



**Ongeche v Victory Consultants Limited (Appeal E145 of 2024)
[2026] KEELRC 576 (KLR) (25 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 576 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E145 OF 2024
DKN MARETE, J
FEBRUARY 25, 2026**

BETWEEN

OINO EVANS ONGECHE APPELLANT

AND

VICTORY CONSULTANTS LIMITED RESPONDENT

JUDGMENT

1. This matter is originated by way of a Memorandum of Appeal dated 16th May, 2024. It comes out as follows;
 1. That since it was common ground that the Appellant at all material times was not in employment of the Respondent September 2019, learned Magistrate erred in law and in fact by dismissing the Appellant's (Claimant in the lower court) case and finding that the Appellant failed to demonstrate that he was dismissed, contrary to the evidence presented before the court that the Appellant unfairly terminated, orally.
 2. That since it was common ground that the Appellant at all material times was not in employment of the Respondent September 2019, the learned Magistrate erred in law and in fact by not giving a finding on how the Appellant exited employment, more so when the Respondent averred and pleaded that the Appellant deserted employment and the face of the Courts finding that the Appellant failed to demonstrate ate that he was dismissed.
 3. That the learned Magistrate erred in fact and in law by finding that the appellants unfair redundancy was based on non-payment of salary, yet the evidence presented before the court was that the Appellants unfair redundancy was based on the violation of the provisions of Section 40 of the *Employment Act*.2007, (the Act) and unfair termination contrary to the provisions of Section 41.43. and 45 of the Act.



4. That the learned Magistrate erred in fact and in law by not awarding the Appellant herein all the remedies sought/prayed for in the lower court case, as against evidence and facts presented before the Honourable Court.
2. The appellant prays for :-
 - a. This appeal be allowed and the decision of the Honourable and Learned Magistrate dated 19.04.2024 be set aside on its entirety.
 - b. Costs of the suit at the lower court and of the appeal, be awarded to the Appellant.
 - c. That this Honourable court do issue such orders and directions as it may deem fit and just to grant to meet the ends of justice.
3. The Appellant submits that for reasons that the Respondent never called any witness to controvert his evidence at trial court, his testimony remained uncontroverted as was observed by court.
4. The Appellant further moves on to narrate his employment history with effect from 15th February, 2019 when he was offered a one year fixed-term contract and 15th September, 2020. It is his case that on the 3rd week of September, 2019, he was asked to surrender his uniform which he construes as a breach of the contract of employment. This is coupled by the fact that he was not paid his salary for September all indicating a case of termination through redundancy.
5. The Appellant submits a contradiction on the trial court's findings that the Appellant had no post(ing) of work at the time of being requested to return the uniform and also that this would not be construed as termination since security officers wear the uniforms only when they are posted on duty which was not the case for the Appellant.
6. The Appellant basis their case on the fact that all this time, there was a subsisting a one-year fixed term contract running between 15th February, 2019 to 16th February, 2020. This was still alive in August and September, 2019 having not been frustrated by the termination of the contract between the Respondent and Ole Sereni. It was incumbent upon the Respondent to re-post the Appellant after the refresher course partaken on their instructions. The Appellant further rubbishes the Respondent's case and submission of absconding duty and in all seeks to rely on the authority of *Godfrey Anjere v Unique Suppliers Limited* [2015] eKLR where the court observed that employers are duty bound to seek out their employees in the event that they are missing in action. This is because the employees may be out of work station on genuine causes such as illness and are unable to communicate this to the employer in good time.
7. The Respondent opened their submission by a narration of the facts of the case. On the background of the employment details for the Appellant, it is their case on 1st September, 2019, Ole Sereni, the Appellant's post terminated their contract creating a need to redeploy the Appellant and other guards. They were recalled to the head office in South B for a refresher course pending redeployment but the Appellant and sixteen (16) others declined the offer and elected to seek employment elsewhere. The Appellant changed their phone number and was not available or traceable. He was later to resurface with a letter from the labour officer and rudely demand his salary by creating an unsavory and ugly scene. This was paid for and he signed as such. Had the Appellant been patient enough and undergone the refresher training, he would have been re-deployed like his other colleague who remained behind.
8. The Respondent's case and submissions is that there was no termination of the employment of the Appellant by the Respondent, or at all. The Appellant on his own volition left the training in search of greener pastures. He was paid his salaries for September and requested to surrender his uniform which is normal in the industry. Such surrender of uniform as observed by the trial court at page 62 of the



Record of Appeal does not amount to termination or even termination as assumed by the Appellant. It is not at all, termination. In any event he never sort guidance from the Respondent as to why he was asked to surrender his uniform but proceeded to raise answers that his contract had been breached.

9. The Appellant in toto failed to satiate the burden of proof of termination of employment as required of him by section 47(5) of the *Employment Act*, 2007 as read with sections 106, 107, 108 and 109 of the *Evidence Act*, Chapter 80, Laws of Kenya. This is further drummed up in the authority of *Ainushamsi Construction Transporters Company Limited v County Government of Vihiga*, Civil Appeal No. E003 of 2022[2024] KEHC 3288 (KLR) (20, March, 2024.)
10. The Appellant in finality submits that a case of no termination of employment arose in the circumstances and the trial court rightly dismissed the claim by the Appellant for want of proof.
11. This is so. A look at the respective cases of the parties established that the trial court elaborately analyzed the issues and evidence before it and came up with a sober and solid case of dismissal of the claim. The Appellant has not brought out anything new relating to the issues and matters determined at trial. With such a considered determination by the trial court, we are left with no choice but to dismiss the appeal.
12. I am therefore inclined to dismiss the appeal with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF FEBRUARY 2026.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Rakoro instructed by Rakoro & Co. Advocates for the Appellant.

M/s Wangui holding brief for Chisengo instructed by Chisengo & Company Advocates for the Respondent.

