



**Muia v Cale Infrastructure Constuction Company Ltd (Appeal  
144 of 2023) [2025] KEELRC 220 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 220 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL 144 OF 2023  
DKN MARETE, J  
JANUARY 29, 2025**

**BETWEEN**

**JOHN MUTUA MUIA ..... APPELLANT**

**AND**

**CALE INFRASTRUCTURE CONSTUCTION COMPANY LTD . RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Appeal dated 7th August, 2023 and comes out as follows;
  1. That the Learned Magistrate erred in law and in fact in failing to evaluate the evidence in its totality and to consider the submissions by the Appellant and thereby arrived at the wrong conclusion of dismissing the Claimant Claim.
  2. That the Learned Magistrate showed extreme prejudice by totally ignoring the testimony of the Respondent's witnesses which was shifty and which clearly demonstrated that the Respondent's the evidence on record and the pleadings were at variance and inconsistent thereby arriving at an erroneous conclusion.
  3. That the Learned Magistrate erred in law and fact by failing to take account of consideration of which he should have taken account, such as want of procedural and substantive fairness on the part of the Respondent in the dismissal of the Appellant from employment.
  4. That the Learned Magistrate erred in law and fact by totally ignoring the evidence placed before him (both oral and written) which clearly demonstrated that the Claimant was never paid all his dues.



5. That the learned trial magistrate erred in law and fact by overly relying upon the evidence of the Respondent which was not proved in finding that the Appellant had not discharged the burden of proof of unlawful and unfair dismissal.
6. That the Learned Magistrate erred in law and in fact by failing to exercise its discretion properly, fairly and judiciously in considering the Appellant's case that was before him and disregarded the Appellant's submissions on the facts and evidence in support.
7. That the learned Magistrate showed extreme prejudice by totally ignoring the Appellant's Counsel's submissions and legal authorities relied upon in support thereon on the issue of law and evidence and thereby arrived at an erroneous conclusion.
8. That the learned trial magistrate erred in law and fact by overlying on the Respondent's submissions and legal authorities, which were not relevant and without addressing his mind to the circumstance of the case.

It is proposed to request this Honourable Court for orders that;

1. That the Appellant's appeal be allowed.
  2. That the Judgment of the Trial Court dated the 24<sup>th</sup> of July 2023 be set aside.
  3. That costs of the Appeal be borne by the Respondent.
  4. Any further relief that the Honourable Court deems fit in the interest of justice.
2. The Appellant submits that the learned magistrate failed to consider all the evidence submitted on a balance of probabilities there by occasioning a miscarriage of justice.
  3. It is the appellant's further submission is that the Appellant was declared redundant or terminated due to completion of work. This amounted to a breach of procedural and substitutive fairness on which he now relies in his appeal.
  4. The Respondent's case is that the Claimant vide an employment contract dated 26th August, 2020 employed the claimant as a dumper driver at a basic salary of Kshs.34,035.04 or Ksh.163.63 per hour.
  5. It is his further submission and case that the grounds of appeal as set out are not merited as these were addressed by the lower court diligently. The learned magistrate took into consideration all the evidence that was placed before him therefore this court should slow in interfering with the findings. He seek to rely on authority of *Musera vs. Mwechelesi & Another* ([2007]) KLR 159: in regards to Appeals where the court observed thus;

“We must at this stage remind ourselves that though this is a first appeal to us and while we are perfectly entitled to make our own findings on the evidence, the trial judge has in face made clear and unequivocal findings and as an appellate court we must indeed be very slow to interfere with the trial judge's findings unless we are satisfied that either there was absolutely no evidence to support the findings or that the trial judge must have misunderstood the weight and bearing of the evidence before him and thus arrived at an unsupportable conclusion.”



6. The nature of the Appellant's employment is also all telling. This was a construction service in which the work had been completed thereby rendering workers redundant. The Respondent submits thus;

On or about 15th June 2021 he was issued with a 30 day notice of termination due to completion of work which he duly signed and acknowledged. All issues of sick off and certification of the Appellants illness were never notified to the Respondent.

7. Notice was issued to the Appellant and he acknowledged the same. He cannot now be heard to complain and raise issues of sick off which were never raised at the time of separation. This appeal in toto lacks merit. It is not supported on any basis in law and evidence.

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

9. Again, the Appellant fails to recharge his burden of proof for his case.

**DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

**Appearances:**

1. Miss Macharia instructed by Wanjiku Macharis & Co. Advocates for the Appellant.

2. Ms Maina instructed by Kimondo Gachoka & Company Advocates for the Respondent.

