



**Wanyama v Mumias Sugar Company Limited ((Under Receivership)) (Employment and Labour Relations Appeal E013 of 2024) [2025] KEELRC 293 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 293 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E013 OF 2024**

**DN NDERITU, J  
FEBRUARY 6, 2025**

**BETWEEN**

**FREDRICK WANYAMA ..... APPELLANT**

**AND**

**MUMIAS SUGAR COMPANY LIMITED ..... RESPONDENT  
(UNDER RECEIVERSHIP)**

*(Under Receivership) (Being an appeal from the judgment of the Chief Magistrate (Hon. R. Nyakundi) delivered on 2nd April, 2007, in Bungoma CMCC 459 of 2003)*

**JUDGMENT**

**I. Introduction**

1. The appellant herein (the plaintiff in the lower trial court) commenced Bungoma CMCC No. 459 of 2003 and subsequently filed an amended plaint dated 29<sup>th</sup> May, 2006 on 2<sup>nd</sup> June, 2006 wherein the following reliefs were sought –
  - a. A declaration that the plaintiff purported dismissal of 20<sup>th</sup> December, 1999 was unlawful and null and void for all purposes.
  - b. An order for the immediate release to the Plaintiff of his motor vehicle registration number KAA 232 M Make Peugeot 504 saloon.
  - c. The immediate payment of all the arrears and dues to the plaintiff consequent upon the said termination as reckoned in paragraph 9 above.
  - d. General and exemplary damages for unlawful dismissal.
  - e. Costs of this suit and interest thereon at court rates.



2. The respondent herein (the defendant in the lower trial court) defended the suit.
3. In a judgment delivered on 2<sup>nd</sup> April, 2007 the court dismissed the appellant's cause with costs to the respondent.
4. Dissatisfied with the judgment the appellant filed Bungoma High Court Civil Appeal No.40 of 2009 raising the following eight grounds of appeal as per the memorandum of appeal dated 30<sup>th</sup> April, 2009 –
  1. That the learned magistrate erred in fact and in law in holding that the respondent had complied with the terms and conditions of employment in dismissing the appellant when the letter of termination did not have such reasons or at all hence his finding is insupportable in law and pegged on the evidence tendered on record.
  2. That the learned trial magistrate erred in law and in fact in holding that the respondent was justified in repossessing the Motor vehicle which was registered in the name of the appellant.
  3. That the learned trial magistrate fell into an error of law in holding that the appellant was paid his benefits as per the contract when there was no such evidence on record that the appellant was paid.
  4. That the learned trial magistrate erred in law and in fact in relying on inadmissible documents to hold that the benefits due to the appellant were assigned to settle outstanding debts contrary to the clear cut provisions of the Evidence Act Cap 80 Laws of Kenya.
  5. That the learned trial magistrate erred in law and in fact in holding that the appellant's dismissal was neither malicious nor capricious.
  6. That the learned trial magistrate erred in law and in fact in holding that the respondent's action in dismissing the appellant was not arbitrary.
  7. That the learned trial magistrate did not judiciously evaluate the evidence tendered before him and his findings are against the weight of the evidence tendered.
  8. That the learned trial magistrate erred in law and in fact in holding that the appellant had no right to claim aggravated or exemplary damages.
5. The appellant is seeking that judgment be entered in his favour in the following terms –
  - a. This appeal be allowed and that the decision of the learned trial magistrate be reversed.
  - b. Judgment be entered in favour of the appellant as prayed.
  - c. Costs of this appeal and in the lower court be awarded to the appellant.
6. On 13<sup>th</sup> November, 2018 the High Court in Bungoma (S.N. Riechi J) directed that the appeal be transferred to ELRC Kisumu where it was registered under file Number ELRC Cause No. 382 of 2018. The file was then transferred to Bungoma ELRC and registered as ELRC Cause No. 52 of 2021. Subsequently, Justice J.W.Keli on 20<sup>th</sup> April, 2023 transferred the appeal to Kakamega whereby the same was allocated the reference in the header.
7. When the matter came up in court for directions on 18<sup>th</sup> September, 2024 it was by consent of counsel for both parties agreed that the appeal be canvassed by way of written submissions. Ms.Songok for the respondent filed her submissions on 29<sup>th</sup> October, 2024. No submissions were filed for the appellant.



## II. Submissions by Counsel

8. Counsel for the respondent submitted globally in affirming the trial magistrate's finding on the termination of the appellant.
9. It is submitted that as at the time the appellant was dismissed the applicable law was the repealed *Employment Act*. It is submitted that the aforesaid law did not provide for the issuance of a letter to show-cause or the provision for the invitation to a disciplinary hearing but the respondent, out of abundance of caution and based on tenets of natural justice, issued the appellant with a show-cause letter dated 27<sup>th</sup> October, 1999. The show-cause letter related to a complaint against the appellant over sexual assault of a female at the respondent's premises where the appellant was undertaking his duties as a clinical officer. The appellant had been given 48 hours to write a defence.
10. It is submitted that the appellant was invited to appear before the probe committee, but he declined to participate on the grounds that a criminal case was pending against him. It is submitted that the probe committee nonetheless deliberated on the appellant's case and a decision to dismiss him was arrived at.
11. It is submitted that the trial magistrate arrived at the proper finding that criminal proceedings are distinct from internal disciplinary processes and pendency of the criminal case was not a reason for the appellant to refuse and or fail to appear before the probe committee.
12. It is submitted that the lower trial court was right in finding that the appellant's role required a duty of care and his conduct was intolerable in the workplace.
13. It is further submitted that the trial court arrived at the proper finding that the respondent did not have to await the outcome of the criminal proceedings before disciplining the appellant and that his dismissal was lawful.
14. Citing *Patrick Sosio Lekakeny v Tomito Alex Tampushi & 3 others* (2018) eKLR where the court relied on the finding in *Peters V Sunday Post Ltd* (1958) EA 424, the court is urged to find that the trial court's finding was supported by evidence and should not be disturbed.
15. It is submitted further that the appellant had an outstanding car loan under the respondent's car loan scheme, and upon offsetting the appellant's terminal dues against the loan, the appellant's car loan remained unsettled and hence the respondent was right in repossessing the impugned motor vehicle.
16. It is submitted that the trial court was right in finding the appellant was duty-bound to repay his loans and thus he was not entitled to the reliefs sought.
17. The court is urged to dismiss the appeal with costs.

## III. Issues for Determination

18. The court has carefully gone through the entire record of appeal including the memorandum of appeal and the written submissions by counsel for the respondent. The following issues commend themselves to the court for determination –
  - a. Was the appellant's termination unfair and unlawful?
  - b. Did the trial court arrive at the correct decision in regard to the termination and reliefs?
  - c. What are the appropriate orders for this court to make in regard to the above issues and on costs?



#### IV. Dismissal

19. As the first appellate court, this court is obligated to evaluate the evidence and arrive at its own conclusions but bearing in mind that it did not hear and record the evidence in the trial – See *Selle V Associated Motor Boat Co. Ltd* (1968) E.A 123.
20. It is not in dispute that the appellant was engaged by the respondent as a Clinical Officer. The employment relationship was regulated and governed by a letter of appointment exhibited on pages 10 -11 of the record of appeal. The respondent produced this letter during the trial in the lower court and the same is duly signed by the parties. The production of the same was not objected to during the trial and as such the court shall rely on and apply the same as the foundation of the employment relationship between the parties.
21. The appellant signed the contract on 7<sup>th</sup> May,1997, and amongst the terms was an annual salary of Kenyan pounds Seven Thousand Two hundred and forty-two. The contract provided for a two-month notice or pay in lieu of notice by either party in terminating the same. According to the appellant, the reasons for his termination were not provided for in his letter of appointment and as such he could thus not be dismissed without evidence.
22. The appellant pleaded that the allegations against him were false and that by the respondent purporting to investigate the allegations while criminal proceedings was ongoing was malicious. There was produced by the respondent a show-cause letter dated 27<sup>th</sup> October, 1999 accusing the appellant of having had carnal knowledge of a patient. A termination letter dated 20<sup>th</sup> December, 1999 was served upon the appellant which points to the fact that the appellant appeared before a probe committee. He was dismissed for loss and lack of trust arising from his purported gross misconduct.
23. The appellant alleged during the hearing in the lower trial court that he had appeared before the probe committee but did not participate or answer questions since a criminal case was going on against him in Butere – See page 55 of the record of appeal. The appellant contends that the reason for his termination was not in the termination letter and hence the reason thereof is not supported by law. The letter of appointment indicated that the appellant could be summarily dismissed in the event of misconduct.
24. The *Employment Act* (Cap 226) (Now repealed) (“the Act”) in force when the appellant was dismissed provided in Section 17(g) that –
  - “ 17. Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal –
    - (g) if an employee commits, or on reasonable and sufficient grounds is suspected of having committed a criminal offence against or to the substantial detriment of his employer or his employer’s property.”
25. The show-cause letter to the appellant which doubled as a letter of suspension indicated that the act by the appellant of having carnal knowledge of or engaging in sexual intercourse with a patient was misconduct. There was no other incident when the appellant was suspended. The termination letter indicates that the appellant was dismissed following his suspension for gross misconduct. The only



incident arising during the appellant's employment was the alleged misconduct that led to the loss of trust by the respondent.

26. The court finds that the trial court arrived at the proper finding in holding that criminal proceedings and internal disciplinary processes are separate and distinct. The court is persuaded by various decisions that have held that criminal proceedings are not a bar to internal disciplinary process – For example, see *Joseph Wambugu Nderitu V Teachers Service Commission (2016) eKLR*.
27. The appellant had been employed as a clinical officer by the respondent. The accusation of having sexually assaulted a patient in itself grounds for serious allegations of gross misconduct against the appellant. The respondent submitted that investigations were undertaken that confirmed the allegations against the appellant notwithstanding that the appellant declined to participate in the disciplinary hearing before the probe committee but he attended. The court finds that the allegations against the appellant in themselves eroded the trust between him and the respondent, his employer.
28. The appellant confirmed that he attended the hearing but refused to participate. He had been served with the show-cause letter, although the act did not provide for one to be issued.
29. The court finds and holds that the termination was fair and lawful on both substantive and procedural fairness. In that regard, the trial lower court arrived at the right decision and the court has no reason(s) for disturbing that holding.

## **V. Reliefs**

30. Having found that the trial court arrived at the proper finding in that the appellant's dismissal was fair and lawful, it means that the appellant was not entitled to general and or exemplary damages claimed as there was no proof that the termination was malicious, unfair, or unlawful. The appellant admitted that he was paid his salary for December, 1999 when he was dismissed and thus there was no proof of any salary arrears. The appellant was not entitled to any notice pay as he was summarily dismissed for gross misconduct.
31. On the assertion that the motor vehicle registration number KAA 232M make Peugeot 504 was registered in the name of the appellant and thus not open for repossession the court has read the appellant's testimony in the lower trial court where the appellant confirmed that the motor vehicle was the property of the respondent. The appellant did not dispute that he had not settled his car loan. The car loan had been issued under the respondent's car loan scheme. The respondent was still in possession of the original logbook and without proof from the appellant that he had settled the loan, the respondent was within its legal right to repossess the motor vehicle as it had the legal title to the same – See pages 54-55 of the record of appeal.
32. In that regard, the lower trial court arrived at the right decision in finding that the respondent had a right to repossess the motor vehicle and the appellant was obligated to clear his loan before claiming ownership of the said motor vehicle. The court has no reason(s) for disturbing that finding and holding.
33. The appellant asserted that inadmissible documents were produced to indicate that the benefits due to him were used to settle his outstanding loan. There was no contrary evidence adduced by the appellant to rebut the evidence adduced by the respondent relating to the appellant's benefits. Without evidence contrary to the documents produced by the respondent, the appellant could not legally assert that the records were false without adducing documentary counter-evidence. No evidence was adduced to prove that the documents and records from the respondent were forged and or fake. The court finds no reason to interfere with the lower trial court's findings.



**VI. Costs**

34. Each party shall meet own costs for this appeal. The order for cost by the trial court shall remain undisturbed.

**VII. Orders**

35. Flowing from the foregoing, the court makes the following orders –

- a. The appeal fails in its entirety and is hereby dismissed.
- b. Each party shall meet own costs in this appeal.
- c. The order on costs by the trial court shall remain undisturbed.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

.....

**DAVID NDERITU**

**JUDGE**

