



REPUBLIC OF KENYA



**KENYA LAW**  
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**Roam Access Company Limited v Onyo (Appeal E002 of 2025)  
[2025] KEELRC 3528 (KLR) (10 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3528 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E002 OF 2025  
JK GAKERI, J  
DECEMBER 10, 2025**

**BETWEEN**

**ROAM ACCESS COMPANY LIMITED ..... APPELLANT**

**AND**

**MOURICE ODHIAMBO AMAYO ONYO ..... RESPONDENT**

**JUDGMENT**

1. This is an appeal from the Judgment of Hon. V. Adhiambo delivered on 3<sup>rd</sup> December 2024 in Kisumu MCELRC No. E288 of 2023 Mourice Odhiambo Amayo Onyo V Roam Access Company Ltd.
2. The brief facts of the case were that the respondent employed the claimant under a written contract of service dated 18<sup>th</sup> November 2022 effective 1<sup>st</sup> December 2022, as Manager for 12 months at a gross salary of Kshs.60,000.00 with a one (1) month probationary period.
3. The claimant averred that on 10<sup>th</sup> February 2023, he and two colleagues were accosted by goons at the workplace who sought to evict Mr. Sabbath Opiyo from the premises forcefully, allegedly on instructions by one of the directors of the employer, M/s Ruth Mbata but they stood their ground and the goods left but returned with M/s Ruth Mbata who gave them letters of suspension on the same day and the goons seized the letter from the claimant and was not allowed to resume duty on 17<sup>th</sup> February 2023 and M/s Ruth Mbata informed him not to return to the premises.
4. The claimant sued for a declaration that termination of employment was unlawful, Kshs.807,000.00 comprising salary in lieu of notice, house allowance for 3 months, 12 months compensation and costs. The respondent's case was that the claimant was not its employee and the suit was for dismissal. Both parties availed witnesses who were cross-examined.
5. After considering the pleadings, evidence on record and submissions by counsel, the learned trial magistrate entered judgment in favour of the claimant and awarded 3 months gross salary, one month's



salary in lieu of notice, Kshs.20,000.00 less what had been paid, house allowance, Kshs.27,000.00, costs and interest at court rates.

This is the Judgment appealed against.

6. The appellant faults the trial court on six (6) 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. Acted on wrong principles of law and misdirected herself.
  4. Failing to consider the evidence on record.
  5. Delivering a Judgment that was against the weight of the evidence.
  6. Disregarding the appellant's case.

The appellant sought the setting aside of the Judgment with costs.

7. The learned trial magistrate is faulted on appreciation and application of the material placed before the court, principles of law and disregard of the appellant's case.

### **Respondent's submissions**

8. 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.
9. 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.
10. 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.

Counsel urged the court to dismiss the appeal with costs.

### **Analysis and determination**

11. On 29<sup>th</sup> 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.
12. On 27<sup>th</sup> 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.
13. As correctly submitted by the respondent's counsel, the appellant's Memorandum of Appeal dated 7<sup>th</sup> January 2025 identified one Maurice Odhiambo Amayo Onyo as the appellant which was not the case as the company was the appellant.



14. In the court's view this was a misdescription or misrepresentation 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.
15. This appeal turns on whether the failure by the appellant to file and serve submissions rendered the appeal liable for dismissal.
16. As adverted to elsewhere in this Judgment directions on the filing and exchange of submissions were given on 29<sup>th</sup> October 2025 and by 27<sup>th</sup> November 2025, the appellant had not filed its submissions and its counsel was not in court.
17. The court accorded the respondent's counsel two (2) days as requested to file submissions and directions to serve judgment notice.
18. 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.
19. As submitted by the respondent's counsel the principles that govern unprosecuted appeals are well settled.
20. On submissions generally, the sentiments of the court in *Ali Ngumbao Bay & 2 others V Director of Public Prosecutions* [2016] eKLR, are instructive;
21. 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.
22. 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".
23. In the South African case of *Ndebele V South Africa Police Service & another* (supra) cited by the respondent's counsel, the court held:
24. 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..."
25. Similarly, in the words of Odunga J (as he then was) in *Johnstone Makasa Mutwti V Francis Mbuya & 3 others* (supra).
26. 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..."
27. 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.

Consequently, the appeal herein is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 10<sup>TH</sup> 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

