



REPUBLIC OF KENYA



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Moi Teaching and Referral Hospital v Njuguna (Employment and Labour Relations Appeal E023 of 2024) [2026] KEELRC 88 (KLR) (22 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 88 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E023 OF 2024**

**MA ONYANGO, J
JANUARY 22, 2026**

BETWEEN

MOI TEACHING AND REFERRAL HOSPITAL APPELLANT

AND

ROBINSON KAMAU NJUGUNA RESPONDENT

(Being an appeal from the judgment and decree or order of the Chief Magistrates Court at Eldoret before Honourable Richard Odenyo, Senior Principal Magistrate dated 21st June, 2024 in Eldoret CMELRC No. 128 of 2022)

JUDGMENT

1. This appeal arises from Eldoret CMELRC Cause No. 128 of 2022 filed in the Chief Magistrate's Court in which the Claimant, now the Respondent, instituted the suit alleging unlawful termination of his employment by the Appellant and sought terminal dues and compensation.
2. The matter proceeded by way of formal proof on 2nd May 2024 after an interlocutory judgment which was indicated in the impugned judgment to have been entered on 9th September 2022.
3. On 21st June 2024, the trial court delivered judgment in favour of the Claimant and awarded a sum of Kshs. 1,726,623.34 as compensation for unlawful termination.
4. Aggrieved by the said judgment, the Appellant lodged the present appeal vide a Memorandum of Appeal dated 22nd July 2024 on the following grounds: -
 - i. That the learned Magistrate erred in fact and law in entering default judgement on the same day that the claim was filed.
 - ii. That the Learned Magistrate erred in fact and law in entering default interlocutory judgement on 9th September 2022 for a claim that was filed on 19th September 2022.



- iii. That the Learned Magistrate erred in fact and law in entering default interlocutory judgement on 9th September 2022 before the summons to enter appearance werest September 2022 and served on 27th September 2022.
issued on 21
- iv. That the learned magistrate erred in fact and law by holding and finding that the Respondent did not file any response and proceeding to formal proof.
- v. That the learned magistrate erred in fact and law by finding and holding that the Respondent did not file any response to the Claimant's claim without any proof that the default judgement had been served upon the Respondent who had already entered appearance and filed its response.
- vi. That the learned Magistrate erred in fact and law by failing to find that, where there is no proper service, then ex debito justitiae a judgement by default must be set aside.
- vii. That the learned magistrate erred in fact and law by holding and finding that the Respondent did not file any response and proceeding to formal proof after allowing parties to appear before it for almost 2 years.
- viii. That the learned magistrate erred in fact and law by holding and finding that the Respondent did not file any response, proceeding with formal proof and entering the Judgement dated 21st June 2024 while the respondent had filed and served its response dated 2nd December 2022 on 5th December 2022 despite the clear provisions of Rule 14 (5) of the Employment & Labour Relations Court Procedure Rule 2016 (currently Rule 33 ELRC Procedure Rules 2024)
- ix. That the learned magistrate erred in law and in fact by dismissing the application dated 24th April 2024 seeking to set aside ex-parte judgement against the defendant.
- x. That the learned magistrate erred in law and in fact by failing to have regard to the Respondent's explanation for his failure to file its documents in the e-filing system or its failure if any could be sufficiently punished by terms as to cost or otherwise which the court in its discretion is empowered to impose.
- xi. That the learned magistrate erred in law and in fact by failing to observe that the failure by Defendant to file defence and deny liability as attributed to him by the Appellant in the plaint amounted to admission of the same.
- xii. That the learned magistrate erred in law and in fact by disregarding the clear and undisputed evidence submitted by the Respondents demonstrating the Claimant's poor work attendance and performance issues over an extended period.
- xiii. That the learned magistrate erred in law and in fact by awarding the Claimant compensation for unlawful termination as stated in the Claim without considering the- evidence of the opposing party which proved the defendant's case.
- xiv. That the learned magistrate erred in law and in fact by not putting into consideration the fact that the advocate failed to file his amended response to the Claim on time because he faced a lot of challenge filing as the court at the time was shifting from physical filing at the courts to e-filing electronically.
- xv. That the learned magistrate erred in law and in fact by awarding the Claimant the sum of Kshs. 1,726,623.34 as the claimant contract was terminated rightfully because of his misconduct.



5. Consequently, the Appellant urged this Court to allow the instant appeal, dismiss the decision of the trial court or alternatively, quash the judgment and order a retrial before a different magistrate, with costs.
6. The Appeal was disposed of by way of written submissions pursuant to the directions of this court issued on 8th October 2025. The Appellant's submissions are dated 31st October 2025 whereas the Respondent's submissions are dated 10th November 2025.

The Appellant's submissions

7. In its submissions, the Appellant identified the issues for determination to be:
 - i. Whether the trial court ex-parte judgement was regular and principles of natural justice were upheld.
 - ii. Which orders should be granted? Whether the appellant's decision to dismiss the claimant was lawful, procedural and fair.
 - iii. Who should pay for the costs of the appeal?
8. On the first issue, the Appellant submitted that the ex-parte judgment as recorded in the Respondent's documents and the typed proceedings of the trial court, was irregularly entered against it on 9th September 2022 for a claim that was filed on 19th September 2022. The Appellant submitted that the court's registry received the Statement of Claim dated 30th August 2022 and all annexures on 19th September 2022, while the summons to enter appearance were issued on 21st September 2022 and served upon the Appellant on 27th September 2022, after the interlocutory judgment had already been entered.
9. The Appellant maintained that under Order 10 Rule 11 of the Civil Procedure Rules, it is entitled to move this Court to set aside the default judgment and be granted leave to defend the suit. In support of this position, the Appellant relied on the case of *James Kanyiita Nderitu & Another v Marios Philotas Ghikas & Another* (2016) KECA 470 (KLR), and *Kihara v Mathenge* (Civil Appeal 86 of 2019) (2025) KEHC 7914 (KLR).
10. The Appellant submitted that the principle of audi alteram partem was greatly violated by the trial court as it was not afforded the right to be heard.
11. According to the Appellant, a default interlocutory judgement was entered on 9th September 2022 for a claim that was filed on 19th September 2022 which order locked out the Appellant from being heard. It is the Appellant's submission that the learned magistrate erred by entering default interlocutory judgment on 9th September 2022 even before summons to enter appearance were issued on 21st September 2022. According to the Appellant, the case was decided even before the Appellant could enter appearance and that it was not given proper notice of the case against it.
12. On this basis, the Appellant urged the court to set aside the trial court's judgment dated 21st June 2024 and grant it leave to defend the suit
13. On the second issue, the Appellant contended that the trial court failed to comply with Rule 14(5) of the Employment & Labour Relations Court (Procedure) Rules 2016, which allows a party to object to a pleading with stated grounds, except on matters of form.
14. Further, the Appellant submitted that the trial court failed to consider the difficulties posed by the transition to e-filing and should have allowed filing of hard copies. This failure, according to the



Appellant resulted in the premature entry of an ex-parte judgment before the Respondent had been properly served.

15. In the end, the Appellant urged this Court to allow the appeal and award it costs.

The Respondent's submissions

16. On his part, the Respondent submitted that through his advocate, he obtained the summons to enter appearance dated 21st September 2022 and served it upon the Appellant on 27th September 2022. That on 27th October 2022, his advocate swore an affidavit confirming service of the summons. It is the Respondent's submission that the Appellant failed to file any responses in a timely manner and an interlocutory judgment was entered way before the Appellant filed a response on 2nd December 2022.
17. It is the Respondent's submissions that on 9th March 2023, when the matter came up for mention to take pre-trial directions, the trial court directed the Appellant to serve and file proper pleadings within seven days and on 17th January, 2024, when the matter came up for hearing of the main suit, the Appellant had not yet filed and served its statements and list of documents.
18. The Respondent asserts that on 18th April 2024, the matter came up for mention to confirm compliance on the part of the Appellant when the Appellant was given time up to 26th April 2024 to file its application to set aside the interlocutory judgment. That failure to do so, the Respondent was to proceed with formal proof.
19. It is submitted that on the said 24th April 2024, the Appellant hadnd May 2024. That the matter was set for formal proof when the Respondent testified and produced documents in support of his case. not complied, and the Respondent's Counsel requested a date for a formal proof hearing and on 2
20. According to the Respondent, from the typed proceedings at pages 73-78 of the Record of Appeal, the Appellant was granted sufficient time to regularize its pleadings but blatantly failed to do so without any justifiable reason. The Respondent asserts that the trial court had the opportunity of seeing and taking evidence of the witness and after the close of the case, had a look at the Respondent's pleadings, evidence and submissions and thereafter applied the right principles in arriving at the decision that the Respondent had been unfairly terminated and granted the orders sought.
21. It is the Respondent's position that the Appellant's documents dated 22nd July 2024 were filed beyond statutory timelines and without leave, rendering them defective and further, that the Response to the Statement of Claim filed on 26th April 2024 was out of time and contrary to Order 7 Rule 1 of the Civil Procedure Rules.
22. The Respondent thus contended that the Appellant cannot claim injustice, as it was granted ample opportunity to comply.
23. The Respondent submitted that the trial court correctly applied the law and considered the evidence. That the Appellant has not demonstrated a basis to interfere with the trial court's exercise of discretion.
24. The Respondent thus urged this Court to uphold the trial court's judgment dated 21st June 2024 and dismiss this Appeal with costs.

Analysis and determination

25. This being a first appeal, this Court has the duty to examine the record of the trial court, review the evidence, and determine whether the conclusions reached by the learned trial Magistrate were justified,



as stated in *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR.

26. Having considered the record of appeal, the grounds of appeal and the rival submissions, the main issue that arises for determination is whether the proceedings culminating in the judgment delivered on 21st June 2024 were procedurally fair and in accordance with the law.
27. It is common ground that the Statement of Claim was filed on 19th September 2022 and the summons to enter appearance issued on 21st September 2022. It is further not in dispute that the summons to enter appearance was served upon the Appellant on 27th September 2022.
28. In the impugned judgment at page 71 of the Record of Appeal, the trial court indicated that an interlocutory judgment was entered on 9th September 2022, a date preceding both the filing of the claim and the issuance and service of summons.
29. Rule 31 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides that where a Respondent has failed to enter appearance or file a defence, the Claimant may apply to the Court for directions that the matter proceeds to formal proof as an undefended suit.
30. The interlocutory judgment was thus entered on 9th September 2022 before the filing of the claim, before summons were issued and served upon the Appellant. The same was further entered without application by the Respondent. The interlocutory judgment was therefore irregular and void ab initio.
31. Evidently, the trial court, treating the interlocutory judgment as valid, proceeded to give directions for the matter to proceed to formal proof on the basis that the interlocutory judgment had not been set aside.
32. From the record, the Appellant filed a response to the Statement of Claim on 2nd December 2022, which was duly served. Once a response is filed and the parties actively participate in proceedings, the matter can no longer be treated as undefended. Proceeding to formal proof solely on the basis that the interlocutory judgment had not been set aside was therefore an error on the part of the trial court as it was procedurally unsound.
33. The right to be heard is a fundamental principle of natural justice, guaranteed under Article 50(1) of *the Constitution*. By directing the matter to formal proof on the basis of an irregular interlocutory judgment, the trial court violated this right.
34. Consequently, the proceedings culminating in the judgment delivered on 21st June 2024 were procedurally flawed and therefore cannot be allowed to stand. The trial court's reliance on an irregular interlocutory judgment, despite the Appellant having filed a response, vitiated the entire process.
35. In the circumstances, I allow the appeal and make orders as follows:-
 - i. The judgment of the Chief Magistrate's Court at Eldoret in CMELRC Cause No. 128 of 2022, delivered on 21st June 2024, together with all consequential orders, is set aside.
 - ii. The suit is remitted the Chief Magistrate's Court at Eldoret for hearing afresh before a different magistrate of competent jurisdiction to be determined on its merits.
 - iii. Each party shall bear its costs of this appeal.
36. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JANUARY, 2026.



M. ONYANGO
JUDGE

