



REPUBLIC OF KENYA



**KENYA LAW**  
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**Joel v Tirgaga Tea Factory Company Limited. (Civil Appeal  
10 of 2018) [2022] KECA 651 (KLR) (8 July 2022) (Judgment)**

Neutral citation: [2022] KECA 651 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL 10 OF 2018  
HM OKWENGU, A MBOGHOLI-MSAGHA & KI LAIBUTA, JJA  
JULY 8, 2022**

**BETWEEN**

**CHERUIYOT KIPKEMOI JOEL ..... APPELLANT**

**AND**

**TIRGAGA TEA FACTORY COMPANY LIMITED. .... RESPONDENT**

*(An appeal from the Judgment of the Employment and Labour Relations Court of Kenya at Kericho (Njagi Marete, J.) dated 15th November, 2017 in ELRC No. 199 2015)*

**JUDGMENT**

- [1] On 15<sup>th</sup> November 2017 the Employment and Labour Relations Court (the ELRC) (Marete, J.), delivered a judgment in which he dismissed a claim by Cheruiyot Kipkemoi Joel (the appellant), against his employer Tirgaga Tea Factory Company Limited (the respondent), for unlawful and unfair summary dismissal from employment.
- [2] In his judgment, the learned Judge found that the appellant failed to prove unlawful termination of his employment as there was a resignation letter produced by the respondent, which showed that he voluntarily resigned from his employment. Consequently, the learned Judge found that he was not entitled to the relief sought.
- [3] The appellant, being aggrieved by the judgment of the ELRC, filed an appeal in which he raised 15 grounds. In brief, the appellant faulted the learned Judge for not taking issue with the relationship between Kapkoros Tea Factory Co. Limited and the respondent, as the contract of employment was between the appellant and the respondent, and not Kapkoros Tea Factory Co. Limited to whom the letter of resignation was allegedly written; in reaching a decision without giving the grounds for his decision; in not giving a detailed and independent decision, but relying on the respondent's submissions; in failing to establish the authenticity of the alleged resignation letter that was relied upon by the respondent, though addressed to Kapkoros Tea Factory Co. Limited; in ruling in favour



of the respondent against the evidence adduced; in failing to find that Kapkoros Tea Factory Co. Limited and the respondent were two separate entities in law; in failing to determine all the issues that were presented before the court; in failing to give reasons why the appellant should not be awarded a certificate of service; and in failing to consider the terms and conditions for the appellant's contract of employment, which formed the basis of the relationship between the appellant and the respondent.

- [4] The appellant filed written submissions, which he solely relied on in support of his appeal. He submitted that the suit in the ELRC was only partially heard, because the respondent's two witnesses never testified as the court was misled that the respondent had opted to rely on its written submissions. He therefore faulted the learned Judge for determining the matter on written submissions. He argued that the court failed to distinguish between the respondent, Kapkoros Tea Factory Co. Limited and the KTDA Co. Limited, which were all separate legal entities. He pointed out that the employment contract was between him and the respondent. Kapkoros Tea Factory Co. Limited, and that KTDA were not privy to the contract.
- [5] The appellant explained that he was issued with the termination letter from KTDA Co. Limited, through Kapkoros Tea Factory Co. Limited and, yet neither KTDA Co. Limited nor Kapkoros Tea Factory Co. Limited had responded to the appellant's claim. He submitted that the respondent should not have honoured the termination letter since the purported termination letter was not addressed to it, nor did KTDA Co. Limited or Kapkoros Tea Factory Co. Limited, who forwarded the termination letter, have any capacity to enforce the terms of the contract between the appellant and the respondent.
- [6] The appellant maintained that he was coerced into resigning. He denied being seconded from Kapkoros Tea Factory Co. Limited, and maintained that he was an employee of the respondent. He pointed out that the respondent's witnesses were conflicted in their evidence and fabricated claims. He denied having been paid any terminal benefits, contending that the amount of Kshs. 46,000 that he was paid was his salary for the days worked in March, 2014, less the statutory deductions.
- [7] The appellant identified issues which need determination as: whether there was breach of the employment contract; whether the appellant was unlawfully, unprocedurally and unfairly dismissed from his employment by the respondent; whether he is entitled to the relief and the compensation sought; and who should pay costs and interest of the suit.
- [8] On breach of the employment contract, he argued that the respondent erroneously relied on the resignation letter in breach of the contract that it had signed with the appellant. On the unlawful, unprocedural and unfair dismissal, the appellant submitted that the respondent terminated his employment without giving him one month's notice or one month's salary in lieu of notice as required in the letter of appointment. His termination was therefore wrongful and unfair as it involved breach of statute law. He argued that he was entitled to all the relief and compensation that he had sought for the unlawful termination, including a certificate of service. He urged the Court to allow the appeal and set aside the orders of the ELRC.
- [9] The respondent opposed the appeal through its written submissions that it fully relied upon. The respondent maintained that the appellant resigned from his employment through a letter dated 26<sup>th</sup> February 2014 that he addressed to the factory unit manager, Kapkoros Tea Factory Co. Limited, which letter was accepted on 12<sup>th</sup> May, 2014. The respondent argued that it was a satellite company of Kapkoros Tea Factory Co. Limited, whose factory unit manager was responsible for the respondent's overall administration, and that the appellant was aware of that arrangement as he addressed his resignation letter to the factory unit manager, Kapkoros Tea Factory Co. Limited.
- [10] The respondent argued that there was no evidence that the appellant's letter for resignation was a forgery and/or was written through coercion. It pointed out that the letter was handwritten and the



authorship was not denied by the appellant. The respondent disputed the allegation that the appellant was constructively dismissed and cited *Coca Cola East & Central Africa Limited vs Maria Kagai Lugaga* [2015] eKLR; and *Premier Construction Limited vs. Josephat Bwire Lukale & 5 Others* [2017] eKLR in support. It urged the Court to find that the learned Judge was right in finding that the appellant failed to prove his claim. Finally, the respondent submitted that the appellant has no claim against it as he was paid all his terminal dues and duly signed the employment release agreement acknowledging receipt of the terminal dues.

- [11] We have carefully considered the record of appeal, the rival submissions, and the authorities cited. The appeal before us being a first appeal, we take cognizance of our duty to subject the evidence that was before the trial court to a fresh analysis, by re-evaluate and re-analyze the evidence in order to come to our own conclusion. This duty is stated in Rule 29 of the *Court of Appeal Rules* and reiterated by this Court in *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR as follows:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re- evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

- [12] It is not disputed that the appellant was employed by the respondent. It is also common ground that the appellant was released from employment following a resignation letter that was said to have been signed by him and forwarded to the respondent through Kapkoros Tea Factory Co. Limited. The main issue in contention is whether the appellant was unlawfully and unfairly dismissed from his employment. In addressing this issue, there are subsidiary issues that must also be addressed. The first is whether the appellant voluntarily resigned from his employment or whether he was coerced into writing the resignation letter.
- [13] The appellant did not specifically deny writing the resignation letter, but argued that he resigned from Kapkoros and that the respondent who was his employer should not have acted on the letter as it was not addressed to it, nor delivered to it, that the letter was addressed to Kapkoros Tea Factory Co. Limited, who was not the appellant’s employer, and that the letter was written under coercion. Regarding the latter claim, no evidence was laid before the trial court to justify the claim that the letter was written under coercion, nor did the appellant adduce any evidence to show that the letter was a forgery.
- [14] The respondent explained its relationship with Kapkoros Tea Factory Co. Limited. It was a satellite company of Kapkoros Tea Factory Co. Limited, and its administrative management was being undertaken by the factory unit manager of Kapkoros Tea Factory Co. Limited. This explanation appears to be in line with the conduct of the appellant in submitting the resignation letter to the Factory Unit Manager of Kapkoros Tea Factory Co. Limited. The appellant has not explained why he forwarded the letter to the Unit Manager of Kipkoros Tea Factory Limited. And, even though it took quite a while before the respondent acted on the letter, the appellant did not write another letter directly to the respondent countermanding the resignation letter or explaining the circumstances in which it was written.
- [15] We find that the learned Judge was right in finding that the appellant voluntarily wrote the letter of resignation and that, although it was addressed to Kapkoros Tea Factory Co. Limited, the same was intended for the respondent, and was only received by the Factory Unit Manager of Kapkoros Tea Factory Co. Limited as an agent. The appellant having voluntarily resigned from employment, his services were not terminated and the issue of unlawful or unfair termination does not arise. In the



circumstances, the appellant was not entitled to any salary in lieu of notice nor was he entitled to payment of compensation or damages under section 49 of the *Employment Act*. As regards the terminal dues, the appellant signed an employment release agreement confirming that he had been paid. In the circumstances, the learned Judge arrived at the correct decision in dismissing the appellant's claim. We find no merit in this appeal. It is accordingly dismissed. Each party shall bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF JULY, 2022.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**A. MBOGHOLI MSAGHA**

.....

**JUDGE OF APPEAL**

**DR. K. I. LAIBUTA**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

