

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

APPEAL NUMBER E122 OF 2025

ROYAL GARMENTS INDUSTRIES EPZA LIMITED.....APPELLANT

-VERSUS

MARY KATUMBI KIMILU.....RESPONDENT

(Being an Appeal from the Judgment and Decree of the Hon. B. Ojoo (CM) delivered on 5th April 2025 in Mavoko MCELRC No. 70 of 2020)

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, being dissatisfied with the whole of the Judgment and Decree of the Hon. B. Ojoo (CM) delivered on 5th April 2025 in Mavoko MCELRC No. 70 of 2020, filed a Memorandum of Appeal dated the 24th of April 2025 raising the following grounds of appeal -
 - a. The Honourable Magistrate erred both in law and fact thereby arriving at a wrong decision that the termination of employment was illegal, unlawful, wrongful and unfair.
 - b. The Honourable Magistrate erred in law, principles and fact in finding that the Respondent proved her case on a balance of probability.

BACKGROUND TO THE APPEAL

2. The Respondent filed a suit against the Appellant vide a memorandum of claim dated 30th August 2020 seeking the following orders: -
 - a) A declaration that the Claimant's dismissal from the Respondent's service was unfair and unlawful and totally failed to follow due process.
 - b) An order for the Respondent to pay the Claimant her terminal dues and compensatory damages totaling Kshs. 245,050/=with interest thereon.
 - c) The Respondent do pay the Claimant costs of this cause plus interest thereon. (pages 4-6 of Appellant's ROA dated 10th July 2025).

14. In support of her claim, the Respondent filed her list of witnesses dated 30th September 2020; witness statement of even date; and list of documents of even date with the bundle of documents attached (pages 8-18 of ROA).

15. The claim was opposed by the Appellant who entered appearance and filed a statement of response dated 31st May 2023 (pages 19-20 of ROA). Alongside the response, the Appellant filed a list of documents dated 31st May 2023 with the bundle of documents attached; list of witnesses of even date; and witness statement of Victoria Nyaga stamped on 31st May 2023 (pages 21-29 of ROA), which was later substituted with the witness statement of JOHN MUTHUI dated 25th September 2024.

16. The Claimant/Respondent's case was heard on the 3rd of October 2024, with the Claimant testifying. She relied on her filed witness statement as her evidence in chief and produced

the documents listed as exhibits. She was cross-examined by counsel for the Appellant, Mr. Kipkurui (pages 36-39 of ROA).

17. The Appellant's case was heard on 3rd December 2024, with the Appellant calling one witness, JOHN MUTHUI, as DW1. He relied on his filed witness statement as his evidence in chief and produced the Appellant's documents as exhibits. The witness was cross-examined by counsel for the Claimant/Respondent, Mr. Namada (pages 40-42 of ROA).
18. The parties took directions on the filing of written submissions after the hearing, and complied.
19. The Trial Magistrate Court delivered its judgment on the 5th of April 2025 partially allowing the Claimant/Respondent's claims in respect of one month's salary in lieu of notice, and 3 months' salary as compensation for unfair termination; plus costs and interest (judgment at pages 46-49 of ROA).

DETERMINATION

20. The appeal was canvassed by way of written submissions. The Appellant complied.

Issues for determination

21. The court discerned from the grounds of appeal the issues for determination to be:-
 - (a) Whether the trial court erred in finding the termination was unfair.
 - (b) Whether the Appeal was merited.

- (c) Whether the trial court erred in finding the termination was unfair.
22. The Claimant/Respondent alleged that on 8th July 2020, she was summoned by the Appellant's Human Resource Manager, one Mrs. Victoria, who verbally ordered that her services were no longer needed and proceeded to dismiss her forthwith. The Respondent was employed on 20th June 2011 as a mass-production machinist. The employment relationship was not in dispute.
23. Conversely, the Appellant in response to the suit contended that the Claimant/Respondent resigned from employment vide letter dated 8th July 2020 for personal reasons (page 26 of ROA) and they accepted the resignation vide letter of even date (page 25 of ROA) that further, as per witness statement of Victoria Nyaga the said Human Resource Manager, she released the Respondent's dues on 6th August 2020 which she alleged was collected on behalf of the Respondent by shop steward Violet since the Respondent informed them she was far away.
24. During the hearing, the Respondent maintained that her services were terminated verbally on 8th July 2020 by Mrs. Victoria. She denied receipt of dues.
25. Conversely, the Appellant called Muturi, who produced the said resignation letter, acceptance, computation of dues, and a discharge voucher. He told the court the letters were in the confidential records. He told the court the final dues computation were signed by Violet on behalf of the Respondent, who was a shop steward. He told the court Violet was called by the Respondent in their presence, was on speaker when instructed by the Claimant to collect the dues. He could not recall the exact date of the conversation.

26. The trial court, in its judgments, did not believe the Respondent resigned. The trial court grappled with the alleged factual situation regarding why the Respondent allegedly involved a shop steward to sign off on the discharge form in favor of the company, and the said person was not called as a witness. The trial court further correctly found that there was no record that the said finds were remitted to the Claimant by the alleged shop steward. The court on appeal found the trial court's remarks well-founded.
27. Sections 108 & 109 of the Evidence Act place the burden on the person who alleges to prove. The Appellant had the burden to prove that the letter of resignation was by the Claimant. It was also their burden to prove the alleged call by the Respondent on their dues, made through the shop steward.
28. The witness had no evidence of remittance of the said terminal dues to the Claimant. Nothing would have been easier than to call the said shop steward as a witness. A third party could not have committed the employee in a discharge voucher.
29. The Court of Appeal in Mbogo V Shah [1968] EA Page 93 ,De Lestang V.P (As He Then Was) Observed At Page 94: *“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”*In the instant case, I find the decision of the trial court was informed by evidence before the trial court and on re-evaluation of the evidence, I find no basis to disturb the judgment.

30. A termination of employment to pass the fairness test must be in compliance with section 45 (2) of the Employment to wit-

(2) A termination of employment by an employer is unfair if the employer fails to prove—

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason—

(i) related to the employee's conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.''

31. The court, having upheld the finding by the trial court that the Appellant did not prove the alleged resignation letter was by the Respondent or even that the alleged terminal dues were remitted to the Respondent, the court consequently upheld the finding of the trial court that the dismissal was unfair.

Whether the appeal was merited

32. I found no merit in the appeal. The award of compensation of 3 months' salary and notice pay is held as fair. I find no merit in the appeal, and the same is dismissed with costs to the Respondent.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH
DAY OF FEBRUARY, 2026.

J. W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Macharia

Respondent – Wanyangu h/b Namada