



REPUBLIC OF KENYA



**Kimulu v Steel Makers Limited (Appeal E003 of 2020)
[2025] KEELRC 125 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 125 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
APPEAL E003 OF 2020
MA ONYANGO, J
JANUARY 23, 2025**

BETWEEN

BONIFACE KASANGA KIMULU APPELLANT

AND

STEEL MAKERS LIMITED RESPONDENT

(Being an Appeal from the decree and judgment of the H. ONKWANI, Principal Magistrate (PM) delivered on the 19th day of AUGUST, 2020 in MAVOKO CMELRC No. 51 of 2019)

JUDGMENT

1. The Appeal herein arises from the decision of Hon. H. Onkwani, Principal Magistrate in Mavoko CMELRC No. 51 of 2019 delivered on 19th August, 2020. In the Memorandum of Claim dated 8th April, 2019, the Appellant herein (Claimant in the lower Court suit) alleged that his employment was unfairly terminated by the Respondent and he was not paid terminal dues. He prayed for the following remedies against the Respondent:
 - a. A declaration that the termination of Claimant's employment was unlawful and unfair.
 - b. An order for the respondent to pay to the claimant his due terminal benefits and compensatory damages as pleased.
 - c. Costs of interest of the suit
 - d. Any other relief that this Honourable Court may deem fit and just to grant
2. The Respondent filed a Memorandum of Defence dated 29th April, 2019 denying all the averments in the Memorandum of Claim.



3. After hearing the parties, the Trial Court dismissed the Claim. Aggrieved by the judgment and decree of the trial court, the Appellant filed the instant appeal vide Memorandum of Appeal dated 4th November, 2020 in which he raises the following Grounds of Appeal:
 - i. That the learned magistrate erred in law and fact by holding that the Claimant/appellant resigned voluntarily hence arrived at the wrong decision.
 - ii. That the learned magistrate erred in law and in fact by failing to find that the testimony of RW1 (James Muriigi) was inadmissible and or amounted to hearsay.

The Appellant prayed that the appeal be allowed with costs to the Appellant.

Background

4. In the Memorandum of Claim filed by the Appellant in the trial court, it was his case that he was employed by the Respondent in June 2014 as a loader. He was paid a daily wage of Kshs. 659 translating to Kshs. 17,134 per month.
5. He averred that on 27th March, 2018 he was summoned by the Respondent's Human Resource Manager, Madam Esther who told him that according to the records held by the Respondent the Appellant was 62 years old and the company was no longer interested in his services. His appeals to the Human Resource Manager not to terminate his services were met with threats.
6. The Appellant averred that on 29th March, 2018 he went to work but was denied entry/access to the Respondent's premises by the Respondent's security guards under the Respondent's instructions. His pleas for an explanation from the Human Resource Manager or Director bore no fruits. He was later paid for days worked.
7. The Appellant averred that the termination of his services was unfair, unprocedural and offended the express provisions of *the Constitution* of Kenya, 2010, the *Employment Act*, 2007 and the tenets of fair labour practice because:
 - a. The Claimant had done absolutely nothing wrong to warrant his dismissal/termination.
 - b. No hearing ever took place before the decision to dismiss/terminate the Claimant was reached.
 - c. No plausible reason was given to the Claimant before the decision to dismiss him was reached.
 - d. Due process was disregarded in haste to dismiss the Claimant
 - e. The decision to dismiss the Claimant was harsh, unwanted, inhumane and unjustified considering the claimant had served the respondent without blemish for over 2 years.
8. The Appellant prayed for:
 - i. One Month's salary in lieu of notice..... Ksh.17,134/=
 - ii. Unpaid house allowance for the entire period of serve (15/100x17,134/=)*45 months)Ksh.115,655/=
 - iii. Unfair termination 12 months' salary (12x17,134Ksh.205,608/=
 - iv. Service/gratuity pay for the entire period of service (18/30x17,134/= *4 years).....Ksh.41,122/
=



- v. Overtime;(June 2014 to Nov. 2016=2.5years*52 Saturday = 390 hours @Ksh. 124/= per hour (1.5 rate).....Ksh.48,360
9. At the hearing the Appellant testified on his behalf as PW1. He adopted his witness statement in which he had reiterated the averments in his Memorandum of Claim and produced his documents. He testified that he was paid either after 20 days or one month, and signed a wage sheet. He stated that he did not author the letter of resignation produced by the Respondent as D. EX1. He testified that the Respondent forged his signature.
 10. Under cross examination the Appellant stated that he did not sign the wage sheet daily, was paid in cash and the Respondent deducted NSSF and NHIF. He testified that Mr. Toor, the Manager told him that he was not be paid house allowance even though he had been promised that he would be paid. He stated that he did not resign and that he worked daily. That payment records were kept by the Respondent.
 11. The Respondent called James Murigi who testified as DW1. He stated that he was the General Manager, Administration of the Respondent. He adopted his witness statement dated 18th June, 2019 in which he stated that the Appellant was employed by the Respondent as a crane operator based in its Athi River plant. He was paid a daily wage of Kshs. 659 and was a casual employee who worked on a needs basis sporadically when absolutely necessary. That the Appellant resigned from employment by letter dated 27th February, 2018 which the Respondent accepted.
 12. He denied that the Appellant was threatened and stated the resignation notice was voluntary. He stated that as a casual the Appellant was not entitled to house allowance or service pay. That any overtime due was paid immediately.
 13. On cross examination DW1 stated that he did not know when the Appellant started working for the Respondent. He stated that there were wage sheets that were not filed in court and that the documents filed did not all bear a stamp of the Respondent.

Analysis and Determination

14. This being a first appeal, this Court has a singular duty to re-evaluate the entire case and come up with its own findings in the matter. This is as was set out in the case of *Selle v Assorted Motor Boat Company* 1968 EA Company 1968 EA 123-126 where the Court stated as follows:

“Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial. Judge’s findings of fact appear earlier that he has clearly failed on some part to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”
15. Although the parties were directed to file submissions, there is none on record.
16. Having considered the Memorandum of Appeal, the proceedings in the trial court, the issues for determination are whether the trial court erred in dismissing the appellant’s case.
17. The only grounds of appeal in the Memorandum of Appeal are that the learned magistrate erred in law and fact by holding that the Claimant/appellant resigned voluntarily hence arrived at the wrong



decision and that the learned magistrate erred in law and in fact by failing to find that the testimony of RW1 (James Murigi) was inadmissible and or amounted to hearsay.

18. Having not filed submissions to elaborate on the grounds of appeal, I have no reason to disagree with the trial court. I have considered the evidence adduced in court and I agree with the trial court that there was no evidence to support the Appellant's averment that he did not author the letter of resignation dated 27th February, 2018.
19. For the foregoing reasons I find no merit in the appeal and dismiss it with no order as to costs.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 23RD DAY OF JANUARY 2025

MAUREEN ONYANGO

JUDGE

