



**Langat v Konoin Growers Sacco Society Limited (Civil Appeal  
8 of 2018) [2024] KECA 1859 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KECA 1859 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL 8 OF 2018  
MA WARSAME, SG KAIRU & FA OCHIENG, JJA  
DECEMBER 20, 2024**

**BETWEEN**

**JOSEAH KIPRONO LANGAT ..... APPELLANT**

**AND**

**KONAIN GROWERS SACCO SOCIETY LIMITED ..... RESPONDENT**

*(An appeal from the Judgment and Decree of the Employment and Labour Relations Court  
at Nakuru (D. K. Marete, J.) dated 17th October 2017 in ELRC Cause No. 2 of 2014)*

**JUDGMENT**

1. The appellant herein, vide a statement of claim dated 27<sup>th</sup> May 2013 sued the respondent for breach of the terms and conditions of his employment, and for his illegal termination.
2. The appellant's case was that, by an appointment letter dated 29<sup>th</sup> December 1995, he was employed by the respondent as a secretary manager under Job Group II. His salary was Kshs.4,500 per month. The salary was subject to annual increments on 1<sup>st</sup> January of every financial year. He signed the letter on 30<sup>th</sup> December 1995 and he was posted to the respondent's Mogogosiek office and assigned payroll number 001.
3. The appellant stated that his troubles with the respondent began on 10<sup>th</sup> December 2004, when he was sent on compulsory leave. Sometime in January 2005, the respondent made allegations that the appellant had stolen. This led to his arrest and detention. On 17<sup>th</sup> January 2005, he was charged in Sotik SRMCCR No. 93 of 2005 with several counts of stealing by servant, conspiracy to defraud, and failing to prevent the commission of a felony. He stated that he was later acquitted of the charges.
4. The appellant claimed that when he was sent on compulsory leave, he was not paid. At that time, he was earning a gross salary of Kshs.25,540 per month.



5. This prompted the appellant to lodge the claim before the trial court, seeking orders, inter alia, that:
  - “ a) A declaration that the claimant is deemed to be in employment with the respondent and that his contract of employment has not been terminated.
  - b. An order directing the respondent to allow the claimant to resume his duties as an employee of the respondent.
  - c. An order that the claimant be paid all his salaries and benefits from the time of the compulsory leave until the date of reinstatement or until the date ordered by the court.
  - d. Costs of the suit.
  - e. Any other relief the honourable court may deem fit to grant.”
6. In their response to the claim dated 28<sup>th</sup> November 2013, the respondent denied the claim. They stated that they were justified in sending the appellant on compulsory leave without pay. They also stated that the appellant was not entitled to the reliefs he had sought.
7. The respondent pointed out that, while the appellant was on compulsory leave, he took up alternative employment at their sister Sacco, hence the issue of termination did not arise.
8. After evaluation of the case before the court, the learned Judge held that the appellant had failed to establish a case of unlawful termination on a balance of probability. Consequently, the appellant’s claim was dismissed.
9. Being aggrieved by the trial court’s judgment, the appellant lodged the present appeal vide a memorandum of appeal dated 18<sup>th</sup> January 2017. He raised 11 grounds of appeal which can be summarized as follows:
  - a. The learned Judge erred in dismissing the appellant’s claim.
  - b. The learned Judge erred in misinterpreting the provisions of Section 44(4) (c) and (g) of the *Employment Act*.
10. The appellant prayed for orders that the appeal be allowed, the trial court’s judgment be set aside, and that he be awarded the costs of the appeal.
11. When the appeal came up for hearing on 12<sup>th</sup> June 2024, Mr. Kamau, learned counsel holding brief for Mr. Kioko appeared for the appellant, whereas Mr. Kefa, learned counsel appeared for the respondent.
12. Mr. Kamau relied on his written submissions dated 11<sup>th</sup> June 2024 to support the appeal. In the submissions, the appellant argued all 11 grounds as one, with the view of demonstrating that his dismissal was unprocedural and unlawful.
13. The appellant submitted that the learned Judge misinterpreted Section 44(4) (c) & (g) of the *Employment Act* on the grounds for summary dismissal, as due process was mandated under Section 41. He submitted that he was not given a notice explaining the reasons for his dismissal nor was he afforded the opportunity to defend himself against the said allegations.
14. The appellant submitted that he was never served with a dismissal letter and only became aware of the purported dismissal letter dated 29<sup>th</sup> September 2009 when the respondent filed their documents in court. He submitted that the employment law mandates that an employee be given an opportunity to be heard before any adverse action is taken against them. He further submitted that the burden of



proof was on the respondent, as the employer, to justify procedural fairness in his dismissal as provided for under Section 47(5).

15. The appellant submitted that the respondent did not prove that the proper procedure was followed; as they failed to give the appellant the reasons for dismissal in writing, and also that the respondent failed to demonstrate that they had conducted a fair hearing.
16. The appellant submitted that due to lapse of time, reinstatement was not feasible, and abandoned the prayer entirely.
17. Opposing the appeal, Mr. Kefa relied on the written submissions dated 15<sup>th</sup> November 2022, which he briefly highlighted. Counsel submitted that the appellant's dismissal was procedurally fair as he was given an opportunity to present his case before the respondent's board through a letter dated 14<sup>th</sup> December 2004.
18. Counsel relied on the case of Kenya Revenue Authority vs Menginya Salim Murgani [2010] KECA 164 KLR in submitting that a hearing need not solely be determined through oral submissions, as it can be done through the exchange of letters as was the case herein. Counsel submitted that the appellant had indeed conceded to the malpractices that happened under his watch, and he was remorseful.
19. Counsel pointed out that, while the appellant was on compulsory leave and the respondent was in the process of investigations and internal disciplinary procedures, the appellant sought employment from another company, Silibwet Sacco.
20. Counsel submitted that an internal disciplinary process is distinct from a criminal process. He pointed out that in as much as the appellant was acquitted of the criminal charges, the respondent had the authority to conduct their own internal investigative and disciplinary processes.
21. Counsel pointed out that the appellant's suit was time-barred.

He submitted that the appellant was dismissed on 29<sup>th</sup> September 2009, yet he instituted the claim on 1<sup>st</sup> November 2013. Counsel submitted that this was outside the contemplated timelines of three years under Section 90 of the *Employment Act*. However, counsel conceded that the issue had been determined by the trial court, and the respondent did not appeal against the said ruling.

22. In a brief rejoinder, Mr. Kamau reiterated that due procedure was not followed in dismissing the appellant, as the letter referred to by the respondent was issued in 2004 yet action was only taken in 2009, five years later. He pointed out that a decision should have been made within reasonable timelines. Counsel pointed out that the letter did not state that the appellant was guilty of misconduct, but rather he had found a job elsewhere.
23. This is a first appeal. Rule 31(1)(a) of the Court of Appeal Rules provides that:

- (1) On an appeal from a decision of a superior court acting in the exercise of its original jurisdiction, the Court shall have power —
  - a. to re-appraise the evidence and to draw inferences of fact;
  - b. ...”

24. We must defer to the findings of fact made by the trial court, especially where they are based on the credibility of witnesses, because the trial court had the added advantage of hearing and seeing the said witnesses testify. Nevertheless, we are entitled to interfere with those findings if they are based on no evidence or upon a misapprehension of the evidence or if the trial court is shown demonstrably to have



acted on wrong principles in reaching the findings. In the case of Kenya Ports Authority vs Kuston (Kenya) Limited (2009) 2EA 212 this Court espoused that mandate or duty as follows:

“On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

25. We have carefully considered the record, the submissions made by counsel, the legal precedents cited, and applicable laws. The issues for determination are whether the appellant was unfairly dismissed from employment and whether he was entitled to the reliefs sought.
26. It is common ground that the reason for the appellant’s dismissal from the respondent’s employment was that at the time of his dismissal on 29<sup>th</sup> September 2009, the appellant was employed by another company, following his suspension by the respondent. This was so because the appellant’s actions were contrary to the advice he had been given by the respondent, to await the outcome of the court case.
27. It is common ground that the appellant was sent on an indefinite compulsory leave on 13<sup>th</sup> December 2004. This conduct by the respondent could possibly have been the foundation for a claim of constructive dismissal. However, parties are bound by their pleadings and the appellant did not plead constructive dismissal. This issue came up subtly during the hearing. In the case of Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others [2014] eKLR, this Court held that:

“As the authorities do accord with our own way of thinking, we hold them to be representative of the proper legal position that parties are bound by their pleadings which in turn limits the issues upon which a trial court may pronounce.”
28. Therefore, we find that the appellant cannot sustain a claim for unfair termination as there was no such claim before the trial court. The appellant’s claim was for a declaration that his contract with the respondent had not terminated and that he was therefore entitled to receive payment of his salaries from the date he was sent on compulsory leave.
29. We further hold that the appellant’s claim that he was still an employee of the respondent, even after he had taken up another job is inexplicable. At any rate, the appellant did not demonstrate how he was employed by the two employers simultaneously. It was the fact of taking up another job that practically brought to an end the employer/employee relationship between the appellant and the respondent.
30. It is trite that an employee who is suspended but takes up another job before being dismissed may have to contend with assertions such as breach of contract, violation of the duty of loyalty, and good faith obligations, as set out in the *Employment Act*.
31. Suspension is not dismissal but can lead to dismissal depending on the outcome of investigations. If the employee takes another job during this time, it could be interpreted as an indication that they no longer wish to return to the original employer.
32. Therefore, we find that by being sent on compulsory leave, the appellant’s employment had not been terminated. He ought not, therefore, to have procured new employment, as he was still in the respondent’s employment.
33. In the result, we find that the appellant has failed to persuade us that the learned trial Judge erred when he held that the appellant failed to establish a case of unlawful termination.



34. In a nutshell, the appeal is without merit. It is therefore dismissed, with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024.**

**M. WARSAME**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

