lived. The court is satisfied that the Respondent earned Kshs. 9,000.00 per month and was housed by the Appellant. Housing is calculated at 15% of the basic salary which would in this case be Kshs. 1,350.00 per month. The gross salary paid to the Respondent monthly is therefore Kshs. 10,350.00 from the date of employment until termination in January 2018.



19. In terms of section 40(1) of the *employment Act*, the Respondent was entitled to one months' salary in lieu of notice;
- (ii) Severance pay calculated at ½ salary for each completed year of service (5,175 x 8) Kshs. 41,400.00
  - (iii) Compensation for the unprocedural termination on grounds of redundancy the appellant having tendered no evidence that the matter was notified to the county labour office and/or the Respondent was given one month notice before the termination on grounds of redundancy.
20. Accordingly, the termination on grounds of redundancy was for a valid reason but was procedurally flawed. The Claimant/Respondent had served the Respondent for a period of about eight (8) years. The Claimant had a clean record. The Claimant was not compensated for the loss of employment. The Claimant declined to receive Kshs. 40,000.00 offered to her upon termination. The court has considered the case of 'The German School Society & another v Ohany & another (Civil Appeal 325 & 342 of 2018 (Consolidated) [2023] KECA 894 (KLR) (24 July 2023) (Judgment) where the Court held that;

"In determining the award, the approach is that the court has discretion, to be exercised judicially upon a consideration of all facts, and in essence, it is a matter of fairness to both parties. A redundancy by its very nature adversely affects employees without any fault or wrongdoing on their part. The employees therefore need to be cushioned from these adverse effects. Ordinarily, the employee will receive the wages which the employee would have earned had the employee been given the period of notice to which he was entitled or the equivalent of a number of months wages or salary not exceeding 12 months based on the gross monthly wage or salary of the employee at the time of dismissal. The respondent does not dispute that she was paid one-month's salary in lieu of notice, severance pay at the rate of 15 days per every year worked and accrued leave days. However, it is our view that the compensation of 12 months' salary for unfair termination in the circumstances of this case was excessive, taking into account the relevant factors provided in paragraphs (a), (e), (f), (g), (h) and (m) of section 49(4) hereinabove"

21. The factors to be considered by the Court under section 49(4) includes, inter alia, circumstances under which the termination took place, the opportunities available to the employee for securing comparable or suitable employment with another employer and the employee's length of service with the employer. The Court in light of these factors finds that the award of the equivalent of twelve months salary awarded by the trial court to be excessive in the circumstances of the case.
22. The court revises that award to the equivalent of eight (8) months' salary in compensation for the unprocedural declaration of redundancy in the sum of Kshs. (10,350 x 8) 82,800.00.
23. The trial court did not give any reasons for the award of compensation.

### **Underpayments**

24. This suit was filed on 24<sup>th</sup> October 2018 and claim of under payment even if were genuine cannot be backdated out of the three (3) years limitation period. The claim was back dated to 2009 upto January 2018.
25. The Respondent had produced the Regulation of wages (General) (amendment) orders for the period 2010, 2011, 2012 and 2015 to which the trial court made no reference at all to justify the award of under payments. In 2011 the minimum wage in Nairobi for a General Labourer including a house



servant was Kshs. 7,586.00 plus 15% house allowance. In 2012, it was Kshs. 8,579.80 plus 15% house allowance and in 2015 it was Kshs. 10,954.00 including 15% housing allowance.

26. Accordingly, apart from the fact that the alleged under payments are largely time barred, even those within three years period from the year 2014 to 2017 are without merit the Respondent having been housed and earned a general wage of Kshs. 10,350.00. The claims for underpayment were therefore erroneously awarded by the trial magistrate and are set aside.
27. Accordingly, the court sets aside the judgment by the trial magistrate and in its place grants the following reliefs to the Respondent as against the Appellant.
  - a. Kshs. 10,350.00 in lieu of one-month notice
  - b. Kshs. 41,400.00 severance pay.
  - c. Kshs. 82,800.00 in compensation  
Total Kshs. 134,550.00
  - d. Interest at court rates from date of judgment at the lower court till payment in full.
  - e. Costs of the suit before this and the trial court

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF OCTOBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Mwenesi for Appellant

Ms. Wangechi for Respondent

Mr. Kemboi – Court Assistant

