



**Bugundu v National General Secretary Kenya National of Private Security Workers Union
(Appeal E016 of 2024) [2025] KEELRC 3205 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3205 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
APPEAL E016 OF 2024
DN NDERITU, J
NOVEMBER 13, 2025**

BETWEEN

PROTUS BUGUNDU APPELLANT

AND

**NATIONAL GENERAL SECRETARY KENYA NATIONAL OF PRIVATE
SECURITY WORKERS UNION RESPONDENT**

*(Being an appeal from the judgment and decree issued in KAKAMEGA CMC
ELRC No. E007 of 2023 by Hon. J. R. Ndururi (SPM) delivered on 11th July 2024)*

JUDGMENT

I. Introduction

1. In a judgment delivered on 23rd October 2024 the lower trial court dismissed the cause by the appellant (the claimant in the trial) with no orders as to costs.
2. Thereafter, the appellant acting in person commenced this appeal by way of a memorandum of appeal dated 5th August 2024 raising the following grounds of appeal –
 1. That the learned trial magistrate erred in law and in fact in failing to appreciate the provisions of section 40 of the *Employment Act* which is explicit in terms and mandatory in tone thereby arriving at an erroneous decision based on extraneous facts not forming part of the proceedings.
 2. That the learned trial magistrate erred in law and in fact in treating the main issue of termination as redundancy, that the due process was followed and thus procedurally fair despite the absence of consultation in compliance with section 40 and disciplinary process under section 41 of the *Employment Act*.
 3. That the learned trial magistrate erred in law and in fact and misdirected himself by failing to exercise judicial authority on known legal principals and rendering an unjust judgment.



4. That the learned trial magistrate erred in law and in fact in holding that the appellant was not entitled to any compensation on account of lawful termination whereas the termination was unfair and unlawful and hence not justified. The trial magistrate failed to find that the pay slips that the respondent presented in court were fabricated just to defeat justice for the appellant and did not at all consider the bank statement to ascertain if the salary alleged to have been paid by the respondent by including the word add Gratuity was actually the amount that the appellant received in his bank account.
 5. That the learned trial magistrate erred in law and in fact by failing to award the appellant one month's salary in lieu of notice, and damages for unlawful termination, despite the respondent having failed to prove adherence of the statutory protections under section 40 and 41 of the *Employment Act*, 2007.
 6. That the learned trial magistrate erred in law and in fact in making findings that were total misdirection and legal deviations from the express provisions of the law and known legal principles.
 7. That the learned trial magistrate grossly erred in not considering at all the evidence tendered in support of the appellant's case.
 8. That the learned trial magistrate exhibited actual bias against the appellant herein.
3. The appellant is seeking for orders that the judgment of the lower trial court be set aside and judgment be entered allowing the claim as pleaded and prayed in the lower trial court.
 4. By consent, the appeal was canvassed by way of written submissions. The appellant filed written submissions dated 24th April 2025 while Miss Wanyama Advocate instructed by D. B. Wati & Co Advocates representing the respondent filed submissions dated 8th June 2025.

II. Background

5. In a memorandum of claim dated 2nd May 2023 filed in person, the appellant pleaded that he commenced working with the union headed by the respondent on 1st August 2009 as a recruitment clerk at an initial monthly salary of Kshs8000/=. He was promoted to a junior clerk vide a letter dated 10th March 2010 and, later on promoted to an errand clerk through a letter dated 4th May 2020. He further pleaded that while he attained the age of 70yrs on 4th May 2020 he was supposed to retire at the age of 80yrs. He pleaded that he was forced to retire at 70.
6. He pleaded that he was not paid his retirement benefits including a promised sustenance allowance. He tabulated his claims as follows –



1.	Gratuity: 27,500,00 x 30 days x 10 years 26 days working days	317,307.69
2.	Sustainable allowances for 34 month x 10,000.00	340,000.00
3.	The remainder period to retirement of year x 27,500.00 salaries	3,300,000.00
4.	12 months compensation for less of employment: 27,500 x 12 months	330,000.00
Grand Total Kshs.	4,287,307.69	

7. He prayed for judgment against the respondent as follows –
1. That to order the respondent to pay all the retirement terminal benefits to me as tabulated above.
 2. That the respondent be found that they have mishandled me in this matter.
 3. That the respondent pay me in due course to assist me from suffering/starving.
 4. That the respondent to pay for the cost of this suit.
8. The claim was denied in its totality by the respondent in a statement of response dated 7th August 2023. It was pleaded that the respondent was lawfully and procedurally retired upon attainment of the mandatory age of retirement at 70. It was further pleaded that the appellant was paid all his dues upon retirement. The lower trial court was asked to dismiss the claim with costs.
9. The matter came up for hearing before the lower trial court on 15th February 2024 when the claimant adopted his filed statement dated 27th March 2023 as his evidence-in-chief. The claimant continued with his testimony on 9th May 2024 when he produced his filed documents as exhibits 1 to 6.
10. In cross-examination, the appellant admitted that as at the time of his retirement he owed a personal loan to Jamii Sacco. He admitted that his contract with the respondent did not provide 80yrs as his age of retirement. He also admitted receiving monies from the respondent upon retirement but he asserted that the said monies did not cater for his retirement benefits.
11. The defence was heard on the same date, 9th May 2024, when Isaac Andabwa (DW1), the respondent, testified. He adopted his filed statement dated 31st August 2023 as his evidence-in-chief and produced copies of the documents in a list dated 3rd October 2023 as exhibits 1 to 3. He stated that it is the policy of the union that employees retire at 70. He stated that the appellant, like all other employees, was paid gratuity at the end of each year of service completed. He stated that upon retirement the union compassionately paid a loan balance that was due from the appellant to Jamii Sacco. He stated that the appellant was paid the all his retirement benefits.



12. In cross-examination, the respondent reiterated that the appellant was paid all his retirement benefits and out of compassion the respondent also paid a loan balance owed by the appellant to Jamii Sacco.
13. Upon concluding the hearing of the both sides, the lower trial court delivered a judgment in the terms alluded to in the introductory part of this judgment. It is against that judgment that the appellant has now filed this appeal seeking for the orders set out in the introductory part of this judgment.

III. Written Submissions

14. The appellant submitted that his letter of appointment dated 1st March 2010 is clear that he was entitled to gratuity at the rate of one month's salary for each year completed. He submitted that his salary as at the time he ceased working was Kshs27,500/= and not Kshs30,000/= as alleged by the respondent.
15. It is submitted that the lower trial court was wrong in failing to award the appellant damages for unlawful termination and failed to protect his rights under Section 41 of the *Employment Act*. He submitted that he was forced out of office on purported retirement against the policy in trade unionism and the respondent failed to pay him retirement benefits or sustenance allowance as promised.
16. He insisted that he is entitled to the reliefs sought in the lower trial court and urged the court to set aside the judgment of the lower trial court and allow the claim as prayed.
17. On the other hand, counsel for the respondent submitted that the appellant has not demonstrated a case for this court to interfere with the judgment of the lower trial court – *Mwanasokoni V Kenya Bus Services Ltd (1982-1988) 1 KAR 278*.
18. Counsel isolated the following issues for determination –
 1. Whether the appellant was terminated on account of redundancy and whether there were any disciplinary processes required.
 2. Whether the trial court failed to exercise judicial authority on known legal principles.
 3. Whether the appellant was entitled to reliefs sought in the memorandum of claim.
 4. Whether the learned trial magistrate considered all the evidence tendered in support of the appellant case.
19. On the first issue, it is submitted that the appellant was not terminated on redundancy under Section 40 of the *Employment Act*. It is submitted that the normal retirement age for the staff of the Union is 60 and only elected officials may retire at 70. It is submitted that the appellant was issued and served with a one month's retirement notice dated 4th April 2020 informing that he was to retire by 5th May 2020. It is submitted that the appellant confirmed in his testimony in the trial that by the time he was retired he had attained the age of 70 and he availed his national identity card as an exhibit confirming that he was born on 1st January 1950. It is submitted that the appellant as an ordinary employee worked for an extra 10yrs since it is only elected officials who should retire at 70.
20. It is submitted that the respondent was gracious enough to pay to the appellant a sustenance monthly allowance of Kshs10,000/= for some time but the voluntary allowance was not sustainable after the Covid 19 pandemic as the payment was subject to availability of funds.
21. On the second issue, it is submitted that the lower trial court lawfully dismissed the appellant's claim on merits and the judgment considered all the angles and aspects of the claim as filed, pleaded, and prosecuted.



22. On the third issue, it is submitted that the appellant failed to prove his case during the trial by discharging his burden of proof as envisaged under Sections 107 & 109 of the Evidence Act. It is further submitted that the respondent demonstrated and proved that it had paid gratuity to the appellant as per the pay-slips produced as exhibits. It is submitted that the appellant was lawfully retired after being served with a lawful notice of retirement. It is submitted that the respondent was gracious and very accommodating as it paid loan arrears owed by the appellant to Jamii Sacco and for a while paid to him a sustenance allowance.
23. It was submitted that the letter addressed to Jamii Sacco purporting that the appellant was to retire at 80 was not factual and the same was only intended to allow him to obtain a loan. It is this loan that the appellant had not repaid as at the time of his retirement and as such the respondent had to clear the balance on behalf of the appellant. It is submitted that this explains why the said letter was addressed to the Sacco and not copied to the appellant.
24. On the fourth issue, it is submitted that the lower trial court considered the appellant's case in its totality and dismissed the same on merits. It is submitted that the appellant was not a founder member of the union and he was only one of the many members of staff.

IV. Analysis & Determination

25. The court has perused the record of appeal, including the proceedings in the lower trial court, the memorandum of appeal, and the submissions by counsel for both parties as summarized above. In my considered view, the following issues commend themselves to the court for determination in this appeal -
 - a. Was the cause and the appeal as presented against the named respondent sustainable and properly in court?
 - b. Was the appellant lawfully retired or unfairly and unlawfully terminated?
 - c. Whether the lower trial court arrived at the wrong and improper verdict and made wrong and unlawful orders in the impugned judgment.
 - d. Is there a reason(s) for this court to interfere with the decision of the lower trial court as prayed by the appellant?
 - e. What appropriate orders should this court make in regard to the above issues and on costs?

V. Analysis & Determination

26. As the first appellate court, this court is obligated to re-evaluate the evidence on record and arrive at its own conclusions but bearing in mind that it neither heard nor recorded the evidence during the trial – see *Selle & Another V Associated Motor Boat Company Ltd (1968) EA*.
27. The court has listed the first issue above for determination notwithstanding that the same was neither canvassed in the lower court nor in this appeal. This is an issue that has come to the attention of the court rather late as I drafted this judgment. It is an important issue for consideration as whether raised or not this court ought to consider all issues of law concerning the matter as to arrive at a fair and just conclusion of the matter.
28. It is not in dispute that a trade union in the name of Kenya National Private Security Workers Union is a duly incorporated and registered trade union in accordance with the provisions of the Labour



Relations Act. In that regard, therefore, the said trade union is a legal entity with own legal personality and capacity separate and distinct from that of the respondent herein, the National General Secretary.

29. For avoidance of doubt and ease of reference, Section 21 of the Labour Relations Act provides as follows

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A trade union, employers' organization or federations shall be registered as a body corporate

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- a. with perpetual succession and a common seal;
- b. with the capacity in its own name to –
 - i. Sue and be sued; and
 - ii. enter into contracts; and
- c. hold, purchase or otherwise acquire and dispose of movable and immovable property.

30. In the understanding of the court, upon reading the pleadings filed in the lower court, the proceedings therein, the record of appeal, and the submissions in this appeal, it is very clear that the claim by the appellant is not against the National General Secretary but against the union. I state so because it is the union that was the employer of the appellant and not the respondent named herein. Although this issue was not raised and or argued by either of the parties, both in the lower trial court and in this appeal, it is the finding and holding of this court that the cause and the appeal by the appellant are fatally defective as no cause of action was or has been disclosed as against the respondent named herein. Without the union – the employer – being joined as a party in the cause and now this appeal, both the trial in the lower court and this appeal cannot stand.

31. On the foregoing finding and holding, this appeal is for dismissal without further ado.

32. However, even if only for completeness, though merely academic, the court will deal with the other issues in summary as follows. In all the three stages of engagement of the appellant by the respondent – temporary employment vide a letter dated 12th August 2009; appointment as a junior clerk vide a letter dated 10th March 2010; and, appointment to the position of office errands clerk dated 1st June 2013 – there is no mention of the retirement age for the appellant.

33. His last disclosed salary was admitted in his evidence as Kshs27,500/=.

34. Obviously, the employment relationship between the union and the appellant was subject to laws of Kenya and more specifically the Employment Act. Since the appellant was on a month to month contract of service, either party was entitled to one month's notice for termination of the relationship under Section 35 of the Employment Act. It is on this understanding that the respondent issued to the appellant a notice of retirement dated 4th May 2020. It is noted that other than stating that “the Union recognizes your advanced age, hence give you a NOTICE of one month to proceed on retirement with effect from 5th June 2020” there is no other reason stated in the said notice for the retirement.

35. However, in a letter dated 9th December 2018 addressed to the General Manager, Jamii Sacco, which was produced by the appellant as an exhibit and the contents whereof were admitted by the respondent, the age of retirement for the appellant is stated to be 80yrs. The respondent insisted that the retirement age of the appellant was supposed to be 60 but he overstayed by 10yrs and that the above letter was only authored to assist the appellant in securing a loan from Jamii Sacco.



36. In the notice of retirement, the respondent undertook to clear the outstanding balance of the loan so advanced to the appellant and, indeed, the evidence on record is that the said balance was cleared by the respondent. In the said notice, the appellant was promised a monthly sustenance allowance of Kshs10,000/= but “depending on the Union’s income”. It is the respondent’s case that due to the Covid 19 pandemic the Union was unable to continue paying to the appellant the promised sustenance allowance.
37. While there is a public policy and the law that all employees in the public sector, unless otherwise engaged, retire at 60, there is no public policy on the age at which those in the private sector should retire. It is a concept based on the freedom of contract in the private sector.
38. It is the finding and holding of the court that the evidence on record establishes that there was no retirement age in the letter of appointment of the appellant and based on the letter by the Union to Jamii Sacco the appellant was to retire at 80. In this regard the trial lower court was wrong in holding otherwise. It did not matter whether the said letter was copied to the appellant or not as written evidence cannot and should not be retracted and or amended orally. This is more so considering that the contract of employment was silent on the age of retirement.
39. Likewise, the lower trial court failed to draw a distinction between the Union and the respondent sued herein. As stated elsewhere in this judgment, the Union was the employer and without it being joined in the claim, the appellant shot himself in the foot as the named respondent has no capacity to be sued for and on behalf of the Union. The union is a duly incorporated legal entity and personality with capacity to sue and be sued. It was not the appellant’s claim that the named respondent was personally liable to settle the claim.
40. Having said all the above, this appeal brings to the fore two fundamental issues that employers and employees should always keep in mind. One, all the terms and conditions of the employment relationship should be written and documented and both parties, as much as practically possible, keep copies of the same. Of course, the court is aware of the obligation and duty imposed on an employer in this regard under Sections 10 and 74 of the *Employment Act*. Two, it is paramount for an employee to seek proper legal advice before presenting a claim in court. It is germane that a claim be filed against the proper party or parties. Had the appellant joined the union in the claim, in its own name as a legal entity, the court should have had a basis of determining the other issues on merits as against the real employer.
41. As it now turns out, the appellant sued the wrong party yet the claim and liability therefor is directed at the Union. As much as the court sympathizes with the appellant, it is unable to escalate the matter beyond this point. This is so because even if the court was to find that the employer – the Union – owes the appellant unpaid retirement dues, may it be in gratuity or compensation for the alleged unlawful and unfair termination, the proper party to compensate him – the Union – is not a party and neither was it named in the proceedings in the lower trial court nor in this appeal.
42. Therefore, albeit for different reasons, as deliberated and discussed above, the court shall dismiss this appeal and uphold the dismissal of the claim in the lower court.

VI. Orders

43. Flowing from the foregoing, the court makes the following orders –
 - a. This appeal is devoid of merits and the same is hereby dismissed.
 - b. Each party shall meet own costs for this appeal and that of the trial in the lower court.



DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 13TH DAY OF NOVEMBER, 2025.

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DAVID NDERITU

JUDGE

