

**REPUBLIC OF KENYA**

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

**APPEAL CAUSE NO. E013 OF 2024**

*(Before D. K. N. Marete)*

**MANDEEP ENTERPRISES LIMITED.....APPELLANT**

**VERSUS**

**JOSEPH BULIMO.....RESPONDENT**

**JUDGMENT**

This matter was originated by way of a Memorandum of Appeal dated 18th January 2024. It is an appeal from a judgment delivered on 19th December, 2023 in Milimani in CMEL No. E2037 of 2021.

The Memorandum of Appeal sets out the following grounds:

- i) That the Learned Magistrate erred in law and fact in disregarding the evidence tendered by the Appellant and/or failing to consider the said evidence in its totality.*
- ii) That the Learned Magistrate erred in law and fact in making a finding that the Respondent/Claimant was unfairly terminated and in making a consequent erroneous award of Kshs. 150,000/- as compensation.*
- iii) That the Learned Magistrate erred in law and fact in making a finding that the Respondent/Claimant did not resign and in making a consequent erroneous award of Kshs. 25,000/- as payment in lieu of notice.*
- iv) That the Learned Magistrate erred in law and fact in making a finding that the Respondent/Claimant was entitled to 3 months' unpaid salary and in making a*

*consequent erroneous award of Kshs. 75,000/- as unpaid salary when the Respondent had not served notice.*

- v) *That the Learned Magistrate erred in law and fact by disregarding the cardinal principle of legal personality of the Appellant and the effect that the administrative action by the Kenya Revenue Authority against the Appellant had on the employment relationship between the Appellant and the Respondent.*

The Appellant prays for orders that:

- a) *This appeal be and is hereby allowed.*
- b) *The Judgment of Honourable 19/12/2023 dated and delivered on 19/12/2023 and all consequential orders thereto be set aside. (sic)*
- c) *Judgment be entered for the Appellant for:*
  - i. *Separation upon resignation.*
  - ii. *One month's salary in lieu of notice.*
- d) *The costs of this appeal be awarded to the Appellant.*
- e) *Interest at court rates on (c) and (d) above.*
- f) *Any other order that the court may deem fit in order to meet the ends of justice.*

The Appellant's case before the trial court was presented through the following documents, all of which form part of the Record of Appeal: a Memorandum of Claim dated 29th November, 2021 the Respondent's Witness Statement of even date, a List of Witnesses and a List of Documents of even date, a Memorandum of Appearance dated 17th December, 2021, a Memorandum of Respondent of even date, the Respondent's Witness Statement and List of Documents of even date, a Reply to Defence dated 3rd February, 2022, and submissions filed at trial on 19th October, 2023. At the appeal stage, the Appellant filed Submissions dated

14th October, 2025 and a Supplementary Record of Appeal containing the proceedings and decree.

The Appellant's case, as presented at trial and on appeal, is as follows: On or around the year 2021, the Appellant Company was subjected to administrative action by the Kenya Revenue Authority which froze its bank accounts during the period of inquiry. As a result of this, the Appellant was unable to honour its payment obligations to its employees on time, including the Respondent/Claimant, although it made best efforts to do so. The Respondent, Joseph Bulimo, had been employed by the Appellant as a driver from 2020. He was a permanent employee who was never issued with a pay advice slip. He was not paid for the months of July, August and September 2021.

The Appellant's central contention was that the Respondent voluntarily resigned from employment by letter dated 13th September, 2021. It was the Appellant's case that, dissatisfied with the delay in payment of his salary caused by the KRA account freeze, the Respondent issued a resignation letter. Upon receipt of that letter, the Appellant acknowledged it and responded by a letter dated 14th September, 2021 lamenting the short notice given by the Respondent. The Appellant further contended that, on his last day of work, the Respondent took the company pickup without authorisation and disappeared for one to two days without informing any person at the Appellant's establishment. The Respondent subsequently commenced employment at a competing business situated next to the Appellant's premises, where he was still working at the time of trial, a fact the Appellant maintained was uncontroverted.

In its Submissions dated 14th October, 2025, the Appellant identified the sole issue for determination as whether the trial court erred in rejecting the resignation letter dated 13th

September, 2021. The Appellant submitted that the trial court misdirected himself by rejecting the resignation letter solely on the basis that it lacked a company stamp, which the Appellant contended was an irrelevant factor and a misdirection of law. The Appellant further contended that the totality of evidence adduced at trial established that the Respondent had voluntarily separated from employment. The Respondent admitted in cross-examination that he did not give any notice and the Appellant acted on the resignation letter by lamenting the short notice. The Respondent was uncontrovertedly working at a rival establishment next door immediately thereafter. This is besides the Respondent's own admission that his wife was unwell and that he took her to hospital which reason or justification was not pleaded anywhere in his statement of claim. It was fabricated to retrospectively explain an absence that was, in reality, a resignation.

The Appellant sought to rely on the authority of **Oceanfreight Shipping Company Limited v Oakdale Commodities Limited [1997] KECA 222 (KLR)** for the proposition that an appellate court may only interfere with the findings of a trial court where it misdirected itself in law or in fact by taking irrelevant factors into account, failing to consider relevant factors, or arriving at a plainly wrong decision. They also relied on **Joel v Tirgaga Tea Factory Company Limited [2022] KECA 651 (KLR)** to back the proposition that where an employee voluntarily writes a resignation letter, the issue of unfair or unlawful termination does not arise and the employee is accordingly not entitled to compensation or salary in lieu of notice under section 49 of the Employment Act, 2007. The Appellant further relied on **Joshua Mung'athia v Evarick Muthuri Ntoiba & another [2021] KEHC 5869 (KLR)** on the duty of the first appellate court to re-evaluate the case afresh, and urged this Court to do so and allow the appeal.

The Respondent's case before the trial court was presented through the Memorandum of Claim, his Witness Statement, his List of Documents, and his Reply to the Defence, all filed on 29th November, 2021. At the appeal stage, the Respondent filed Submissions dated 4th November, 2025 in such support.

The Respondent's case, as presented at trial and on appeal, comes out thus: Joseph Bulimo was employed by the Appellant as a driver from 2020 and was a permanent employee. He was never given a payslip. He worked from as early as 400 hours and as late as 1700 hours. He transported luggage, worked on public holidays, and worked overtime none of which was compensated. He was not paid his salary for the months of July, August and September 2021. His wife fell ill and he obtained permission from his immediate supervisor on 26th September, 2021 to take her to hospital. He reported back to work on 30th September, 2021 whereupon the Appellant's Managing Director, one, a Mr. Mandeep Singh, verbally informed him that his services were no longer required and ordered him to go home. He was never recalled. He was never paid his terminal dues, or accumulated leave and also never paid his July, August and September salary.

The Respondent denied having written or authored the resignation letter dated 13th September, 2021 that was produced by the Appellant through pages 16 to 17 of the Record of Appeal. The Respondent maintained in his evidence in chief and under cross-examination that the letter was not his letter. In cross-examination by Mr. Ombati, the Respondent specifically stated that he did not write the letter dated 13th September 2021 and was not aware of its filing in court on 17th December, 2021. The Respondent noted that the acknowledgement letter dated 14th September, 2021 which the Appellant relied upon as

evidence of having received the resignation letter was written by the Appellant and addressed to itself all this raising serious doubts as to the authenticity of the entire transaction.

On the merits, the Respondent in his Submissions dated 4th November, 2025 invoked sections 107 and 108 of the Evidence Act, Chapter 80, Laws of Kenya and further relied on the authority of **Mutunga Nyamai v Chancery Restaurant Limited t/a China Plate [2020] KEELRC 405 (KLR)** for the proposition that where an employee denies authoring a resignation letter, the burden of proving that the letter was authored by the employee lies with the employer who seeks to rely upon it. The Appellant's witness was unable to authenticate the letter, produce a handwriting expert or otherwise establish that the signature and handwriting belonged to the Respondent.

On grounds II and III, the Respondent submitted that his evidence of verbal dismissal on 30th September 2021, which was never rebutted. Additional to the Appellant's own admission in cross-examination that the Respondent "ran away with the company pickup for one to two days without giving reasons" (which directly contradicts the resignation theory) or established that the termination was the Appellant's act and not a voluntary departure. On this the Respondent sought to rely on authority of **Naima Khamis v Oxford University Press (E.A) Limited [2017] eKLR** and sections 41, 43 and 45 of the Employment Act, 2007 for the proposition that an employer must justify a termination with valid reasons and also in accordance with fair procedure. On grounds IV and V, the Respondent submitted that the Kshs. 75,000/- in unpaid salary had since been paid by the Appellant to the Respondent by cheque No. 00016 dated 30th January, 2024 thereby rendering these grounds of appeal as spent.

The issues for determination therefore are:

- 1) Whether the trial court erred in rejecting the resignation letter dated 13th September 2021.
- 2) Whether the termination of the Respondent's employment was unfair and unlawful.
- 3) Whether the Appellant is entitled to the reliefs sought on appeal.
- 4) Who bears the costs of this appeal.

On the applicable standard of review, this court is entitled and obliged as a first appellate court to re-evaluate the evidence on the record and draw its own conclusions, while remaining conscious that it lacked the advantage of observing the demeanour of witnesses at trial. Interference with the findings of the trial court is warranted only where the trial court misdirected itself in law or in fact, took irrelevant considerations into account, failed to consider relevant matters, or reached a decision that is plainly wrong. This is the ratio decidendi in the authority of **Oceanfreight Shipping Company Limited v Oakdale Commodities Limited [1997] KECA 222 (KLR)**. This duty to reconsider the evidence afresh is settled: see also **Joshua Mung'athia v Evarick Muthuri Ntoiba & another [2021] KEHC 5869 (KLR)**.

On the 1st issue for determination, the pivotal question is whether the trial court erred in rejecting the resignation letter dated 13th September, 2021. The trial court rejected the letter primarily on the basis that it lacked the company's receiving stamp. The Appellant argues that this was an error and that the absence of a receiving stamp is an irrelevant factor and that the evidence in totality pointed to a voluntary resignation.

This court agrees with the Appellant that a receiving stamp is not, of itself, a conclusive criterion for assessing the authenticity of a resignation letter. However, the enquiry does not end there. The primary question should be whether the Respondent authored and delivered

the resignation letter, a question that arises squarely because the Respondent denied authorship. Once an employee denies authoring a document that an employer relies upon, it is incumbent upon the employer to establish, on a balance of probabilities, that the document was indeed authored and tendered by the employee. Sections 107 and 108 of the Evidence Act are clear: whoever asserts the existence of a fact must prove it. The Appellant relied heavily on the resignation letter, yet its witness, one, Mr. Mandeep Singh was unable to establish, whether by handwriting comparison, expert evidence, or other admissible means that the signature and handwriting on the letter belonged to the Respondent. No witness testified that they saw the Respondent write or sign the letter. No handwriting expert was called whatsoever. The purported acknowledgement letter of 14th September, 2021 far from corroborating the resignation, was written by the Appellant and addressed to itself. It was never shown to have been delivered to the Respondent. This court endorses and subscribes to the reasoning in **Mutunga Nyamai v Chancery Restaurant Limited [2020] KEELRC 405 (KLR)** that the burden of proving the resignation letter lay with the Respondent therein, now Appellant and this was not discharged, or at all.

The Court further notes specific internal inconsistencies in the Appellant's account. In cross-examination, Mr. Mandeep Singh admitted that the Respondent "went away with the pickup for days" without informing anyone. This is the Appellant's own characterisation of the Respondent's conduct, not a man who had just resigned by letter, but a man who had either absconded or been dismissed. A case of resignation does not need to be reinforced with assertions of taking the company vehicle without explanation. The Appellant's case at trial straddled an irreconcilable contradiction: the Respondent resigned, yet simultaneously absconded with the vehicle. These two accounts cannot coexist.

This Court finds that the trial court, even if it articulated its reason imprecisely by focusing on the company stamp, arrived at the correct conclusion. The resignation letter was not authenticated and therefore the Respondent cannot have resigned. The true mischief was not procedural, it was the Appellant's failure to prove its foundational factual assertion. This ground of appeal fails.

On the 2nd issue, whether the termination was unfair and unlawful, the legal framework is clear. Section 43(1) of the Employment Act, 2007 places the burden on an employer in any claim arising from termination to justify the reasons for the termination. Section 45(2) requires that the termination be for a valid reason a fair reason related to the employee's conduct, capacity or compatibility, and that it be carried out in accordance with fair procedure. Section 41 imposes a mandatory requirement to hear the employee before termination on grounds of misconduct, poor performance or physical incapacity.

From the evidence on record, the Respondent testified that he was verbally informed by Mr. Mandeep Singh on 30th September, 2021 that his services were no longer required. That testimony was not meaningfully rebutted. The Appellant's witness denied having dismissed the Respondent and maintained that the Respondent resigned, but as this court has found above, that resignation was not proved. There was no written termination letter. There was no disciplinary hearing. There was no opportunity accorded to the Respondent to respond to any charge. The Appellant's own letter of 14th September, 2021, even if the court were to accept it as a document responding to an actual resignation did not follow the mandatory procedure under section 41 of the Employment Act, 2007. In the event that the document was, as the Appellant claimed, a response to a resignation, then no termination occurred. But if no resignation occurred, as this court has found, then a dismissal occurred without any of the procedural safeguards required by statute.

The Appellant sought to rely on the KRA account freeze as mitigating the employment relationship. This Court finds that defence unavailing. The legal personality of the Appellant as a corporate entity does not insulate it from its statutory duties as an employer. Whatever the financial difficulties of the Appellant, it remained bound to pay wages timeously and to follow lawful procedure in any termination. Ground v of the Memorandum of Appeal accordingly fails. The Respondent's termination was unfair and unlawful. There was no valid reason established nor a pursuance of fair procedure in the event of such termination of employment.

On the 3rd issue, the reliefs awarded by the trial court are considered in turn. One month's salary in lieu of notice at Kshs. 25,000/- is appropriate and is upheld. Compensation for unfair termination at Kshs. 150,000/-, being six months' equivalent salary, is within the parameters of section 49 of the Employment Act, 2007 and is upheld, having regard to the nature of the Respondent's employment, the duration of service and the conduct of both parties. Three months' unpaid salary at Kshs. 75,000/- was awarded by the trial court for July, August and September 2021. The Respondent's Submissions on appeal note that this sum was paid by the Appellant by cheque No. 00016 dated 30th January, 2024. The trial court's order in this regard therefore stands as paid and no further order of court is required on this. The award of service pay was made, and costs were awarded to the Respondent. These orders are all upheld.

On the 4th issue, costs follow the event. The appeal having been dismissed, the Respondent is entitled to the costs of this appeal.

I am therefore inclined to dismiss the appeal and order as follows;

- i. The Judgment and Decree of the trial court dated 19th December 2023 in CMEL No. E2037 of 2021 be and is hereby affirmed in its entirety.
- ii. A declaration be and is hereby issued that the termination of the Respondent's employment by the Appellant was unfair and unlawful.
- iii. The Appellant be and is hereby ordered to meet and pay to the Respondent the following sums in relief:
  - One month's salary in lieu of notice.....Kshs.  
25,000.00
  - Six (6) months Compensation for unfair termination ...Kshs.  
150,000.00

**Total of Award** **Kshs. 252,800.00**

- iv. The unpaid salary of Kshs. 75,000/- is noted as having been paid by the Appellant to the Respondent by cheque No. 00016 dated 30th January 2024 and requires no further order.
- v. Interest on the outstanding award shall run at court rates from the date of this judgment of court until payment in full.
- vi. The Appellant be and is hereby ordered to issue a Certificate of Service to the Respondent within 30 days of this judgment of court.
- vii. The costs of this appeal and the lower court shall be borne by the Respondent.

Delivered, dated and signed this **14th** day of **May** 2026.

**D. K. Njagi Marete**  
**JUDGE**

**Appearances:**

1. Mr. Mugambi holding brief for Ombati instructed by Ombati Ong'au & Co. Advocates for the Appellant.
2. Miss Matunda instructed by Matunda Mutemi & Co. Advocates for the Respondent.