



Imara Steel Mills Limited v Mulatya (Employment and Labour Relations Appeal E112 of 2021) [2025] KEELRC 131 (KLR) (28 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 131 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E112 OF 2021**

**HS WASILWA, J
JANUARY 28, 2025**

BETWEEN

IMARA STEEL MILLS LIMITED APPELLANT

AND

WILBERFORCE MUSILA MULATYA RESPONDENT

(An appeal arising from the judgement of Hon. Irene Marcia Kahuya (Principal Magistrate) delivered on 21st July 2021 in ELRC No. 2 of 2018 before the Principal Magistrate's Court at Kajiado Law Courts)

JUDGMENT

1. This appeal arises from the judgment of the Principal Magistrates Court at Kajiado, Honourable Irene Marcia Kahuya, in Kajiado ELRC number 2 of 2018 delivered on 21st July, 2021 where the Respondent herein was the Claimant and the Appellant was the Respondent. The grounds of the Appeal are as follows:-
 - a. That the Learned trial Magistrate erred in fact and in law by entering judgement in favour of the claimant.
 - b. The Learned trial Magistrate erred in fact and in law in concluding that the claimant did not receive his house allowance from the Respondent.
 - c. That the Learned Trial Magistrate misdirected herself in evaluating the evidence placed before her in concluding that the Respondent was liable to pay Kshs 30,000/- as unpaid house allowance.
 - d. That the Learned trial Magistrate erred in law and in fact by failing to properly scrutinize and evaluate the evidence tendered by the Appellant and correctly relate the same to the case law



cited in court and thereby failed to arrive at a just and reasonable assessment on the issue of house allowance.

2. The Appellant sought for the following Orders: -
 - a. Judgement be set aside and the Court allows the Appeal.
 - b. This Honourable Court be pleased to assess the liability and quantum of the Respondent with regards to housing allowance.
 - c. The appeal be allowed with costs.
 - d. This Honourable Court be pleased to make such further and other orders as it may deem just in the circumstances of the case.
3. Summary of the facts is that the Respondent was employed by the Appellant as an Oil Man on a contract dated 29th July 2016, earning a basic salary of Kshs. 6,669 per month. In November 2017, the Appellant's supervisor summarily and without notice dismissed the Respondent. During his employment, the Appellant failed to grant leave days, pay house allowance, and remit NSSF and NHIF contributions. The Respondent sought special and general damages for unfair termination, including Kshs. 13,633.60 as one month's salary in lieu of notice, Kshs. 18,459 for leave not taken, Kshs. 97,504.40 for wage underpayment, Kshs. 32,720 for unpaid house allowance, Kshs. 163,603.20 as 12 months' salary for unfair termination, and Kshs. 7,860 as service pay, totalling Kshs. 333,780.20 plus interest.
4. The Appellant, on the other hand, denied each and every allegation. The Appellant further denied the allegations that the Respondent was employed as an oil man under a contract dated 29th July 2016 earning a basic salary of Kshs. 6,669.
5. The Appellant denied the claims that it failed to remit NSSF and NHIF contributions for its employees. The Appellant cannot ascertain the validity of the Respondent's claims for special and general damages, including those relating to alleged unfair termination, unpaid leave days, and other financial benefits. While the Appellant did not dispute the jurisdiction of the Court, it contends that the Respondent lacks a valid cause of action against it.
6. In its defense, the Appellant relied on the principle established in *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR, where it was held that a party is obligated to prove all the allegations made in their pleadings. The Appellant also invoked section 107 of the *Evidence Act*, which places the burden of proof on the party making the allegations, emphasizing that the Respondent must provide sufficient evidence to substantiate the claims made. Furthermore, the Appellant referred to *Kenya Power & Lighting Co. Ltd v Hulbai Gedi Abdille* [2018] eKLR, reiterating that claims for special damages must be specifically pleaded and strictly proven. The Appellant maintained that the Respondent had not established any valid basis for the claims made and seeks dismissal of the suit.

Appellant's Submissions

7. The Appellant submitted that the award of Kshs 30,000 for housing allowance by the trial court was unjustified and ought to be overturned. The contract of service between the parties, found on page 10, line 20 of the record of appeal, contained a clause stipulating that the Respondent's basic pay of Kshs 9,126 was inclusive of housing allowance. This clause, acknowledged and accepted by the Respondent, was disregarded by the trial court in awarding the housing allowance. The Appellant emphasized that the contract bore the Respondent's signature, and the acceptance clause explicitly



stated that the Respondent had read, understood, and agreed to the terms, including the housing allowance provision. The Respondent was given the opportunity to seek independent advice and to either reject or renegotiate the terms before signing.

8. The Appellant argued that the trial court, in awarding the housing allowance, essentially rewrote the contract, contrary to the principle upheld in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, which held that courts cannot rewrite contracts between parties in the absence of coercion, fraud, or undue influence, none of which were pleaded or proved in this case. The Appellant further noted that the Respondent, having accepted the terms, sought to improperly obtain a sum already accounted for in his basic salary. The lower court also failed to address the fact that the Respondent only produced two payslips as evidence, which was insufficient to justify the award of Kshs 30,000.
9. The Appellant relied on section 107 of the *Evidence Act*, which places the burden of proof on the party asserting the existence of a fact. This is further reinforced by sections 108 and 109 of the same Act, which require a claimant to strictly prove any special damages claimed. The Appellant submitted that the Respondent failed to meet this standard, as no evidence was provided to demonstrate entitlement to the housing allowance beyond the payslips submitted. The Appellant cited *Pius Machafu Isindu v Lavington Security Guards Limited* [2014] KEELRC 484 (KLR), where Justice Nzioki wa Makau dismissed a similar claim due to insufficient proof of non-payment of housing allowance.
10. The Appellant contended that the trial court erred in awarding the amount without requiring all the payslips for the duration of the Respondent's employment. As special damages must be specifically pleaded and strictly proven, the Respondent's reliance on two payslips was inadequate to substantiate the claim. Consequently, the Appellant prayed for the appeal to be allowed, submitting that the trial court lacked justification for awarding Kshs 30,000 as unpaid housing allowance, and requested that the judgment be overturned.
11. I have considered all the averments and submissions of the parties herein. This being a first appeal to this court, this court is obligated to re-evaluate the evidence afresh and make a finding accordingly
12. The only contention before me is whether the respondent claimant is entitled to payment of house allowance awarded by the lower court. In answering this question, I refer to the contract of service signed by the respondent on the 29th July 2016. Paragraph four of the contract on compensation was explicit that the salary payable was kshs 9126 which was inclusive of house allowance a term the Respondent knowingly and voluntarily accepted. The trial court's decision to award the said sum effectively rewrote the contract between the parties, contrary to established legal principles as outlined in *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR.
13. Further, the Respondent did not meet the burden of proof as required under sections 107, 108, and 109 of the *Evidence Act*, nor did he sufficiently plead and strictly prove the special damages claimed. The reliance on only two payslips was inadequate to substantiate the claim, and the award was, therefore, unjustified.
14. It is therefore my finding that the appeal has merit and is allowed. The judgment of the trial court awarding Kshs 30,000 as unpaid housing allowance is hereby set aside. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF JANUARY, 2025.

HELLEN WASILWA



JUDGE

