

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET**

ELRC APPEAL NO. E015 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

KEN-KNIT KENYA LIMITED APPELLANT

VERSUS

JOSEPH KIPSANAI EGO 1ST RESPONDENT

DAVID ATETWA NGEGE 2ND

RESPONDENT

(Being an appeal from the Judgment of the Employment and Labour Relations court delivered on 19th May 2023 in Eldoret CMELRC CAUSE NO. No. E121 of 2023 JOSEPH KIPSANAI EGO & DAVID ATETWA NGEGE VS KEN KNIT (KENYA) LTD)

JUDGMENT

1. The Appellant herein was the Respondent in Eldoret CMELRC No. E121 of 2021, in which the Respondents (then Claimants) filed suit via a Memorandum of Claim dated 15th September 2021, seeking payment of their retirement packages after they retired from employment.
2. After hearing the parties, the trial court delivered judgment on 19th May 2023 in favour of the Claimants and awarded the 1st

Claimant Kshs. 97,479 and Kshs. 143,430 to the 2nd Claimant as compensation for unfair termination. The Claimants were also awarded costs and interest on the suit.

3. Dissatisfied with the judgment, the Appellant filed the instant appeal via a Memorandum of Appeal dated 4th April 2024 on the following grounds:

a) THAT the Honourable Court erred in law by failing to dismiss the suit in its entirety.

b) THAT the Honorable tribunal erred in law by partially allowing the Claimant's suit and granting each of the claimant's 12 months' salary without any legal basis and/or justification as required by Section 49(1) (c) of the Employment Act.

c) THAT the Honorable tribunal erred in law and fact by failing in its ratio decidendi and Obiter Dicta to disclose the reasons for partial allowance of the claim despite there being no evidence advanced to show that the claimant proved their case.

d) THAT the Honorable Court erred in law and fact by finding that the Claimants (now Respondents) had been unfairly

terminated despite the fact that all evidence led to show that they retired.

e) THAT the Honorable Court erred in law and fact by using the wrong standard of proof in deciding the case

4. The Appellant thus prays for the following orders: -

a) That the Appeal be allowed and the judgment of the Honorable Court on 19th May, 2023 be set aside and substituted with an order dismissing ELDORET CMCC ELRC CAUSE NO. E121 OF 2021 JOSEPH EGO & DAVID ATETWA VS KEN KNIT LIMITED in its entirety with costs to the Appellant.

b) The Costs of this Appeal be awarded to the Appellant and paid by the Respondent.

5. The appeal was disposed of by way of written submissions. The Appellant's submissions are dated 8th December 2025 while the Respondent's submissions are dated 21st January 2026.

Analysis

6. This being a first appeal, this Court is guided by the principles espoused in ***Selle & Another v Associated Motor Boat Co. Ltd & Another (1968) EA 123***, namely, to re-evaluate and re-examine the evidence adduced before the trial court and

arrive at its own independent conclusions while bearing in mind that it did not have the opportunity to see or hear the witnesses testify.

7. Vide a Memorandum of Claim dated 15th September 2021, the 1st Claimant averred that he was employed by the Respondent as an electrician in the engineering department with effect from 5th July 2007 until 31st May 2021 when he retired. He stated that at the time of his retirement, he was earning a monthly salary of Kshs 15,553.
8. The 2nd Claimant stated that he was employed by the Respondent as an electrician in the electrical engineering department with effect from 1st July 1987 until 31st May 2021 when he retired and that at the time of his retirement, he was earning a monthly salary of Kshs. 33,886.
9. The Claimants contended that they served the Respondent diligently and faithfully until their retirement but the Respondent failed to pay them their terminal dues upon retirement.
10. They therefore sought to be paid their terminal benefits which they tabulated as hereunder: -

1st Claimant

- i. Sum of Kshs 301,275/= being gratuity pursuant to paragraph 35(a) & (d) of the Employment Terms and conditions of service.
- ii. Sum of Kshs 97,479.2 being compensation pursuant to paragraph 35(b), (d) (2) of the employment Terms and Conditions of service.
- iii. Leave allowance dues.....Kshs
443,796
- iv. NHIF deductions.....Kshs 156,000
- v. Travelling allowance 250KM @150.....Kshs 37,500
- vi. Paternity leaveKshs 18,746
- vii. Sum of Kshs 135,240 being the payments of wages or work done during the public holidays in a year for 168 months.
- viii. Sum of Kshs 139,256/= being overtime dues for 20 hours per week earned and accrued over the 52 weeks at one and half times the normal hourly rate.
- ix. Rest days.....Kshs. 55,702.4
- x. Plus interest on all the limbs above

2nd Claimant

- i. Sum of Kshs 388,701.3/= being gratuity pursuant to paragraph 35(a) & (d) of the Employment Terms and conditions of service
- ii. Sum of Kshs 143,420.16 being compensation pursuant to paragraph 35(b), (d)(2) of the employment Terms and Conditions of service.
- iii. Leave allowance dues.....Kshs 443,796
- iv. NHIF deductions.....Kshs 156,000
- v. Travelling allowance 250KM @150.....Kshs 37,500
- vi. Paternity leaveKshs 268,670.26
- vii. Sum of kshs 328,440 being the payments of wages or work done during the public holidays in a year for 168 months
- viii. Sum of Kshs 110,323,2/= being overtime dues for 20 hours per week earned and accrued over the 52 weeks at one and half times the normal hourly rate.
- ix. Rest days.....Kshs. 93,977.2
- x. Plus interest on all the limbs above

11. Consequently, the Claimants sought for the following reliefs:

- a. The sums pleaded above for each Claimant

- b. Costs of this suit and interests at court rates from time of filing the suit until payment in full
- c. Any other further and better relief the Honourable Court may deem just and fit to grant.

12. The Appellant, the Respondent before the trial court, filed a Memorandum of Response dated 8th October 2021 in which it denied the Claimants' averments and maintained that all their terminal dues had been paid upon retirement.
13. In response to the claim for gratuity, the Appellant contended that the same was untenable as the Claimants were members of the National Social Security Fund and any benefits due were payable through the scheme.
14. On the claim for leave allowance, the Appellant averred that the Claimants had proceeded on leave during the course of their employment and had been paid all their dues. Regarding the claim for refund of NHIF deductions, the Appellant stated that the same were duly remitted to the relevant authority.
15. On the claim for paternity leave, the Appellant contended that no applications had been made and no proof was tendered to support the claim. With respect to public holidays, overtime, and rest days, the Appellant denied liability, stating that the

Claimants did not work on public holidays or rest days and that any overtime worked was duly compensated.

16. The Appellant therefore prayed that the suit be dismissed with costs.

Evidence

17. At trial, the 1st Claimant testified as CW1 and adopted his witness statement dated 15th September 2021 as his evidence in chief. He testified that he was not paid his retirement package and leave allowance upon retirement. He urged the Court to grant the reliefs he sought in the Memorandum of Claim.
18. On cross-examination, CW1 stated that he was paid salary during leave days and that NHIF and NSSF contributions were not remitted for a period of three months. He further stated that he was not granted gratuity or paternity leave. He however admitted that he received Kshs 100,000 from NSSF and also that the Respondent paid him some money, which he argued, was less than what he was entitled to as per his tabulation.
19. The 2nd Claimant testified as CW2 on 8th March 2023 and adopted his witness statement dated 15th September 2021 as

his evidence in chief. He similarly sought for payment of his retirement benefits as tabulated in the Memorandum of Claim.

20. On cross-examination, CW2 stated that his pay slips reflected payment for overtime. He further stated that he visited NSSF but had not been paid due to non-remittance of the statutory deductions by the Respondent. CW2 also stated that he never utilised NHIF services. He further testified that he had been paid leave allowance.
21. On re-examination, the 2nd Claimant maintained that although the Respondent deducted NSSF contributions from his salary, the deductions were not remitted.
22. The Respondent called its Human Resource Manager, Rebecca Cheluget, who testified as RW1. She adopted her witness statement dated 21st November 2021 as her evidence in chief.
23. RW1 maintained that NSSF contributions for the Claimants were remitted to the statutory body and asserted that the Claimants were not entitled to gratuity as claimed since they benefited from the statutory scheme. In response to the other claims by the Claimants, RW1 testified that overtime was paid when employees worked beyond normal hours, that travel allowance was not applicable to factory workers, and that

paternity leave was only granted upon application by an employee.

24. On cross-examination, RW1 stated that although the Respondent produced tabulations indicating that the Claimants were paid their terminal dues, she did not produce documentary evidence to demonstrate payment of leave dues.
25. Upon considering the evidence, the trial court delivered its judgment on 19th May 2023. The court found that most of the claims had not been sufficiently proved and dismissed them. However, it awarded the 1st Claimant Kshs. 97,479 and the 2nd Claimant Kshs. 143,420 as compensation equivalent to twelve months' salary for unfair termination, together with costs of the suit.

Appellant's submissions

26. In its submissions on appeal, the Appellant maintained that the trial court erred in law by awarding the Claimants twelve months' salary as compensation when such relief had neither been pleaded nor justified.
27. The Appellants asserted that Section 49(1)(c) of the Employment Act provides the circumstances under which such

compensation may be awarded. That in this case, there was no finding of unfair termination to justify the award.

28. The Appellant contended that the case of the Claimants was premised on payment of terminal dues and not compensation for unfair termination. On this basis, it is the Appellant's submission that the trial court erred in granting reliefs that had not been sought.
29. The Court was urged to allow the appeal and set aside the judgment of the trial court in its entirety.

The Respondents' submissions

30. On their part, the Respondents submitted that the trial court properly evaluated the evidence and exercised its discretion judiciously in partially allowing the claim. They contended that the court considered each head of claim independently and only awarded what had been proved on a balance of probabilities while dismissing the rest.

31. The Respondents further submitted that the Appellant had failed to demonstrate that the trial court exercised its discretion on wrong principles or that the award was manifestly excessive.
32. The Respondents further submitted that although they had retired, the Appellant failed to demonstrate compliance with lawful and fair exit procedures, thereby justifying the award made by the trial court.
33. They therefore maintained that the findings of the trial court were grounded in both evidence and law and urged the Court to dismiss the appeal with costs and uphold the judgment delivered on 19th May 2023.

Determination

34. Having carefully considered the Record of Appeal and the submissions by both parties, the issue that falls for determination is whether the trial court erred in awarding the

Respondents compensation equivalent to twelve months' salary for unfair termination.

35. The main grievance of the Appellant is that the trial court awarded a remedy that had neither been pleaded nor proved. It is the Appellant's position that there was no basis for a finding of unfair termination as the Respondents had retired from employment.
36. It is a settled principle of law that parties are bound by their pleadings and a court of law ought not to grant reliefs that have not been specifically pleaded and proved. A perusal of the Memorandum of Claim reveals that the Respondents' claim was anchored on alleged unpaid terminal dues arising from their retirement. The claim did not, in substance, seek a declaration of unfair termination even though the Respondents prayed for compensation under Section 49(1)(c) of the Employment Act.
37. From the evidence on record, it is not in dispute that the Respondents exited employment upon attaining retirement age. The Respondents themselves pleaded and testified that they retired from service without being paid all their retirement dues. There was no material placed before the trial court to

demonstrate that the retirement of the Respondents amounted to unfair termination within the meaning of the Employment Act.

38. While this Court agrees with the Respondents that an employer is under an obligation to demonstrate compliance with lawful exit procedures, the remedy for failure to settle terminal dues is distinct from compensation for unfair termination. The two causes of action are legally separate and must be specifically pleaded and proved.
39. In its judgment, the trial court expressly found that the various heads of claim for terminal dues had not been sufficiently proved and proceeded to dismiss them. Having made that finding, there was no legal basis upon which the court could then award compensation for unfair termination, particularly in the absence of proof of such a claim.
40. Moreover, the trial court did not provide a reasoned basis for the award of twelve months' salary as compensation, nor did it demonstrate consideration of the factors set out under Section 49(4) of the Employment Act, which guide the exercise of discretion in awarding such compensation.

41. In the upshot, it is my finding that the trial court erred both in law and in fact in awarding compensation for unfair termination when no such claim had been proved or justified by the evidence on record.
42. Consequently, the appeal is merited and is allowed in the following terms: -
- i. The judgment of the trial court delivered on 19th May 2023 awarding the Respondents compensation for unfair termination is hereby set aside in its entirety.
 - ii. In its place, an order is hereby issued dismissing Eldoret CMELRC No. E121 of 2021 in its entirety.
 - iii. There shall be no order as to costs in both the trial court and in the appeal.
43. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 23RD DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**