



**Salano v Western Steel Mills Limited & another (Appeal E028 of 2024)
[2025] KEELRC 3225 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3225 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E028 OF 2024
MA ONYANGO, J
NOVEMBER 13, 2025**

BETWEEN

PETER MUKWANO SALANO APPELLANT

AND

WESTERN STEEL MILLS LIMITED 1ST RESPONDENT

HERITAGE WORKFORCE LIMITED 2ND RESPONDENT

(Being an appeal against the Judgment of Hon. Mukabi Kimani (Principal Magistrate) delivered on 31st June, 2024 in the Chief Magistrates Court at Eldoret vid CMELRC No. 84 of 2021)

JUDGMENT

1. The Appellant herein was the Claimant in Eldoret CMELRC No. 84 of 2021 wherein he had sued the Respondents vide a Statement of Claim dated 31st May 2021 seeking compensation for alleged unfair termination of his employment and payment of his terminal dues.
2. After hearing the parties, the trial court delivered its judgment on 13th June 2024, finding the 2nd Respondent liable for the unfair termination of the Appellant's employment. The Appellant was awarded, one month's salary in lieu of notice, NSSF balance remittance of 36 months, one month salary in lieu of leave, 12 months' salary as compensation for unfair termination, a certificate of service, 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 8th July 2024 on the following grounds of appeal:
 - i. The learned Magistrate erred in law and fact and rendered a decision that allowed the Appellant's Claim against the Interested Party, Heritage Work Force Ltd but declined the Appellant's Claim against the Respondent, Western Steel Mill Ltd.



- ii. The learned Magistrate erred in law and fact and failed to hold both the Respondent and the Interested Party jointly and severally liable for unfair dismissal of the Claimant Appellant from employment.
 - iii. The learned Magistrate erred in law and fact by failing to act judiciously and hence failing to properly appreciate the facts of this case and the employment law as envisaged under section 2 of the *akn ke act 2007 11 Employment Act* which defines an employer to include but not limited to any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.
 - iv. The learned Magistrate erred in law and fact by misapprehending the evidence on record and applying the wrong principles of law and rendered a decision that is incompetent and not supported by evidence and law.
 - v. The learned Magistrate erred in law and fact by misapplying the provisions of the employment law and or procedural law as envisaged under the provisions of Order 1 Rule 7 of the Civil Procedure Rules 2010 whereby the Claimant Appellant is entitled to enjoin two or more defendants and rendered a decision that is incompetent and not supported by law
 - vi. The learned magistrate erred in law and fact by failing to act judiciously and hence failing to properly appreciate the fact that the Claimant was jointly and severally employed by both the Respondent and the Interested Party
 - vii. The learned Magistrate erred in law and fact in dismissing the Claimant’s claim against the Respondent in total disregard of the provisions of *akn ke act 2010 constitution the Constitution*, the statutory law, the Employment law, the case law and the submissions tendered therein.
4. Consequently, the Appellant prayed that this Appeal be allowed and judgment dismissing the Appellant’s claim against the Respondent be set aside and consequently the Honourable court be pleased to order;
- a. That the Respondent, Western Steel Mills Ltd and the Interested Party, Heritage Work Force Ltd be held jointly and severally liable for unfair dismissal of the Claimant from the employment
 - b. The Respondent be condemned to pay the costs of the instant appeal

Analysis

- 5. This being a first appeal, this Court has the duty to analyze and re-examine the evidence adduced in the lower Court and reach its own conclusion but to bear in mind that it neither saw nor heard the witnesses testify and make due allowance for that.
- 6. In *Abok James Odera T A A.J Odera & Associates v John Patrick Machira T A Machira & Co. Advocates* [2013] KECA 208 (KLR) the Court stated as follows:-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”



7. Vide his Statement of Claim dated 31st May 2021, the Claimant (now the Appellant) averred that at all material times to this suit, he was employed by the Respondents, where the 2nd Respondent was the employing agency and agent of the 1st Respondent.
8. The Claimant contended that he served the Respondents with dedication and commitment but the Respondents summarily dismissed him from employment on 17th March 2020 and unfairly failed to give him his entitled dues.
9. The Appellant contended that he was unfairly terminated from employment without being paid his terminal dues which he particularized as hereunder:
 - i. Unpaid house allowance from 2014
to March 2020 Kshs 211,680
 - ii. Service benefits Kshs 50,400
 - iii. One month salary in lieu
of notice Kshs 20,160
 - iv. Compensation for unfair
Termination Kshs 241,920
 - v. NSSF remittance for 24 months
Worked Kshs 25,200
 - vi. NHIF remittance for 24 months
Worked Kshs 31,500
 - vii. Loss of future earnings Kshs 3,024,000
 - Total Kshs 3,604,860
10. The Appellant prayed for the following reliefs:
 - i. A declaration that the summary dismissal of Claimant from his permanent employment by the Respondents was malicious, unlawful, unfair, unprocedural and fundamentally violated the rights of the Claimant.
 - ii. A declaration that the Claimant was entitled to House allowance
 - iii. A declaration that the Claimant is entitled to one month salary in lieu of annual leave.
 - iv. A declaration that the Claimant is entitled to National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF), for the period worked.
 - v. A declaration that the Claimant is entitled to his dues, compensation, damages, and benefits as a result of wrongful dismissal from the employment as calculated herein.
 - vi. An award of a maximum compensation of 12 months as per Section 69 (c) of the *akn ke act 2007 11 Employment Act*, Cap 226 Laws of Kenya (Act No 11 of 2007) and Section 12 of the *akn ke act 2011 20 Employment and Labour Relations Court Act*, Cap 234 B, Laws of Kenya. (Act No 20 of 2011)
 - vii. Damages and terminal dues as per the calculations under paragraph 11.



- viii. Loss of Earning of salary for a period of 15 years that the claimant would have worked until the statutory retirement age of 60 years.
 - ix. A Certificate of Service as per section 51 of the *akn ke act 2007 11 Employment Act*;
 - x. Costs of this suit from the date of filing until its full determination.
 - xi. The claim is allowed in entirety.
 - xii. Any other and or further relief as the court deems fit and just to grant.
11. The 1st Respondent filed a Response to the Statement of Claim on 11th July 2023, denying the Appellant's allegations, particularly the claim that he was its employee.
 12. The 1st Respondent thus urged the court to dismiss the Claimant's claim with costs.
 13. The 2nd Respondent neither filed a response nor participated in the proceedings.

The Evidence adduced

14. At trial the Appellant testified as CW1 and adopted his witness statements recorded on 31st May 2021 as his evidence in chief.
15. Upon cross examination, the Appellant maintained that he was employed by the 1st Respondent and that the 2nd Respondent was its supervisor.
16. The Respondent called Michael Njuguna, its human resource officer who testified as RW1. RW1 adopted his witness statement recorded on 11th July 2023 his evidence in chief.
17. On cross-examination, RW1 stated that the Claimant was not an employee of the 1st Respondent. He stated that the 2nd Respondent was an independent contractor and that the Claimant was employed by the 2nd Respondent, although he worked at the 1st Respondent's premises.
18. After hearing the parties, the trial court delivered its judgment on 13th June 2024 dismissing the claim against the 1st Respondent, and entering judgment against the 2nd respondent in favor of the Claimant.
19. It is the said judgment that is now the subject of this appeal.

The Appeal

20. The appeal was disposed of by way of written submissions. The Appellant and 1st Respondent filed their submissions. The Appellant's submissions are dated 9th June 2025 while the 1st Respondent's submissions are dated 13th May 2025.

The Appellant's submissions

21. The Appellant submitted that the trial magistrate erred in holding that the 2nd Respondent was solely liable, having misapprehended the evidence and misapplied the law.
22. According to the Appellant, the 1st Respondent's witness at trial, RW1, testified that the 1st Respondent contracted the 2nd Respondent to supply manpower, and that the Appellant worked for 2nd Respondent at the 1st Respondent's premises. This, according to the 1st Respondent, confirmed that both Respondents jointly and severally employed the Appellant as the 1st Respondent controlled, supervised, and benefited from his services.



23. The Appellant thus urged the Court to hold both Respondents jointly and severally liable, relying on *David Njuguna Ngotho v Family Bank Limited & Another* [2018] eKLR and *Karanja v Phoenix of EA Assurance Co Ltd* [1991] eKLR.
24. He prayed that the trial court's judgment be set aside and replaced with a finding holding both Respondents liable for unfair dismissal.

The 1st Respondent's submissions

25. In its submissions, the 1st Respondent contended that during the trial, the Appellant produced a National Social Security Fund (NSSF) statement (Claimant's Exhibit 1), which clearly indicated that the 2nd Respondent was the Appellant's employer.
26. The 1st Respondent, while relying on Section 19(1) of the *akn ke act 2007 11 Employment Act*, submitted that the NSSF statement produced by the Appellant at trial confirmed that the 2nd Respondent was responsible for such statutory remittances and was therefore the Appellant's employer.
27. The 1st Respondent further cited Section 107 of the *akn ke act 1963 46 Evidence Act*, emphasizing that the burden of proof lies upon the party asserting a fact. In this regard, it was argued that the Appellant bore the legal burden of proving, on a balance of probabilities, that the 1st Respondent was his employer or that a principal-agent relationship existed between the 1st and the 2nd Respondents.
28. The 1st Respondent maintained that the Appellant's evidence did not establish the existence of any agency relationship under Section 2 of the *akn ke act 2007 11 Employment Act*, and that the evidence demonstrated that the 2nd Respondent, as an independent contractor, was the Appellant's employer.
29. It was the 1st Respondent's submission that the 2nd Respondent independently hired, paid, and supervised its employees, who merely performed their tasks within the 1st Respondent's premises. That as such, the 1st Respondent could not be held liable for any breaches or inadequacies in the conduct of the 2nd Respondent. In support of this position, the 1st Respondent relied on this Court's decision in *Nyane v Western Steel Mills Ltd & Another* [2024] KEELRC 13396 (KLR) (Judgment of 11 December 2024).
30. Further, while citing the case of *Board of Governors, St. Mary's School v Boli Festus Andrew Sio* [2020] KECA 952 (KLR), the 1st Respondent asserted that where an agent-principal or master-servant relationship does not exist, an alleged principal cannot be held liable for the unlawful acts of an independent contractor.
31. The 1st Respondent maintained that the 2nd Respondent was accorded an opportunity to defend itself but failed to do so, while the 1st Respondent duly filed its defence and clarified that the two were in an independent contractor relationship.
32. In the end, the 1st Respondent submitted that the Appellant failed to prove the existence of an employment relationship with the 1st Respondent and that the trial court correctly dismissed the claim against it.
33. The court was thus urged to dismiss the appeal in its entirety with costs



Determination

34. I have considered the Record of Appeal and the submissions by both parties. The central issue for determination is whether the Appellant was jointly employed by both Respondents or solely by the 2nd Respondent.
35. The Appellant's case before the trial court was that he was an employee of both Respondents and that the 2nd Respondent acted as an agent of the 1st Respondent. It was his averment that both Respondents should be held jointly and severally liable for the alleged unfair termination.
36. The trial court in its judgment at page 112 of the Record of Appeal held as follows: -
- “Thus going by a perusal of the Claimant's NSSF statement (Exhibit 1), it was clearly indicated that it was the 2nd Respondent who was remitting the statutory deduction hence it can only be deemed to have been the Claimant's employer at a daily wage of Kshs 600 per day in the absence of evidence rebutting the same. The Claimant's engagement with the 2nd Respondent had therefore been converted from casual to regular term and he was protected against unfair termination.”
37. It is clear that the learned trial magistrate based his finding for holding the 2nd Respondent liable for the Appellant's unfair termination on the documentary evidence produced by the Appellant, (Claimant Exhibit 1), the NSSF statement which reflected the 2nd Respondent as the employer.
38. An employee is defined by Section 2 of the *kenya act 2007 11 Employment Act*, 2007 as:
- “a person employed for wages or a salary and includes an apprentice and indentured learner”.
39. An employer is defined as “any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual”
40. The burden of proving the existence of an employment relationship lies upon the person who asserts it, pursuant to Section 107 of the *kenya act 1963 46 Evidence Act*.
41. The Appellant did not produce any letter of appointment, pay slip, or contract of service linking him directly to the 1st Respondent.
42. The NSSF statement produced by the Appellant identified the 2nd Respondent as the entity that was remitting statutory deductions on his behalf. This evidence, in my view, strongly supports the finding that the 2nd Respondent was the Appellant's employer within the meaning of Section 2 of the *kenya act 2007 11 Employment Act*. The fact that the Appellant worked within the premises of the 1st Respondent, without more, does not create an employment relationship between him and the 1st Respondent.
43. In determining whether an employment relationship exists, courts are guided by the element of control, that is, whether the alleged employer had authority over the manner in which the employee performed his duties, the power to hire or dismiss, and the obligation to pay wages. The Appellant did not lead any evidence to show that the 1st Respondent exercised such control over his employment nor demonstrate that the 1st Respondent participated in the hiring process, supervised his work, determined his wages or issued instructions concerning his employment.
44. Although the Appellant argued that the 2nd Respondent was an agent of the 1st Respondent, he did not adduce sufficient evidence to support this allegation.



45. The Appellant's reliance on Order 1 Rule 7 of the Civil Procedure Rules does not aid his case. While the provision allows a claimant to join multiple defendants where liability is uncertain, such joinder does not relieve the Claimant of the burden of proving liability against each of the Defendants.
46. On the basis of the evidence adduced, I find that the trial magistrate correctly evaluated the evidence and applied the law properly in finding that the 2nd Respondent was the Appellant's employer and solely liable for the Appellant's unfair termination.
47. In the end, I find no merit in this appeal. The judgment of the trial court delivered on 13th June 2024 is hereby upheld.
48. The appeal is dismissed with no orders as to costs.

DATED, DELIVERED AND SIGNED

THIS DAY 13TH OF NOVEMBER, 2025.

M. ONYANGO

JUDGE

