

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAKURU

ELRC APPEAL NO. E041 OF 2025
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

**ELEMECH ENGINEERING
KENYA LIMITED**
.....APPELLANT

VERSUS

JOHN NJOROGE NJIRANI
RESPONDENT

***(Being an Appeal from the Ruling and Order of the
Honourable Adet Vincent Okello, Principal
Magistrate, delivered on 25th July 2025 in Nakuru
CM ELRC No. E377 of 2024)***

JUDGMENT

1. The Appellant, being dissatisfied with the Judgment and Decree of the Honourable Adet Vincent Okello, Principal Magistrate, filed this appeal vide a Memorandum of Appeal dated 11th August 2025, on the following grounds that: -

1. The learned Magistrate erred in law and in fact by holding that the existence of a discharge agreement does not automatically oust the court's jurisdiction to examine when the Court of Appeal in Coastal Bottlers Limited V Kimathi

Mithika (2022) eKLR was clear that where a discharge contract is found to exist, the court cannot deliberate on the matters relating to the procedure and fairness of the termination in question.

2. The learned Magistrate erred both in law and fact by failing to appreciate the binding nature of the authorities emanating from the Court of Appeal on the place of discharge contracts in Employment and Labour Relations Claims, hence arriving at an erroneous decision.

3. The learned magistrate erred in both law and in fact by disregarding that the Respondent's suit against the Appellant herein is vexatious, having been mainly based on claims which were duly settled between the Appellant and the Respondent, when they willfully and freely signed the discharge contract dated 25th May, 2023.

4. The learned Magistrate erred both in law and in fact by failing to appreciate the overwhelming documentary evidence as provided by the Appellant to warrant the striking out of the

Respondent's suit, especially the duly signed discharge contract dated 25th May, 2025, through which the Respondent expressly waived any further claims against the Appellant.

2. The Appellant prays that:

- a. The Appeal be allowed with costs to the Appellant.*
- b. The Ruling of Hon. Adet Vincent Okello issued on 29th July 2025 in Nakuru MCELRC Cause No. E377 of 2024 be set aside in its entirety.*
- c. The Respondent's suit as commenced vide a Statement of Claim dated 16th December 2024 be struck out in its entirety with costs.*
- d. The costs of this appeal and of the proceedings in the subordinate court be borne by the Respondent.*
- e. The Appellant be awarded cost of this appeal*

3. The appeal was disposed of by way of written submissions.

Appellant's submissions

4. The Appellant submitted that on 25th May 2023, the Respondent entered into a valid discharge contract with it in which the Respondent formally waived all present and future claims against the Appellant arising from their employment relationship. In the agreement, the Appellant argued that the Respondent confirmed receipt of full payment for statutory dues, salary, leave, severance, medical, and other entitlements, and expressly declared that they had no further claims, including reinstatement or reemployment, and would not pursue any future demands related to their employment with it.
5. The Appellant submitted that the Respondent voluntarily signed a discharge contract on 25th May 2023, waiving all employment-related claims against the appellant. Although the trial magistrate ruled that courts may still examine whether such a discharge was freely executed and whether statutory requirements were met, the Appellant argues that the Respondent's clear acknowledgement of voluntary execution binds him to the contract. The Appellant relied on the case of ***Thara & another v Actae Development Limited & Another [2022] KEELC 3832 (KLR)***, where the court held that parties who voluntarily enter into a contract

are bound by its terms. Also in ***National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR)***, the Court of Appeal stated as follows:

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved... save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity’s function to allow a party to escape from a bad bargain.”

6. The Appellant submitted that the Respondent herein did not raise any allegations of coercion, fraud or undue influence leading to the signing of the discharge contract dated 25th May 2023. As such, it was only imperative that the court enforces the intention of the parties hereto as expressed in the discharge contract. Failure by the court to enforce the intention of the parties to the discharge contract dated 25th May 2023 is a clear derogation from the well-settled law and

principle set out in contract law. Such derogation deserves to be set aside in its entirety.

7. The Appellant submitted that the Respondent's claim in MCELRC Cause No. E377 of 2024 was invalid because a valid discharge contract had already extinguished any cause of action relating to alleged unfair termination or terminal dues. The Appellant relied on **Order 2 Rule 15 of the Civil Procedure Rules**, which empowers courts to strike out pleadings that disclose no reasonable cause of action, are frivolous, vexatious, or amount to an abuse of process. Since the Respondent had expressly acknowledged receipt of all dues and waived future claims, the filing of the suit was contrary to the contract's terms. The Appellant contended that the trial magistrate failed to apply these provisions properly, and therefore the suit was a "non-starter" that ought to have been struck out in the interest of justice.
8. The Appellant submitted that the binding effect of discharge agreements in employment disputes, relying on the Court of Appeal's decision in **Coastal Bottlers Ltd v Mithika [2018] KECA 523 (KLR)**. In that case,

the court held that once an employee voluntarily signs a discharge agreement relinquishing further claims, they are barred from pursuing such claims in court. The judgment stated as follows:

“In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent's termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the respondent's part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties...”

9. The Appellant argued that this precedent is binding on lower courts, and the trial magistrate erred by disregarding it, thereby undermining judicial consistency and constitutional principles.
10. In conclusion, the Appellant submitted that it has shown that the trial magistrate erred by failing to uphold the binding effect of a valid discharge contract freely entered into on 25th May 2023. Since the Respondent did not dispute the contract, the trial magistrate's disregard of its terms undermined its enforceability.
11. Accordingly, the Appellant submitted that the appeal is merited and should be allowed in line with the prayers set out in the Memorandum of Appeal dated 11th August 2025.

Respondent's written submissions

12. The Respondent submitted that the trial magistrate was correct in refusing to strike out the claim despite the existence of a discharge contract. The Respondent emphasized that termination was based on redundancy, which under **section 40 of the Employment Act** requires strict compliance with

statutory procedures, and that the discharge documents presented were equivocal, inconsistent, and not voluntarily executed.

13. The Respondent also submitted that the employee was the weaker party and lacked legal counsel, making the “No Dues Certificate” questionable. The Respondent contended that the trial court properly applied the principles in ***Coastal Bottlers Limited v Kimathi Mithika(supra)***, where the Court of Appeal held:

“Whether or not a settlement agreement voucher bars a party thereto from making further Claims of dependence on the circumstances of each case. A Court faced with such an issue, in our view, should address its mind firstly, in the import of such a Discharge/Agreement and secondly, whether the same was voluntarily executed by the concerned parties.”

14. Still in ***Coastal Bottlers Limited v Kimathi Mithika(supra)***, the court cited the case of ***Thomas De La Rue case***, which stated:

“We would agree with the trial court that a discharge Voucher per se, cannot absolve an employer from Statutory obligation and that it cannot preclude the Industrial Court from inquiring in the fairness of a termination. That is, however, as far as we are prepared to go. The Court has, in each and every case, to make a determination, if the issue raised, whether the discharge voucher was freely and voluntarily executed when the employee was seized of all the relevant information and knowledge.”*

15. Based on these authorities, the Respondent urges the dismissal of the appeal and continuation of the suit, stressing that voluntariness and statutory compliance must be examined before a discharge agreement can bar claims.

Appellant’s supplementary written submissions

16. In rebuttal to the Respondent’s written submissions, the Appellant filed supplementary submissions arguing that the Respondent’s submissions of 9th January 2026 introduced extraneous issues such as

redundancy, letters exchanged in May 2023, and calculations of dues, none of which were determined by the trial court in its ruling of 29th July 2025.

17. The Appellant emphasized that the appeal is confined to three substantive issues:

- (i) *The binding nature of discharge contracts in employment disputes,*
- (ii) *The threshold for striking out pleadings under Order 2 Rule 15 of the Civil Procedure Rules, and*
- (iii) *The binding effect of precedents from the Court of Appeal and the Supreme Court.*

18. The Appellant argued that the Respondent's misapplication of the Court of Appeal's decision in ***Coastal Bottlers Limited vs Kiamthi Mithika (Supra)***, stressing that once an employee signs a discharge contract relinquishing future claims, courts are barred from entertaining such disputes. The Appellant submitted that the trial court erred by failing to fully apply this binding precedent, thereby improperly applying the law.

19. The Appellant concluded by stating that the appeal has merit and should be allowed.

Analysis and determination

20. Being the first appeal, it is the court's duty to reassess the evidence presented, conduct its own analysis, and reach independent conclusions in order to determine whether the trial court's findings align with both the evidence and the applicable law. The court should, however, bear in mind that it did not see the witnesses as they testified and give due allowance. **(See *Selle v Associated Motor Boat Co Ltd & Others [1968] EA 123 and Peters vs Sunday Post Limited (1968) EA 123*).**

21. Having looked at the grounds in the memorandum of appeal and the rival submissions by both parties; the issue for determination is whether the trial magistrate erred in not taking into account the discharge voucher executed by the parties and entering judgment in favour of the Respondent.

22. In this instant case, the Respondent was employed by the Appellant in the year 2016 and was terminated on 25th May 2023 on account of redundancy. The Appellant herein filed a notice of motion dated 28th

February 2025 seeking to strike out the claim by dismissing the suit on the ground that a discharge agreement (“no due certificate”) was voluntarily executed by the Respondent, extinguishing any further claim against the Respondent.

23. The trial court in its ruling stated the existence of a “no due certificate” or discharge agreement, especially where voluntarily executed, is a weighty factor, but does not automatically oust the court’s jurisdiction to examine procedural and substantive compliance with employment law, particularly redundancy. The Claimant had pleaded arguable grounds on non-compliance with section 40(1) of the Employment Act, 2007 and issues of voluntariness/fairness concerning the discharge certificate. The law requires that, in circumstances where “triable issues” subsist, a suit should not be struck out without a fair trial.

24. In ***DT Dobie & Company (Kenya) Limited v Muchina & another [1980] KECA 3 (KLR)***, the Court of Appeal stated as follows:

“No suit ought to be summarily dismissed unless it appears so hopeless that it

plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward, for a court of justice ought not to act in darkness without the full facts of a case before it.”

25. In ***Five Forty Aviation Limited v Finejet Limited [2014] KECA 152 (KLR)***, the Court of Appeal held that the triable issues were raised by the Appellant, and the court set aside the ruling and allowed the appeal as prayed.
26. The court is persuaded that the trial magistrate was correct in dismissing the Notice of Motion dated 28th February 2025, since the suit raised triable issues that required a full hearing and determination. Although the Appellant relied on the ‘no dues certificate’ and argued that the suit ought to have been struck out, failure to hear the suit in its entirety would amount to a breach of Article 47 of the Constitution and the Fair

Administrative Action Act, as the Respondent was entitled to be fairly heard. The question of whether section 40 of the Employment Act was complied with in terminating the Respondent's employment constituted a triable issue. In its ruling, the trial court rightly cited ***DT Dobie & Company (Kenya) Limited v Muchina & Another (Supra)*** to underscore that where triable issues exist, the matter should proceed to a hearing. Accordingly, impartiality required the court to consider the evidence presented before it to render a decision after a fair trial.

27. The Court of Appeal in the cited ***COASTAL BOTTLERS LIMITED -VS- KIMATHI MITIKA (SUPRA)*** states-

“Whether or not a settlement agreement voucher bars a party thereto making further claims dependence on the circumstances of each case.

A court faced with such an issue in our view should address its mind. Firstly, in the import of such a Discharge/Agreement and secondly, whether the same was voluntarily executed by the concerned parties.”

28. The court agrees with the findings in the case of **THOMAS DE LA RUE -VS- OMUTELEMA CIVIL APPEAL 65 OF 2012** the Court of Appeal Stated:-

“We would agree with the trial court that a Discharge Voucher per se cannot absolve an employer from statutory obligation and that it cannot preclude the Industrial court from inquiring in the fairness of termination.”

29. The court having considered the Record of appeal and rival submissions critically is persuaded the appeal against the Ruling of the trial Magistrate is not merited. The particular contents of this case call for a full hearing and determination of the suit. The appeal is dismissed accordingly and the case should be set down for hearing. The same can be heard at a convenient day before any Judge of ELRC Nakuru but if possible before Court No. 1 since Court No. 2 has made this Ruling.

30. The costs will be in the cause.

It is so ordered.

**Dated, Signed and Delivered virtually at Nakuru
this 13th Day of
March, 2026.**

**ANNA NGIBUINI MWAURE
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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL