

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. E369 OF 2024

(Before D.K.N. Marete)

HATARI SECURITY GUARDS LIMITED.....APPELLANT
VERSUS
NGUMI MUASYA.....RESPONDENT

JUDGMENT

This is a appeal dated 23rd December, 2024. It raises issue with the trial court’s award of the equivalent of twelve(12) months compensation for unlawful termination of employment without any legal basis for the same.

The Appellant in their written submission dated 9th May, 2025 submits and highlight that the Court of Appeal has severally pronounced itself on the need for a trial court to provide reason for granting such an award. In the circumstances of this case, the trial court made such an award but omitted to give reasons for such award. They, on this note sought to rely on the authorities of *inter alia* **National Social Security Fund v Grace K. Kazungu & Another [2018] eKLR** and **CMC Aviation Limited v Mohammed Noor [2015] eKLR** at pages 36,40 and 41 respectively where the Court of Appeal emphasized on the need to give reasons in the event of such award.

The Appellant further submits that the Respondent did not controvert the acts of misconduct that led to the termination of his employment. This indicates that he did not proof a case for maximum compensation. This is by failure to produce a medical certificate to establish that he was Covid 19 free. The award was not therefore in consonance with the available evidence and should be removed.

The Respondent submits on a case of courts considering only material that was raised at trial. It is their submission that the issues now forming the basis of this appeal were never raised in the pleadings, hearing and submission by the Appellant at the trial court. As was enunciated in the authority of

Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune [2021], eKLR and OI Pejeta Ranching Limited vs David Wanjau Muhoro [2017] eKLR parties cannot be allowed to appeal and prosecute matters on a defence that was not raised or prosecuted in the lower court. This is because the new issues would be prejudicial to the Respondent as they would not have had an opportunity to address them at trial.

Moreover, the trial court established a case of unlawful termination of employment on Covid 19 pandemic related circumstances. Despite the fact that the Respondent was lax on producing a medical certificate to indicate that he was cured of Covid 19, the process of termination of his employment does not indicate much more involvement by the Appellant. They had leeway to enquire and establish the reasons for failure to present the medical certificate from the Respondent but failed to. Instead, they choose the draconian approach of termination of employment in such a harsh environment.

The award of twelve months compensation for unlawful termination of employment was proper in accordance with the law. The award was justified and in regard to the circumstances under which the termination of employment occurred. I therefore decline to interfere with the award solely on ground of not giving reasons for such award. This is because these can be discerned from the frame of the judgment of court.

I am therefore incline to dismiss the claim with orders that each party bears their costs of the same.

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Kirui instructed by GNK & Associates LLP for the Appellant.

2. Mr. Wetaba instructed by Wetaba Were & Company Advocates for Respondent.