



REPUBLIC OF KENYA



**Riley Falcon Security Limited v Jepkoech (Appeal E030 of 2023)
[2025] KEELRC 3133 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3133 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E030 OF 2023
MA ONYANGO, J
NOVEMBER 6, 2025**

BETWEEN

RILEY FALCON SECURITY LIMITED APPELLANT

AND

PAMELA JEPKOECH RESPONDENT

*(Being an appeal against the Judgment of Honourable R.O. Odenyo
(Senior Principal Magistrate) delivered on 16th November 2023 in
the Chief Magistrates Court at Eldoret in CMELRC No. 245 of 2019)*

JUDGMENT

1. The Appellant herein was the Respondent, while the Respondent was the Claimant in Eldoret CMELRC No. 245 of 2019 wherein the Respondent sued the Appellant vide a Statement of Claim dated 8th November 2018 seeking compensation and terminal dues for the alleged unfair termination of her employment on account of redundancy.
2. After hearing the parties, the trial court delivered its judgment on 16th November 2023 in favour of the Claimant awarding her Kshs. 63,000 being 6 months' salary as compensation, Kshs 10,500 as salary in lieu of notice, Kshs 7,350 as leave dues and Kshs 5,250 as severance pay. The Claimant was also awarded costs of the suit and interest.
3. The Appellant being dissatisfied with the said Judgement instituted the instant appeal vide the Memorandum of Appeal dated 29th November 2023 on the following grounds of appeal:-
 - i. The Learned Trial Magistrate erred in fact and in law in failing to find from evidence on record that there was an Employment Contract that regulated the terms and conditions of service between the Appellant and the Respondent.



- ii. The Learned Trial Magistrate erred in fact and in law by misdirecting himself in making a finding that there was termination of employment at the instance of the Appellant as opposed to finding that the Respondent willfully resigned from employment.
 - iii. That The Learned Magistrate erred in law and in fact in finding that the Appellant had not proved their case on a balance of probability contrary to the evidence on record.
 - iv. The Learned Trial Magistrate erred in law and in fact in failing to appreciate and consider the pleadings and the evidence adduced in support thereof.
 - v. The Learned Trial Magistrate erred in law and fact in failing to attach due weight to Appellant's evidence and submissions and authorities attached thereto.
 - vi. The Learned Trial Magistrate failed to apply judicially and to adequately evaluate the evidence and exhibits tendered and thereby arrived at a decision unsustainable in law.
 - vii. The learned Trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered by both the Appellant and the Respondent and analyze and apply the correct law thereby arriving at erroneous conclusion that is not premised on evidence and the law in respect to unlawful termination to wit section 41 and 45 of the *akn ke act 2007 11 Employment Act, 2007*
4. The Appellant prays for the following orders:
- a. This appeal to be allowed and the judgment and decree of the honourable senior principal magistrate delivered on the 16th November 2023 be set aside
 - b. Judgment to be entered in favor of the Appellant against the Respondent
 - c. Costs of this Appeal and costs of subordinate court to be borne by the Respondent
 - d. Any other relief that this honourable court may deem fit to grant
5. The appeal was disposed of by way of written submissions. The Appellant's submissions are dated 24th January 2025 while the Respondent's submissions are dated 29th January 2025.

Appellant's submissions

6. The Appellant crystallized the grounds of appeal into the following two issues:
- i. Whether the Respondent's contract of service was unfairly terminated,
 - ii. Whether the trial magistrate erred in his decision.
7. On the first issue, the Appellant submitted that the termination of the Respondent's employment arose from the Respondent's own decision to resign. Citing *Edwin Beiti Kipchumba v National Bank of Kenya Limited* [2018], the Appellant argued that resignation is a unilateral act of an employee, and once communicated, it effectively terminates the employment relationship.
8. According to the Appellant, the Respondent tendered a resignation letter dated 7th April 2017, citing domestic challenges beyond her control. The Appellant maintained that there was no evidence to suggest that the Respondent had been denied leave or coerced into resigning.
9. Relying on section 107 of the *akn ke act 1963 46 Evidence Act*, the Appellant asserted that the burden of proof lay with the Respondent to demonstrate that she was terminated on account of redundancy, and that she failed to adduce any evidence to support this allegation.



10. The Appellant further submitted that it produced evidence at the trial court showing that its contract with its client, Safaricom Limited, had been terminated, leading to the recall of all guards for redeployment and it was then that the Respondent opted to resign.
11. The Appellant therefore contended that the trial court erred in finding that redundancy procedures were not followed, whereas no redundancy had occurred. Consequently, it was argued that the trial magistrate's judgment failed to reflect a proper analysis of the facts and the law, resulting in an unsustainable conclusion.
12. The Appellant urged the court to set aside the entire judgment of the trial court and allow the appeal with costs.

The Respondent's submissions

13. The Respondent set out the issues for determination to be:
 - i. Whether the Respondent was unfairly, unlawfully and unprocedurally terminated from employment by the Appellant on account of redundancy,
 - ii. Whether the trial magistrate applied the correct principles of law when awarding the Respondent, the house allowance and dismissing the other prayers,
 - iii. Who should pay the cost of the Appeal.
14. The Respondent, relying on *Julie Tupiran Njeru v Kenya Tourist Board (Industrial Cause No. 886 of 2010)*, submitted that the Appellant failed to comply with the procedural requirements of redundancy as provided under the *akn ke act 2007 11 Employment Act*.
15. The Respondent contended that on 31st March 2017, the Appellant called her and her colleagues to a parade by the Appellant's branch manager and informed that the contract between Safaricom Limited and the Appellant had come to an end, and their services were no longer required. This, according to the Respondent was contrary to sections 40, 41, 43, and 45 of the *akn ke act 2007 11 Employment Act, 2007*.
16. The Respondent denied resigning as alleged by the Appellant and maintained that if any resignation letters were written, they were obtained under duress and misrepresentation, as the employees were told they would receive termination dues, which were never paid.
17. The Respondent submitted that she was neither issued with a termination notice nor informed in advance of the termination of the Safaricom contract. She further contended that neither the County Labour Officer nor the affected employees were notified, contrary to the provisions of section 40(1)(a) of the *akn ke act 2007 11 Employment Act*.
18. It was therefore the Respondent's submission that the termination of her employment was unfair, unlawful, and unprocedural.
19. In addition, the Respondent submitted that the awards by the trial court was justified as she had proved that she was unfairly terminated on account of redundancy, and that she never proceeded on leave during the course of her employment with the Appellant.
20. The Respondent prayed that the appeal be dismissed with costs and that the judgment of the trial court be upheld.



Analysis

21. This being a first appeal, this court is guided by the principles espoused in several decisions among them, *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968) EA 123, to re-evaluate and re-examine the evidence adduced in the trial court in order to reach its own finding, taking into account the fact that this court had no opportunity of hearing or seeing the parties as they testified.
22. Vide her Statement of Claim dated 8th November 2018, the Claimant (now the Respondent) averred that she was employed by the Appellant as a Security Guard with effect from 21st November 2015 at a salary of Kshs 10,500 including house allowance.
23. The Claimant averred that she served the Appellant with loyalty, diligence and commitment without any warning in her employment records until 31st March 2017 when she was unfairly terminated from employment on account of redundancy.
24. It was the Claimant's case that the move by the Respondent in terminating her services on account of redundancy was in total contravention of the procedure under section 40 of the *akn ke act 2007 11 Employment Act* as the Respondent did not have a credible reason to render her redundant without following the procedure.
25. The Claimant sought to be awarded: -
 - i. One month's pay in lieu of notice.....Kshs. 10,500
 - ii. Severance pay.....Kshs. 5,250
 - iii. Compensation for unfair termination.....Kshs. 126,000
 - iv. Pro rate leave for 2018.....Kshs. 1,837
 - v. Leave dues.....Kshs 7,350
26. The Claimant contended that owing to the alleged unfair termination of her employment, she was entitled to terminal benefits and prayed for the following reliefs:
 - a. A Declaration that the Claimant's termination from employment on account of redundancy was unlawful, unprocedural and unfair
 - b. The sum of Kshs 150,937 as tabulated above
 - c. Certificate of Service
 - d. Cost of this suit and interests at court rates from time of filing suit until payment in full
 - e. Any other relief as the honourable court may deem just and fit to grant.
27. The Appellant (Respondent in the trial court) filed a Response to the Memorandum of Claim dated 5th October 2020 denying that the Respondent's claim that she was unfairly and unlawfully terminated from employment. The Respondent maintained that the Claimant opted to resign out of his own volition without issuing a notice to the Respondent as provided for in the employment contract.
28. The Appellant prayed that the suit be dismissed with costs.
29. The suit was heard on 10th June 2021. The Claimant testified on her own behalf while the Appellant called Peter Olima who testified as RW1.



30. In her testimony, the Claimant stated she was terminated from employment on the basis that the contract between the Respondent and a third party had lapsed. She averred that she was directed by the Respondent's manager to write a resignation letter for her to be paid her terminal dues but that she was not paid. She maintained that she never proceeded on leave during the period she was engaged by the Respondent.
31. On cross examination, the Claimant stated that her contract was pegged on the contract between the Respondent and Safaricom.
32. However, on re-examination, the Claimant averred that she was never informed that her employment contract would terminate when the contract between them and the third party ended.
33. RW1 introduced himself as the Branch Manager of the Respondent. He testified that the Claimant was an employee of the Respondent and that she resigned from employment on 10th April 2017. He further stated that the Claimant cleared with the Respondent through a clearance form dated 1st April 2017 and was paid her terminal dues via cheque No. 002643. RW1 added that the Claimant did not issue any notice prior to her resignation.
34. After the close of the Respondent's case, the trial court delivered its judgment on 16th November 2023 in favour of the Respondent which judgment is now the subject of this appeal.

Determination

35. I have considered the Appellant's Record of Appeal and the submissions by both parties. The grounds of appeal may be summarized into the following issues for determination: -
 - i. Whether the trial court erred in holding that the Respondent's terminated from employment on account of redundancy or she resigned
 - i. Whether the trial court erred in awarding the remedies as granted to the Respondent,
 - ii. What reliefs should issue.

Whether the trial court erred in holding that the Respondent's terminated from employment on account of redundancy
36. The Appellant contended that the Respondent voluntarily resigned from employment through a resignation letter dated 7th April 2017, citing domestic reasons beyond her control. The Appellant maintained that there was no evidence that the Respondent was coerced or compelled to resign and argued that once the resignation was communicated, the employment relationship was effectively terminated.
37. The Appellant further asserted that the burden of proving the alleged redundancy lay with the Respondent in accordance with section 107 of the *akn ke act 1963 46 Evidence Act*, and that no evidence was tendered to demonstrate that a redundancy occurred. It was also the Appellant's case that the termination of its contract with Safaricom Limited led to the recall of guards for redeployment, during which the Respondent opted to resign.
38. On her part, the Respondent denied resigning from employment and maintained that she was coerced to write a resignation letter so that she could be paid her service pay. The Respondent averred that she was never notified of the termination of the Safaricom contract, nor was she issued with a notice of termination. She further contended that neither the County Labour Officer nor the affected employees were notified, contrary to section 40(1)(a) of the *akn ke act 2007 11 Employment Act*.



39. From the record, it is not in dispute that the Appellant's contract with Safaricom Limited, where the Respondent was deployed, was terminated. DW1 testified that employees, including the Respondent, were informed in the parade that the Safaricom Limited contract where they were working had been terminated and that the Respondent's resignation came after she had been informed of the end of the contract between the Appellant and Safaricom Limited. The key issue, however, is whether the Respondent's departure from employment was voluntary or amounted to a termination on account of redundancy.
40. In support of its position, the Appellant produced a resignation letter dated 7th April 2017 and a clearance form dated 1st April 2017, being 6 days before the resignation. The inconsistency between the dates in the two documents raise doubt as to the voluntariness of the alleged resignation. It would be illogical for an employee to complete the clearance process prior to tendering a resignation. This inconsistency, therefore, corroborates the Respondent's contention that the resignation was not voluntary, but was to facilitate the release of her terminal dues as advised or directed by the Appellant.
41. Having found that the Respondent did not voluntarily resign, the court must consider whether the termination amounted to redundancy. The Appellant's own evidence was that its contract with Safaricom Limited was terminated, leading to the recall of guards. This implies that the Respondent's position became superfluous as a result of operational changes, which fits the definition of redundancy under section 2 of the *akn ke act 2007 11 Employment Act*.
42. Section 40 of the *akn ke act 2007 11 Employment Act* sets out the mandatory procedure to be followed in cases of redundancy, including the requirement for prior notice to the employee and the labour officer, as well as payment of severance dues. The Appellant did not demonstrate compliance with these procedural safeguards.
43. Accordingly, I find and hold that the Respondent's termination was on account of redundancy, and that the Appellant failed to adhere to the procedural requirements under section 40 of the *akn ke act 2007 11 Employment Act*. The trial court therefore did not err in so finding.

Whether the trial court erred in awarding the remedies granted to the Respondent

44. Having found that the Respondent's termination was on account of redundancy, it follows that the termination was unfair for want of compliance with section 40 of the *akn ke act 2007 11 Employment Act* and as such, the Respondent is entitled to compensation under section 49(1)(c) of the Act.
45. In its judgment, at page 90 of the Record of Appeal, the trial court awarded the Respondent six (6) months' salary as compensation for unfair termination, one (1) month's salary in lieu of notice, leave dues amounting to Kshs. 7,350 and severance pay of Kshs.5,250. The Respondent was also awarded the costs of the suit and interest thereon. I will address these awards in separate heads as hereunder: -
 - i. One month salary in lieu of notice

The award of one (1) month's salary in lieu of notice is anchored on section 35(1)(c) of the *akn ke act 2007 11 Employment Act*, 2007. The provision entitles an employee whose employment is terminated without notice to payment in lieu thereof. The trial court therefore properly granted this award.
 - ii. Leave dues

The award of leave dues amounting to Kshs. 7,350 was equally justified. The Respondent testified that she did not proceed on leave during the entire period of her employment, and the



Appellant did not produce any evidence to the contrary as required under section 74 of the *akn ke act 2007 11 Employment Act*.

iii. Severance pay

With regard to the award of severance pay, section 40(1)(g) of the *akn ke act 2007 11 Employment Act* provides that an employee declared redundant is entitled to severance pay at a rate of not less than fifteen (15) days' pay for each completed year of service. The Respondent's claim for severance pay was therefore well-founded, the Court having found that the termination was on account of redundancy. The award of Kshs. 5,250 was thus properly made

iv. 6 months compensation for unfair termination

Section 49(1)(c) of the *akn ke act 2007 11 Employment Act* empowers the Court to grant compensation for unfair termination up to a maximum of twelve (12) months' salary, depending on the circumstances of each case. In the present case, the termination arose from the loss of the Appellant's contract with Safaricom an event beyond its control. Having already been awarded severance pay under section 40 of the Act, I award the Respondent compensation of two month's salary of account that the redundancy having not been done in accordance with the procedure set out in section 40 of the *akn ke act 2007 11 Employment Act*, was unlawful. In so doing I also take into account the length of service of the Respondent. The award of six (6) months' salary as compensation for unfair termination is therefore set aside and replaced with an award of compensation of 2 months' salary.

46. In the upshot, the Court makes the following final orders:-

- a. The appeal partially succeeds.
- b. The award of six (6) months' salary as compensation for unfair termination is reduced to 2 months salary.
- c. The awards for one (1) month's salary in lieu of notice of Kshs 10,500, leave dues of Kshs.7,350 and severance pay of Kshs. 5,250 are hereby upheld.

47. Each party shall bear its own costs of the appeal. The orders of costs at the trial court will not be disturbed.

48. Orders accordingly.

DATED, DELIVERED AND SIGNED

THIS 6TH DAY OF NOVEMBER, 2025.

M. ONYANGO

JUDGE

