



REPUBLIC OF KENYA



**Kaimosi Tea Estate Limited v Miheso (Civil Appeal 78 of 2017)  
[2022] KECA 1208 (KLR) (4 November 2022) (Judgment)**

Neutral citation: [2022] KECA 1208 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 78 OF 2017  
MSA MAKHANDIA, S OLE KANTAI & KI LAIBUTA, JJA  
NOVEMBER 4, 2022**

**BETWEEN**

**KAIMOSI TEA ESTATE LIMITED ..... APPELLANT**

**AND**

**STEPHEN MIHESO ..... RESPONDENT**

*(Appeal from the Judgment of the Industrial Court of Kenya at Nakuru  
(Ongaya, J.) dated 14th March, 2014 in ELRC Cause No. 346 of 2013)*

**JUDGMENT**

**JUDGMENT OF KANTAI,JA**

1. The respondent, Stephen Miheso, was employed by the appellant Kaimosi Tea Estate Limited, by a letter of appointment with effect from February 26, 2001 as an employee to pick tea. He continued in that employment until by a letter dated October 23, 2012 he resigned, a resignation that was accepted by the respondent by a letter dated October 29, 2012.
2. In a Memorandum of Claim filed at the Industrial Court of Kenya (now Employment and Labour Relations Court) at Nakuru the respondent claimed that he was employed by the appellant from February 26, 2001 until September 22, 2012 when his employment was unlawfully terminated, and the particulars of unlawful termination included that the respondent's trade union was not informed "... of the intention to declare the claimant redundant ..."; that no leave pay was given; no salary in lieu of notice was paid; and that severance pay was not paid and the respondent prayed for declarations that the alleged termination process was unlawful; that he was underpaid during his employment; and that he was entitled to service gratuity and house allowance.
3. The claim was denied in a Memorandum of Defence where the appellant stated amongst other things that it did not terminate the services of the respondent, but that it is he who had resigned from



employment and the claim on house allowance was denied, the appellant stating that it provided housing to its employees.

4. The respondent testified in support of his case and the appellant called one witness, namely Dan Kipchirchir Kabenei, a manager of the appellant company.
5. In a Judgment delivered on March 14, 2014 Ongaya, J. found in favour of the respondent, and issuing “... a declaration that the respondent [appellant] unfairly and unlawfully terminated the claimant’s employment ....”. The appellant was ordered to pay a sum of Ksh.154,790 to the respondent by May 1, 2014 and, in default, interest to accrue at court rates, and costs were awarded to the respondent.
6. The appellant was unhappy with those findings, provoking this appeal through Memorandum of Appeal drawn for the appellant by its lawyers, M/S Onyinkwa & Company Advocates, where 8 grounds of appeal are set out. In summary, the appellant faults the learned Judge for finding that the respondent’s employment was unlawfully terminated; that the Judge erred in finding that the respondent was a person with disability under Section 2 of the *Employment Act* or was illiterate; that the Judge made findings based on extraneous issues; that the Judge should have found that the respondent had resigned from employment, and that the Judge erred in making the monetary award.
7. When the appeal came up for hearing before us on June 15, 2022, learned counsel Mr. Singole appeared for the appellant while learned counsel Miss Valerie Opinde appeared for the respondent. Counsel for the parties had filed written submissions and Mr. Singole did not wish to highlight the same. Miss Opinde, in a highlight, submitted that the trial Judge who had the opportunity to see the respondent should not be faulted for finding that the respondent was illiterate and could not understand the letter of resignation from employment which according to counsel had been authored by someone apart from the respondent.
8. I have considered the whole record, submissions made and the law and these are my findings on this appeal.
9. The trial Judge considered the meaning of “disability” in Section 2 of the *Employment Act, 2007* and held that an illiterate person was a person with disability under the said Act. The following paragraph appears in the course of the Judgment:

“The court finds that acceptance of the alleged claimant’s letter representing to resign was not a valid reason for termination because at the time of termination, the respondent’s field manager and the General Manager failed to confirm that the claimant had authored the alleged request to resign and the respondent was reckless in failing to address the claimant’s ensuing grievance”.
10. I have looked at the resignation letter dated October 23, 2012 written in Kiswahili language and signed by the respondent. The same (resignation) was accepted by the appellant in the letter dated October 29, 2012, and was copied to, amongst others, the “Lower Tier Shopstewards – Kaimosi”. I have not seen any correspondence from the union protesting the resignation by the respondent.
11. The Memorandum of Claim was supported by a “Statement by Stephen Miheso” (the respondent) dated October 14, 2013 signed by him.
12. I find, with respect, that the Judge was wrong to disregard the written document by which the respondent had resigned from employment. The respondent was not illiterate as he claimed – he had not only signed the resignation letter, but had also signed the statement which accompanied the statement of claim. He resigned from employment and thereafter had a change of mind and claimed



that he had been terminated from employment. The claim in the trial court had no substance and should have been dismissed. Accordingly, I allow the appeal and award costs to the appellant.

**JUDGMENT OF ASIKE-MAKHANDIA, J.A**

I have had the benefit of reading in draft the judgment of my brother, S. ole Kantai, J.A. with which I entirely agree with and have nothing useful to add.

**CONCURRING JUDGMENT OF DR. K. I. LAIBUTA, J.A.**

I have had the benefit of reading in draft the judgment of Kantai, JA. I am in full agreement with his reasoning and conclusions and, therefore, have nothing useful to add.

**DATED AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2022.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

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**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**

