



**Real Careers Limited v Mutuku & 2 others (Appeal E096 of 2023)  
[2026] KEELRC 1190 (KLR) (17 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1190 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E096 OF 2023  
DKN MARETE, J  
APRIL 17, 2026**

**BETWEEN**

**REAL CAREERS LIMITED ..... APPELLANT**

**AND**

**NORAH NDINDA MUTUKU ..... 1<sup>ST</sup> RESPONDENT**

**FLORENCE NDUKU MUNYAO ..... 2<sup>ND</sup> RESPONDENT**

**PHILOMENA MBITHE MAKULUU ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Appeal dated 16th June, 2023. It comes out as follows;
  - i. The trial court erred in both law and fact in awarding one month salary in lieu of notice even when the Appellant clearly stated that the Respondent had absconded duty.
  - ii. The trial court erred in both law and fact in awarding seven (7) months salary as compensation yet the claimants had contributed to the loss of employment.
  - iii. The trial court erred in both law and fact when he awarded seven (7) months compensation which was too high in the circumstances without factoring in that the Respondents had absconded duty.
  - iv. The trial court erred in both law and fact when he failed to consider the evidence of the Respondent that the claimants had absconded duty and refused to meet the director of the Respondent.
  - v. The trial court erred in both law and fact when he found that the claimants had proved their case yet it fell short of the required standard.



2. Reasons wherefore the Appellant prays for orders that:-
  1. The appeal be allowed and the judgment of the trial court be set aside with costs.
  2. The costs and interests of this suit.
  3. Such further and other orders that this court may deem just and expedient.
3. The Appellants in their written submissions dated 5th December, 2024 open with a recitation of the facts of their case. This is that the Respondents were employed by the Appellants, a labour outsourcing firm to work for a company, Promo Kings. It is their case that the Respondents were never terminated but became unbearable to work with for being chaotic, uncooperative and not wanting to be assigned duties.
4. The Appellant further submits that the Respondents were issued with stern warnings but were never dismissed or terminated from employment for these misdeeds. On 17th May, 2021, they made their way to work and they were instructed not to enter the work premises as they had unresolved issues. They were instructed to go home and report back the following day for a meeting between the Respondents, the supervisor and the Managing Director of the Appellant, a Mr. Charles Aura.
5. The Appellants submit that the Respondents never showed up or respond to the Appellant's call which amounts to dismissing themselves. No one had the intention of dismissing them but rather they were expected to meet and discuss the way forward in their employment. Their version of the facts belying their termination from employment is open lies. They did not respond to the allegations of disrespect at the workplace but instead absconded duty. They were all this time not keen on resolving their issues when called upon to do so but left work leaving the Appellant with no choice but to let go.
6. The Appellant's further submits in reliance of Section 44 and particularly 44 (a) of the *Employment Act*, 2007 which provides as follows;
  - a. Without leave of other lawful cause, an employee absents himself from the place appointed for the performance of his;
  - b. An employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.
7. The appellant submitted that they never wrongfully dismissed the respondents herein since the respondents absconded duty on their own accord.
8. The respondents were employed by the appellant, a labor outsourcing firm. The respondents had been contracted to work at the premises of a company called Promo Kings.
9. There was no termination of work but rather the respondents herein became unbearable to work with since they became chaotic, did not want to be assigned duties, and also never wanted to be cooperative whenever instructed by their supervisor at Promo Kings. This made the supervisor issue a stern warning since the disrespect towards him had become unbearable, but at no point did he dismiss them or terminate their services.
10. On 17th May 2021, the respondents made their way to work but they were instructed not to enter the Promo Kings Premises since they had unresolved issues, they were instructed to go home and report back the next day for a meeting between the Respondents, the supervisor and the Managing Director of the Appellant herein, one, Charles Aura. The Respondents never showed up and never picked up the Appellant's calls and it is safer to say, they dismissed



themselves from work since no one had the intention of dismissing them but rather they were supposed to meet and discuss the way forward for them.

11. The Appellant further submits that the Respondents are not being candid and they are openly lying, not disclosing facts surrounding their own self-dismissal. They never responded to the allegations of what happened that they were disrespectful at the workplace inasmuch as they had the duty to inform the court of what transpired at the workplace that led to them absconding work.
12. It is clear that the Respondents were never dismissed, never wanted to resolve the issue when called upon and they chose to abscond work and not pick phone calls from their employer. This left the Appellant with no choice but rather let them go as they wished. This rightly disentitles them from the award of the trial court.
13. The Appellants again submit that they should not be held responsible for the predicaments of the Respondents. To buttress this analogy, they seek to rely on the authority of *Mackenzie Maritime (E.A) Limited vs Moses Ochola Juma ELRCA No. E073 of 2022* where the court held as follows;
14. In *Mackenzie Maritime (E.A) Limited v Moses Ochola Juma ELRCA No.E073 of 2022* the court observes as follows;

“...that an employee who is invited to a disciplinary hearing and fails to attend to defend himself cannot turn around and blame an employer.”
15. The Respondents herein chose to abscond duty on their own accord, the supervisor made genuine attempts to reach them via phone calls so that they would arrive at an amicable solution to circumstances that surrounded their insubordination and inability to respect him, but they never showed up when called upon. They rather decided to go and never show up again. This brings the question of who exactly is to be blamed for their predicament. If they showed up for the meeting, the issue at hand would have been amicably resolved and a proper solution or a proper termination of their employment would have been arrived at.
16. The Appellant in buttressing their case sought to rely on the authority of *Stanley Omwoyo Onchweri v BOM Nakuru YMCA Secondary School [2015] eKLR* the court held that the employer must demonstrate what measures were put in place in tracing the employee is alleged to abscond duty. It is their case and submission that the act of absconding duty under Section 44 of the *Employment Act* constitutes gross misconduct and renders an employee liable for summary dismissal. Further, the outcome of the respondents' actions renders them summarily dismissed and they do not qualify for any reliefs that the trial court granted them since the Appellant made an effort to reach out to the respondents but all was in vain.
16. This further resonates with the authority of *Javan Kisoi Mulwa v SAA Interstate Traders (K) Ltd [2018] eKLR* where the court observed thus;

“...where desertion takes place when the employee has no intention of resuming work. Absconding is when the employee fails to seek permission for work absence. For an employer to claim abscondment, this must be demonstrated and proved.”
17. The Respondents therefore have no one to hold accountable for their predicaments and have themselves to wholly to blame. Even the certificate of service should be issued to them with costs since their desertion from work interrupted the company's work negatively. The



Respondents were on a one-year contract and they went against term (i) of their contract where they absented themselves on the 18th day of May 2021 and thus the seven-month award for compensation was excessive.

18. All the Respondents state that they had their employment terminated on the 15th yet they reported to work on the 17th on May 2021 where Gilbert the supervisor took their ID cards. Philomena Mbithe confirmed in her evidence that they were indeed asked to report back to the premises on the 18th of May 2012 as captured on page 5 of the submissions. She admitted that she was called while she was on the way. It is thus clear that the Respondents acted collectively and refused to report back on the 18th day of May, 2024 for a meeting with Charles Aura, an agent of the Appellant.
19. The Respondents in their written submissions dated 29th January, 2025 cite the authority of *Moses Odhiambo Muruka & Another vs Stephen Wambembe Kwatenge & Another* [2018] eKLR to emphasize the role of a first Appellate Court in sitting on appeal. This is to re-evaluate, re-analyse and re-appraise the facts and evidence before court and come up with its own conclusion.
20. On this basis, the Respondents submits thus;
  - i. That Section 36 of the *Employment Act*, 2007 empowers courts to award the remuneration which would have been earned by that party or paid by him in the absence of notice. The award by the trial court was therefore faultless.
  - ii. As to the award of seven (7) months salary as compensation for unlawful termination of unemployment is justified by the authority of *Stephen Mwallyo Mbondo vs County Government of Kilifi*, Civil Appeal No. 2 of 2020, 2021 eKLR where the Court of Appeal emphasized on the principle of restraint in interfering with awards of the trial court as follows;

“The general principles on when an appellate court may interfere with a discretionary power of a trial Court are now well settled. In the case of *Stephen Mwallyo Mbondo v County Government of Kilifi* [2021] eKLR which enjoined with the authority of *Mbogo & Another vs Shah*, [1968] EA, these principles were set out thus:-

“An appellate court will not interfere with the exercise of the trial court’s discretion unless it is satisfied that the court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous, or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of judicial discretion and that as a result there has been misjustice.”

“The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought whether by evasion or otherwise, to obstruct or delay the course of justice.”



21. This is also coupled with the authority of *Patel v E.A. Cargo Handling Services Limited* (1974) E.A. 75, this Court provided thus;

“There are no limits or restrictions on the judge's discretion except that if he does vary the judgment, he does so on such terms as maybe just The main concern of the court is to do justice to the parties and the court will not impose condition on itself or fetter wide discretion given to it by the rules: the principle obviously is that unless and until the count has pronounced judgment upon merits or by consent it is to have power to revoke the expression of its coercive power where that has obtained only by a failure to follow any rule of”

22. It is their case and submission that like was in these authorities, this court should not interfere with the trial courts award of seven (7) months compensation by the trial court.

23. We submit that award of compensation is a discretionary power to be exercised judicially and reasonably. Section 49 of The *Employment Act*, 2007 put a ceiling that maximum compensation for unfair and unlawful termination to be 12 months' salary. The leaned trial magistrate having found that the Respondents' termination was unfair and unlawful exercised his discretion and awarded the Respondents the 7 months' salary as compensation for unlawful dismissal.

24. The Respondents further faulted and rubbished the ground of error by not considering that the Respondents absconded duty. This is taken care of by the observations by the trial court that the Appellant did not adduce any evidence in support of a case of absconding duty. This is as follows;

“In the present case, RW1 simply alleged the Claimants absconded duty No evidence was produced showing the employer tried to contact the employees. The record will reflect that, RW1 admitted that, they have nothing to show they looked for the Claimants.”

25. The trial court therefore carefully considered the evidence of the parties in reaching at its considered decision. This appeal is therefore devoid of merit and should be dismissed.

26. This matter squarely borders on the nature of termination of the employment of the Respondents. It is their case that they were terminated from employment and left for that. They were only paid for the days worked in the month of May, 2021. The Respondent does not come out clean in supporting their theory and proposition of absconding duty. There is no evidence in support of this. There is no explanation whatsoever as to how come the Respondents were paid some token sums at departure. This speaks loudly about the circumstances surrounding the separation of the parties.

27. I am therefore inclined to dismiss the appeal with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 17TH DAY OF APRIL 2026.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:



Mr. Wanyanga instructed by Akolo Wanyanga & Company Advocates for the Appellant.

Miss Owuor instructed by Charles Gomba & Company Advocates for the Respondent.

