REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NYERI

CIVIL APPEAL NO E008 OF 2025

GATHUTHI TEA FACTORY COMPANY LTD……APPELLANT

VS

DORCAS WAGUTHI WARUI……..RESPONDENT

(Appeal from the judgment of Hon. V.S. Kosgei, SRM delivered on 1st April 2025 in Nyeri CMELRC No. E083 of 2022)

J U D G M E N T

1. The Respondent filed his claim at the Chief Magistrate's Court at Nyeri seeking the following remedies:
    a) A declaration that the termination of his employment was unlawful and unfair;
    b) 12 months' salary in compensation;
    c) 1 month's salary in lieu of notice;
    d) Leave pay for period between September 2006 and August 2020;
    e) Overtime pay for October, November and December 2019;
    f) NSSF dues;
    g) Costs plus interest.

2. In a judgment delivered on 1st April 2025, the trial court allowed the Respondent's claim in the following terms:

a) A declaration that the termination of the Claimant's employment owing to outsourcing of casual labour was unfair and un-procedural;
b) Kshs. 464,670 being 12 months' salary in compensation, subject to statutory deductions;
c) Kshs. 38,670 being 1 month's salary in lieu of notice.

3. Being dissatisfied with the judgment, the Appellant proffered the present appeal. In its Memorandum of Appeal, the Appellant raises the following grounds:

a) The learned trial Magistrate erred in law and in fact in making a finding that the Respondent was unfairly and -unprocedurally terminated, in view of the provisions of the Collective Bargaining Agreement (CBA) between the Appellant and the Respondent's Union;

b) The learned trial Magistrate further erred in law and in fact, in failing to appreciate that the Respondent was a seasonal worker whose terms of employment were negotiated by her Union and well documented in the CBA;

c) The learned trial Magistrate erred in law and in fact in failing to appreciate the evidence in the further witness statement dated 6th June 2024, of the Appellant's witness, which clearly stated as follows:

> *"As a seasonal worker, the Claimant signed several contracts of employment in the period she worked for the*

Respondent. The last such contract was in August, 2020. The contract was for one month"

d) The learned trial Magistrate erred in law and in fact in failing to appreciate that the Appellant had no role in the operations of CYKA Manpower Services, but that this was the company that would provide outsourced labour to the Appellant. The Respondent was supposed to enter into an employment contract with CYKA Manpower Services while the Appellant would be supplied with labour by the said CYKA Manpower Services;

e) The misdirected finding that the termination was unfair and un-procedural led the learned trial Magistrate to wrongly award twelve (12) months' salary in compensation, one (1) month's salary in lieu of notice and costs of the suit;

f) The learned trial Magistrate erred in making a judgment that is not supported by the evidence on record.

4. The role of this Court as a first appellate court is to re-assess, re-evaluate and re-analyse the evidence on record, with a view to drawing its own independent conclusions, bearing in mind that it had no opportunity to encounter the witnesses first hand (see ***Selle & another v- Associated Motion Boat Co. Ltd & others [1968] EA 123*** and ***Peters v Sunday Post [1958] EA 424***).

5. In the more recent decision in ***Gitobu Imanyara & 2 others v Attorney General [2016] eKLR,*** the Court of Appeal re-stated the mandate of a first appellate court in the following terms:

> ***''An appeal to this court from a trial by the High Court is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must consider the evidence, evaluate it itself and draw its own conclusions, although it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect".***

6. In its submissions dated 13th October 2025, the Appellant chose to subsume its six (6) grounds of appeal into one. This choice makes sense because the real issue for determination at the trial was whether the Respondent had made out a case of unlawful termination of employment.

7. From the evidence on record, the Respondent worked for the Appellant from September 2006 until August 2020 within the category of seasonal workers.

8. Clause 22 of the CBA dated 18th June 2021 provides for seasonal employment in the following terms:

> ***22. SEASONAL EMPLOYMENT***
>
> *The Company and the Union recognise that the economic well being of the Company and its employees is dependent upon maintenance of harmonious relations and mutual appreciation of the cyclical nature (low/peak season) of the factory production. The parties therefore agree voluntarily that: -*
>
> *a) For continuity, seasonal employees shall be engaged by the Company to cover seasonal operations especially during the flush/peak season.*

b) *Those employed by the Company as seasonal workers may be employed for a maximum period of three (3) consecutive months.*

c) *Seasonal employees are entitled to special terms of contract as follows: -*

i) Seasonal employees shall be paid their wages at the end of each month

ii) Seasonal employees shall be entitled to twenty-eight (28) days notice or twenty-eight (28) days pay in lieu of such notice in case of termination as per sub-clause 22(b) above.

iii) Seasonal employees shall be paid pro-rata leave for each completed month of service.

d) *For any seasonal employee who is converted to permanent employee, the period served in seasonal engagement shall be taken into consideration for purposes of calculating terminal benefits.*

e) *A seasonal employee is eligible to become a member of the Union and the Company undertakes to deduct union dues from members through the payroll at the end of each month and remit the same to the Union.*

9. In her witness statement filed at the trial court, the Appellant's Factory Manager, Mary Munyi admitted that the Respondent had been employed as a seasonal worker earning a daily wage of Kshs. 1,289. Munyi further

admitted that the Respondent's employment had been terminated alongside all other seasonal workers. In Munyi's own words:

> *"**The daily wage of a seasonal worker of Kshs. 1,289 was not economical, and was also not sustainable. Therefore, the Respondent decided to terminate all seasonal workers, and outsource casual labour from Cyka Manpower Services, at the rate of Kshs. 400/= per day. The Claimant did not take the decision to termination (sic) the services of seasonal workers positively.**"*

10. With this unequivocal statement from the Appellant's witness, the circumstances leading to the Respondent's exit from the Appellant's employment are clear; his employment was terminated to pave way for an outsourcing arrangement.

11. In her judgment dated 1st April 2025, the learned trial Magistrate made reference to the decision of a three-judge bench of this Court (Nduma, Ndolo & Nzioki wa Makau JJ) in ***Wrigley Company (East Africa) Limited v Attorney General & 2 others; Sheer Logic Management Consultants (Interested Party) [2013] KEIC 550 (KLR)*** where the parameters for a credible outsourcing arrangement were established as follows:

a) ***Ordinarily employers are not expected to outsource their core functions;***
b) ***An employer will not be permitted to use outsourcing as a means to escape from meeting accrued contractual obligations to its employees;***
c) ***An employer will not be permitted to transfer the services of its employees to an outsourcing agency without the express acceptance of each affected employee and in all such cases, the***

employer must settle all outstanding obligations to its employees before any outsourcing arrangement takes effect; and

d) ***Outsourcing is unlawful if its effect is to introduce discrimination between employees doing equal work in an enterprise.***

12. In the present case, the employer broke every rule in the book; the employee was not consulted and there was no clear break from his employment with the Appellant. The Appellant took a unilateral decision to disengage from the Respondent, under an arrangement that would reduce the Respondent's salary by more than one third.

13. In my considered view, the actions taken by the Appellant constituted, not only a breach of the Respondent's terms of employment, but also an unfair labour practice.

14. Pursuant to the foregoing, I find no reason to cause me to interfere with the judgment of the learned trial Magistrate.

15. Consequently, this appeal fails and is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY THIS 11TH DAY DECEMBER 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Mwai for the Appellant

No apperance for the Respondent