

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
APPEAL NUMBER E004 OF 2023**

BETWEEN

PELT SECURITY SERVICES LIMITED
APPELLANT

AND

SAMUEL
NYANUMBA.....RESPONDENT

[An Appeal from the Judgment and Decree of the Chief Magistrate’s Court at Nakuru, E&LR Cause Number 65 of 2022 between the Parties herein, delivered by Hon. A.P. Ndege, S.R.M, on 23rd March 2023]

*Rika J
Court Assistant: Emmanuel Kiprono*

Kwamboka Marie & Associates, Advocates for the Appellant

S.K. Mburu & Company Advocates for the Respondent

JUDGMENT

1. The Claim before the Trial Court, subject matter of this Appeal, was heard alongside CMELRC Cause Number 66 of 2022, between the Appellant herein, and Jared Makana.
2. Samuel Nyanumba, the Respondent herein, was awarded Kshs. 889,912 in compensation for unlawful termination, and terminal benefits.

3. The Appellant, filed two separate Appeals, No. E004 of 2025 [Nyanumba] and No. E005 of 2025 [Makana], against the common Judgment of the Trial Court.
4. The Grounds of Appeal are the same. In Appeal No. E005 of 2025, which was considered and Judgment drafted earlier by this Court, the following findings were made: -
 - a. At the heart of the Claim before the Trial Court, was the concept of constructive dismissal.
 - b. The Trial Court needed to satisfy itself, that the Respondent was constructively dismissed by the Appellant, applying the principles laid down by the Court of Appeal in **Coca Cola East and Central Africa Limited v. Maria Kagai Ligaga [201] KECA 394 [KLR]**.
 - c. Some of the key principles are: -

[i] That the Employer has repudiated a fundamental term of the contract of employment.

[ii] Repudiation must be significant, indicating that the Employer no longer intends to be bound by one or more of the essential terms of the contract.

[iii] An objective test is applied in evaluating the Employer's conduct.

[iv] There must be a causal link, between the Employer's conduct, and the reason for the Employee terminating of the contract.

[v] The burden of proof of repudiatory breach or constructive dismissal, is on the Employee.

- d. The Judgment of the Trial Court does not indicate whether the Respondent brought his Claim within these principles, to establish constructive dismissal.
- e. The Trial Court did not mention the term constructive dismissal, in its Judgment. It declared that termination was unlawful and unjustified, and contrary to the Employment Act 2007, and other unspecified laws.
- f. The burden of proof, even in the absence of the Appellant at the hearing, rested with the Respondent.
- g. There was no evidence that the Respondent resigned, believing the Appellant, through its conduct, to have terminated his contract.
- h. The Pleadings and documents before the Trial Court, indicated that the Respondent was transferred from Nakuru to Meru. He disputed

transfer, but did not resign, believing the circumstances of transfer to have amounted to constructive dismissal.

- i. The transfer would seem to have been within the discretion of the Appellant, in accordance with the contract of employment exhibited before the Trial Court.
- j. The right of a fair hearing to the Appellant, seems to have been compromised.
- k. Having failed to appear in Court for hearing on 16th March 2023, the Appellant made an application the following day, to reopen the hearing.
- l. The Court declined to certify the application as urgent, suggesting that the Appellant should have applied for proceedings and read the proceedings, before rushing to present the application.
- m. When would the proceedings be typed and supplied, while Judgment had been reserved for 20th March 2023?
- n. There were no procedural orders issued on service of the application upon the Respondent, and on hearing of the application in the presence of both Parties.
- o. There was no consideration and determination of the substantive aspects of the application. There was no ruling on the merit of the

application, just a ruling that the application was not urgent, and was merely intended to delay delivery of the Judgment.

- p. The Appellant, whatever its reasons for not attending hearing on 16th March 2023, deserved a fair hearing on 17th March 2023.
- q. The Trial Court appears to have rushed in its delivery of justice to the Respondent, while not serving the Appellant justice in full. In this Court's **Kowino v. Populations Services Limited [2023] KEELRC 699 [KLR]**; and **Mwangi v. Githinji, KEELRC 741 [KLR]**, it was observed that while Courts are under immense pressure to deliver justice quickly, under the maxim that *justice delayed is justice denied*, Courts must also take into account, that *justice hurried is justice buried*.
- r. There is considerable doubt as to whether, even in the absence of the Appellant at the hearing, the terminal benefits awarded to the Respondent, were specifically proved. The Trial Court stated at paragraph [b] of its Judgment that: -

“The Claimant here is awarded compensation of damage as follows...”

- s. It went on to list compensation of damage, to include: unlawful and unjustified termination at Kshs. 193,724; 1-month salary in lieu of notice at Kshs. 16,143; unpaid leave allowance at Kshs. 36,853; underpayment at Kshs. 149,526; unpaid overtime at Kshs. 139,948; unpaid off/rest days at Kshs. 131,309; unpaid public holidays at Kshs.

48,377; unpaid annual leave at Kshs. 29,388; and service pay at Kshs. 18,867- amounting to Kshs. 783,847.

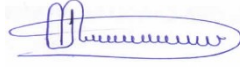
- t. What was compensation of damage, and how did it relate to the Claim for constructive dismissal?
 - u. The Court would therefore uphold the Appeal on the grounds that the Appellant's right to a fair hearing was compromised; the Respondent did not establish his claim for constructive dismissal; and there was no proof of the award characterized as compensation of damage, in the Judgment of the Trial Court.
5. These findings from Appeal No. E005 of 2025, shall apply in this Appeal No. E004 of 2025 *mutatis mutandis*, with the result that the Appeal succeeds.

IT IS ORDERED: -

- a. ***The Appeal is allowed.***
- b. ***The Claim shall be heard afresh, before any other duly qualified Magistrate, other than the Trial Magistrate.***
- c. ***No order on the costs.***

Dated, signed and delivered electronically at Nakuru, pursuant to Rule 68[5] of the E&LRC Rules, 2024, this 28th day of November 2025.

James Rika
Judge

A handwritten signature in blue ink, appearing to read 'James Rika', enclosed within a blue oval border.