



**Mukambi v Robison Security Group also known as Robinson Investment Limited
(Appeal E022 of 2024) [2025] KEELRC 3141 (KLR) (10 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3141 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
APPEAL E022 OF 2024
DN NDERITU, J
NOVEMBER 10, 2025**

BETWEEN

ALLAN CHENONO MUKAMBI APPELLANT

AND

**ROBISON SECURITY GROUP ALSO KNOWN AS ROBINSON INVESTMENT
LIMITED RESPONDENT**

*(Being an appeal from the judgment and decree issued in BUTALI PMC ELRC
No. E011 of 2022 by Hon. R. S. Kipng'eno (PM) delivered on 23rd October 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). Each party was ordered to meet own costs.
2. Thereafter, the appellant through Reece Mwani & Company Advocates commenced this appeal vide a memorandum of appeal dated 30th October 2024 raising the following grounds of appeal –
 1. THAT the learned trial magistrate erred in law and in fact in holding that appellant absconded/ deserted duty without evidence to that effect.
 2. THAT the learned trial magistrate erred in law and in fact in failing to hold that the respondent did not follow the laid down procedure under Section 45, 43 and 41 of the [Employment Act](#).
 3. THAT the learned trial magistrate erred in law and in fact in failing to appreciate the applicable law on termination of employment.



4. THAT the learned trial magistrate erred in law and in fact in failing to appreciate the facts and circumstances of the matter before the court and the submissions made on behalf of the appellant hence arriving at an erroneous decision.
 5. THAT the learned trial magistrate erred in law and in fact failing to give reasons for his decision in dismissing the appellants claim in it's entirety.
 6. THAT the learned trial magistrate erred in law and in fact in holding that appellant absconded/ deserted duty without evidence to that effect.
3. The appellant is seeking for orders that the judgment of the lower trial court be set aside and judgment be entered allowing the appellant's claim as pleaded and prayed in the lower trial court.
 4. By consent, the appeal was canvassed by way of written submissions. Counsel for the appellant Mr. Mukhabani filed written submissions dated 12th June 2025 while counsel for the respondent Mr. Bagada instructed by P. D. Onyango & Company Advocates filed submissions dated 4th September 2025.

II. Background

5. In a statement of claim dated 27th April 2022 filed through Tunoi & Company Advocates the appellant pleaded that on or about 12th December 2012 he was engaged by the respondent as a guard and was assigned to West Kenya Sugar Company Limited and Butali Sugar Mills Limited at an agreed monthly salary of Kshs9,000/=. It was further pleaded that on 27th July 2021 the respondent terminated the appellant unfairly and unlawfully. It was pleading that the verbal termination was unlawful and the appellant was allegedly denied a hearing and due process.
6. The appellant prayed for the reliefs that –
 - a. A declaration that the claimant's employment was unlawfully and wrongfully terminated by the respondent in violation of Articles 28, 41(1), 47, 48 and 50(1) of *the Constitution* of Kenya, 2010, as well as Section 42 of the *Employment Act*, No. 11 of 2007, Laws of Kenya.
 - b. An award of damages for breach of contract and unlawful and wrongful termination of employment as hereunder:
 - i. Damages for unlawful termination (12 months' salary) Kshs.108,000/=
 - ii. One month's salary in lieu of notice Kshs.9,000/=
 - iii. Unpaid salary for July Kshs.9,000/=
 - iv. Unpaid leave (8 ½ years) Kshs.76,500/=

Total Kshs.202,500/=
 - c. Interest on (b) above at court rates until payment in full.
 - d. Certificate of service.
 - e. Costs of this suit plus interest at court rates until payment in full.
 - f. Any other relief that the court may deem fit to grant.



7. In a response to the statement of claim dated 12th July 2022 the entire claim was denied in toto and the lower trial court urged to dismiss the same with costs. It was specifically pleaded that the appellant terminated her employment by deserting duty.
8. 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. Submissions By Counsel

9. Counsel for the appellant identified the following three issues for determination –
 1. Whether the appellant was lawfully terminated?
 2. Whether the appellant is entitled to relieves sought.
 3. Who bears the costs of the claim?
10. On the first issue counsel submitted that no disciplinary hearing was held and as such the termination was prima facie unlawful. It is further submitted that the termination offended Sections 35 & 45 of the *Employment Act*. Counsel cited Jane Nyandiko V Kenya Commercial Bank Limited (2017) eKLR in demonstrating that the termination fell short of the provisions of Sections 41, 42, & 43 of the *Employment Act*.
11. On the second issue, it is submitted that since the termination was evidently unfair and unlawful, based on the evidence adduced in the lower trial court, the appellant is entitled to the reliefs sought.
12. The court is urged to allow the appeal as prayed with costs to the appellant.
13. On the other hand, counsel for the respondent submitted that it is the appellant who terminated his own employment when he deserted duty upon transfer to Kisumu. It is submitted that he failed and or refused to report to work in his new station even upon issuance of a notice of desertion.
14. Citing Moses Ojani Khasaya V Wasso Security Company Limited (2017) eKLR, Pius Machafu Isindu V Lavington Security Guards Limited (2017) KECA 225 (KLR) and, Duncan Muyangu Kibisu V Mediterano Restaurant (2016) KEELRC 1830 (KLR) it is submitted that having been the author of his own misfortune the appellant cannot be rewarded for his misconduct.

IV. Analysis & Determination

15. 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 termination of the appellant, if at all, unfair and unlawful?
 - b. Whether the lower trial court arrived at the wrong and improper verdict and made the wrong and unlawful orders in the impugned judgment.
 - c. Is there a reason(s) for this court to interfere with the decision of the lower trial court as prayed by the appellant?



- d. What appropriate orders should this court make in regard to the above issues and on costs?

V. Analysis & Determination

16. 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*.
17. The appellant's case is that he was an employee of the respondent as a guard from 12th December 2012 to 27th July 2021. His last monthly salary is stated to have been Kshs9,000/=. It was further pleaded that the appellant was terminated by the respondent on 27th July 2021 without due process.
18. The foregoing was pleaded in paragraphs 3 to 7 in the statement of claim filed in the lower trial court dated 27th April 2022 – pages 3-5 of the record of appeal.
19. In a response to the statement of claim dated 12th July 2022, the fact of the employment is admitted but the respondent disputes the period thereof as pleaded by the claimant. The respondent pleaded that the appellant was its employee from 2017 not December 2012. It was also denied that the appellant was terminated but rather it is stated that the appellant deserted duty upon a transfer from Butali to Kisumu. In the circumstances, it was pleaded that the appellant terminated his own employment and as such he was not entitled to the reliefs sought.
20. In his testimony in the lower trial court the appellant adopted his statement dated 27th April 2022 filed with the claim as his evidence-in-chief and produced his filed bundle of documents as exhibits in support of his case.
21. In cross-examination the appellant admitted that he was aware of her transfer to Kisumu. He alleged that he reported to the new station after the due date but he was not allocated work.
22. The record of appeal indicates that the respondent adopted the evidence of one Boniface Mogusu, the human resources manager, who had testified in a similar matter being *Butali PMC ELRC EO06 of 2024*. The evidence and position taken by the respondent is that the appellant failed and or refused to report to his new station upon transfer.
23. Upon the conclusion of the hearing, the lower trial court in undated judgment delivered on 23rd October 2024 found and concluded that the appellant had deserted duty upon transfer from Butali to Kisumu by failing to report to the new station. The lower trial court further found that the appellant was thus not entitled to any of the reliefs sought and dismissed the entire claim and ordered each party to meet own costs.
24. An elementary presumption of the law is that (s)he who alleges shall prove – see Section 107 of the *Evidence Act*. It was thus upon the appellant to establish and prove that he was indeed terminated as pleaded. It was only upon establishing and proving that he was indeed so terminated that the respondent was obligated to justify the termination under Section 43(2) of the *Employment Act*.
25. While Sections 10 & 74 of the *Employment Act* place a legal burden on an employer to keep and avail records of employment, that does not shift the primary burden of an employee to prove the fact of alleged unfair and unlawful termination.
26. The evidence on record confirms that the appellant was indeed an employee of the respondent up to July 2021.



27. In a list dated 17th August 2021 submitted to the labour office Kisumu on 31st August 2021, the appellant was named as one of the many guards who had deserted duty.
28. In a letter dated 26th July 2021 the appellant was transferred to Kisumu. The copy of the letter filed in court confirms that the appellant was served with the letter on 27th July 2021.
29. While the appellant alleges that he reported to his new station, albeit late, he did not avail any evidence in support of that allegation. It cannot be true that the appellant reported and was denied work. The court is convinced that the appellant did not report to the new station and hence his name featured in the list of deserters served upon the labour office in Kisumu by the respondent on 31st August 2021, alluded to above.
30. All the documents and correspondences cited above were produced by the parties as exhibits during the trial in the lower court.
31. It was upon the appellant to satisfy the lower trial court that he was indeed unfairly and unlawfully terminated as claimed and pleaded. However, this court finds and holds that the appellant did not establish and prove that he was indeed unfairly and unlawfully terminated as claimed and pleaded. The evidence on record is that the employment relationship between the parties indeed terminated when the appellant failed, refused, and or neglected to report to his new work station in Kisumu. That is how his name ended up in the list of deserters alluded to above.
32. There is no way that the respondent could force or coerce the appellant to report to his new station. The copy of the letter of transfer produced by the respondent in the trial confirms that indeed the appellant was aware of the transfer as he was served with the said letter on 27th July 2021. The court cannot fathom what else the respondent as an employer was supposed to do to convince the appellant to report to his new work station.
33. For the umpteenth time, the court shall restate that it is not the business of the court to descend into the workplace and taking over the management of the same. Employees are expected to obey lawful orders and directions from employers and those placed in authority by the employers. A transfer is one such lawful order and direction in management of the workplace. The court has no business interfering with such. An employee who fails, refuses, and or neglects to act on such lawful orders and or directions by an employer assumes the risk of the full consequences of such misconduct under Section 44 of the [Employment Act](#).
34. It is the finding and holding of the court that the appellant terminated her own employment, without notice, by deserting duty upon his transfer from Butali to Kisumu.
35. The court therefore finds no reason(s) to faulting the decision arrived at by the lower trial court that indeed the appellant not only authored but indeed also executed his own termination. There is no way that the respondent was responsible for the said termination that, in fact, arose from misconduct on the part of the appellant who rejected a lawful transfer as alluded to above.
36. The court has this far said enough in demonstrating that the appellant's claim in the lower trial court was misconceived and that the lower trial court was right in holding that the same lacked merits.
37. The appellant ought to have reported to his new station on transfer as directed. Failure to report to his new station amounted to desertion of duty and gross misconduct. Through his own misconduct the appellant terminated his employment with the respondent and the court cannot reward or compensate for the same.



VI. Reliefs

38. The court has found and held that the appellant authored and executed her own termination. The court should not reward such misconduct and as such the reliefs sought in the lower trial court were misplaced and not available to her. In any event, during the trial the appellant failed to prove that he was entitled to any of the reliefs sought.
39. Likewise, this appeal is misplaced, misconceived, and without merits and the same is for dismissal.
40. However, the appellant is unconditionally entitled to a certificate of service under Section 51 of the *Employment Act*.

VII. Orders

41. Flowing from the foregoing, the court makes the following orders –
 - a. This appeal is devoid of merits and the same is hereby dismissed.
 - b. However, the respondent shall unconditionally issue and supply the appellant with a certificate of service within 30 days of this judgment.
 - c. Each party shall meet own costs for this appeal and that of the trial in the lower trial court.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 10TH DAY OF NOVEMBER, 2025.

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**DAVID NDERITU
JUDGE
KAKAMEGA ELRC**

