



**Roam Access Company Limited v Odhiambo (Appeal E001 of 2025)
[2025] KEELRC 3525 (KLR) (10 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3525 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E001 OF 2025
JK GAKERI, J
DECEMBER 10, 2025**

BETWEEN

ROAM ACCESS COMPANY LIMITED APPELLANT

AND

CALISTO OPIYO ODHIAMBO RESPONDENT

JUDGMENT

1. This is an appeal against the Judgment of Hon. v. Adhiambo in KISUMU ELRC No.E289/2023 Calisto Opiyo Odhiambo v Roam Access Co. Ltd dated 3rd December 2024.
2. The facts of the case before the trial court were that the claimant was employed by the respondent as a chef on 1st May 2022 at Kshs.30,000.00 which was later reviewed to Kshs.35,000.00
3. The claimant averred that on 10th February 2023 he and two (2) other colleagues were accosted by goons who sought to evict one Sabath Opiyo from the work place allegedly on instructions of Ms Ruth Mbata, a director of the company, but they stood ground and the goons left only to return with Ms Ruth Mbata who distributed suspension letters to the three until 17th February 2023. The claimant was accused of poisoning clients food and was thrown out of the premises, reported the matter to the police and obtain OB NO.18.10/02/2023 and proceed to hospital for examination but when the reported on 17th February 2023 Ms Ruth Mbata informed him that his presence was no longer required, thus terminating his employment.
4. The claimant stated that the dispute was subjected to reconciliation but the respondent did not pay as promised.
5. The claimant prayed for:
 - i. Declaration that termination of employment was unlawful.



- ii. Kshs.547,992 comprising, salary in lieu of notice, house allowance (10 months) service pay, leave days and 12 months compensation.
 - iii. Costs of the suit.
 - iv. Interest on (ii) and (iii) above.
 - v. Any other relief the court deemed just.
6. On its part, the respondent admitted that the claimant was its employee, engaged as a chef but denied all other allegations.
 7. Its case was that on or about 9th February 2023 the claimant and one Sabbath Opiyo colluded to remove Ms Ruth Mbata from the day-to-day running of the respondent's restaurant and filed KISUMU CMC ELRC Cause No. E035 of 2023 Sabbath Opiyo Otieno v Ruth Atieno Okene Mbata & Roam Access Co. Ltd T/A Kalongolongo Restaurant which culminated in the claimants suspension on 10th February 2023 for 7 days and he did not report back on 17th February 2023 and after conciliation, he was paid in lieu of notice.
 7. After considering the pleadings, evidence placed before the court and submissions by counsel, the learned trial magistrate found that termination of the claimant's employment by the respondent was unfair and unlawful and awarded a declaration, Kshs.7,320.00 as salary in lieu of notice, house allowance Kshs.52,500 leave days Kshs.23,555 and equivalent of 5 months salary Kshs.175,000.00, total Kshs.258,375.
 8. This is the Judgment the appellant faults in this appeal on grounds that the learned trial magistrate erred in law and fact by:
 1. Finding that the respondent was unlawfully terminated from employment.
 2. Awarding the respondent for unlawful termination of employment.
 3. Acting on wrong principles of law and misdirected herself.
 4. Not sufficiently taking into account the evidence presented on behalf of the appellant.
 5. Delivering a judgment that was against the weight of the evidence presented by the appellant.
 6. Disregarding the appellant's case.
 9. The appellant prayed for the setting aside and/or vacation of the Judgment of the trial court with costs at the trial court and appeal.
 10. The appellant did not file submissions.

Respondent's submissions

10. Counsel submitted that the appeal was fatally defective as one Maurice Odhiambo Amayo Onyo was described as the appellant, a stranger to the proceedings as he was not a party before the lower court and had no locus standi to move the court and the appellant had not filed submissions since October 2025 when directions were given.
11. Counsel further submitted that the appeal remained unprosecuted as held in *Mutwti v Mboya & 3 others* [2022] KEHC 10084 (KLR) where the court cited the South African case of *Ndebele v South African Police & another* (JR 2395)14 [2017] 2ALCJHB 252, and the appeal was for dismissal.



12. As to whether the trial court erred in finding that the respondent was unlawfully terminated from employment, counsel submitted that the appellant availed no evidence to show that the respondent absconded duty, the statutory provisions on procedural fairness were not complied with and the termination of employment was procedurally unfair.
13. Counsel urged the court to dismiss the appeal with costs.

Analysis and determination

14. On 29th October, 2025, both counsels were present in court and while Mr. Abila holding brief for Mr. Mauwa requested for 14 days to file and serve submissions, Mr. Ndege for the respondent requested for 7 days and directions on the filing of submissions were issued accordingly.
15. On 27th November 2025 only Mr. Ndege for the respondent was present and informed the court they were in the process of execution and had not been served with the appellant's submissions. Counsel prayed for 2 days to file and serve submissions and the court obliged him and gave a Judgment date.
16. As correctly submitted by the respondent's counsel, the appellant's Memorandum of Appeal dated 7th January 2025 identified one Mourice Odhiambo Amayo Onyo as the appellant which was not the case as the company was the appellant.
17. In the court's view this was a misdescription or mistatement of the appellant's name and was not fatal to the appeal bearing in mind that the cover page of Record of Appeal identified the parties correctly.
18. This appeal turns on whether the failure by the appellant to file and serve submissions rendered the appeal liable for dismissal.
19. As adverted to elsewhere in this Judgment directions on the filing and exchange of submissions were given on 29th October 2025 and by 27th November 2025, the appellant had not filed its submissions and its counsel was not in court.
20. The court accorded the respondent's counsel two (2) days as requested to file submissions and directions to serve judgment notice.
21. By the time the court retired to prepare this Judgment, only the respondent's counsel had filed submissions, thus, the appeal was not prosecuted as directed by the court.
22. As submitted by the respondent's counsel the principles that govern unprosecuted appeals are well settled.
23. On submissions generally, the sentiments of the court in *Ali Ngumbao Bay & 2 others v Director of Public Prosecutions* [2016] eKLR, are instructive;

Submissions can either be oral or written. Submissions simply put means an evaluation of the evidence by each party and analysis of the law. This can be done either orally or in writing. At times parties make oral submissions in furtherance or addition to their written submissions.
24. The idea of filing written submissions is intended to save on judicial time and also to enable the parties or their advocates to condense their thoughts on the matter at their own and in good time. This gives the parties enough time to evaluate the case and put down their view in writing. Written submission gives parties latitude to explain their respective cases with ease as opposed to oral submissions which can be limited in form of time".



24. In the South African case of Ndebele v South Africa Police Service & another (supra) cited by the respondent’s counsel, the court held:

“ To decide a leave to appeal application in chambers based on written submissions, the failure to file written submissions in these instances may be viewed to be similar to a party failing to appear in court to argue the case, and all the consequences associated with it, which may include dismissing the application on this basis alone. But at the very least this failure by the applicant leaves the leave to appeal application unmotivated...”

26. Similarly, in the words of Odunga J (as he then was) in Johnstone Makasa Mutwti v Francis Mbuya & 3 others (supra).

27. In other words the court may direct the manner in which an application or an appeal is to be prosecuted. Such hearing may either be orally or by way of written submissions. Where the court directs that the matter be prosecuted by way of written submissions, that would be the mode of prosecution of the matter. Where a party fails to comply with such directions the court may then proceed as if the matter has not been prosecuted or defended and may then allow the matter or dismiss the same as the case may be...”

See also in David Oloo (suing as Administrator of the Estate of John Bruno Oloo v Registered Trustees Trinity Fellowship & another [2024] KECA 650 (KLR), where both parties did not file submissions.

28. Guided by these authorities, it is clear that although the court determined how the appeal would be prosecuted and gave appropriate directions as requested by counsels, the appellant’s counsel did not comply which rendered the appeal liable to dismissal for want of prosecution.

29. Consequently, the appeal herein is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 10TH DAY OF DECEMBER 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COvID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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