



REPUBLIC OF KENYA



KENYA LAW
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**Wepukhulu v Jumbo Spices Ltd (Appeal E079 of 2023)
[2025] KEELRC 244 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 244 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E079 OF 2023
DKN MARETE, J
JANUARY 29, 2025**

BETWEEN

IRENE WEPUKHULU APPELLANT

AND

JUMBO SPICES LTD RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Appeal dated 22nd June, 2023. It comes out thus;
 1. The Learned trial Magistrate erred in law and in fact in failing to award the Appellant the award of underpayment of salary yet the same had been pleaded and the relevant Wage order that was relied upon had been pleaded in the submissions.
 2. The learned Judge erred in law and fact when she disregarded the Appellants submissions.
Reasons wherefore;
 1. That the appeal herein be allowed
 2. That the Judgment of the Hon. E. M. Nyakundi Senior Principal Magistrate in MCELRC case No. E1042 of 2021 between Irene Wepukhulu -Versus- JUmbo Spices Limited be set aside only in terms of the refusal to grant the prayer for under payment of salary.
 3. That the Appellants' cost of this appeal be paid by the Respondent.
2. A scrutiny of the record displays a poorly presented case at the lower court. The learned magistrate went out of her way to painstakingly make her award despite the deficiency in pleadings. It is notable that the following elements of a good pleadings went missing in this cause.
 - (i) There was no evidence of the amount paid to the Appellant.



- (ii) The Appellant pay advice slip was not attached to the claim.
 - (iii) There was no evidence of the Wage Guideline Order.
 - (iv) There was scanty, if any, evidence in support of the claim.
- 3 I find that the award by the learned magistrate was apt and proper in the circumstances of such a poorly presented case. The court went out of its way to innovate and come up with an award to the Appellant on the basis of some Mpesa statement availed to it. This was the nearest the court would come to ascertaining the monthly emoluments for the Appellant.
4. The Appellant cannot now be heard to complain in the midst of such circumstances. It was her onus to present and proof her case to the satisfaction of the court. She did not. The learned magistrate was very fair and just in the circumstances.
5. I am therefore inclined to dismiss the appeal with orders that parties bears the costs of the same.

DELIVERED, DATED AND SIGNED THIS 29TH DAY OF JANUARY 2025.

D. K. Njagi Marete

JUDGE

Appearances:

1. My Onyanga instructed by Akolo Wanyanga & Company Advocates for the Appellant.
2. No appearance for the Respondent.

