



REPUBLIC OF KENYA



KENYA LAW
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**Juma Hardware Limited v Tungani & 2 others (Appeal E189 of 2024)
[2025] KEELRC 317 (KLR) (5 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 317 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E189 OF 2024
JW KELI, J
FEBRUARY 5, 2025**

BETWEEN

JUMA HARDWARE LIMITED APPELLANT

AND

**MIRIAM TUNGANI & 2 OTHERS & 2 OTHERS & 2 OTHERS & 2
OTHERS RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Chief Magistrate
Employment and Labour Relations Court at Nairobi (Hon. S. A. Opande)
delivered on 9th March 2023 in MCMELC Cause No. E438 of 2021)*

JUDGMENT

1. Juma Hardware Limited the above-mentioned Appellant, being dissatisfied with the Judgment and Decree of the Chief Magistrate Employment and Labour Relations Court at Nairobi (Hon. S. A. Opande) delivered on 9th March, 2023 in MCMELC Cause No. E438 of 2021 filed memorandum of appeal dated 11th April 2023 and received in court on the 5th July 2024 seeking for the following reliefs:-
 - a) The Court to set aside the Judgment of Hon. S.A Opande delivered on 9th March, 2023 and substitute the same with this Court's findings and determination of the suit.
 - b) Award the costs of this Appeal to the Appellant.
2. Grounds Of The Appeal
 - a. Disregarding the evidence presented by the Appellant that all procedures for redundancy were complied with, and that there was no evidence of unfair termination.
 - b. Failing to consider the outcome of the conciliation meetings where it was resolved that the dismissal of the Respondents was proper and in accordance with the [Employment Act](#).



- c. Disregarding the evidence presented that the Respondents were given clear reasons for the declaration of redundancy, as well as the procedure and criteria that were used to reach the decision.
 - d. Failing to consider the fact that the Appellant had made efforts to comply with all relevant laws and regulations related to redundancy and had acted in good faith throughout the process.
 - e. Awarding compensation to the Respondents for unfair termination, despite the fact that all procedures were followed and there was no evidence of unfairness and without properly assessing the amount of compensation due.
3. The appeal was opposed by the respondent through notice of preliminary objection dated 20th September 2024 seeking for the appeal to be struck out because the appellant lacked locus standing and was incapable of sustaining a cause of action in the appeal having merged with Ramco Hardware Limited 2 years ago to form ASL Limited; The appellant did not seek leave of the court for its appeal to be admitted out of time the memorandum of appeal having been file don the 5th July 2024 more than a year after the statutory period of 30 days. The judgment was delivered on the 9th of March 2023; The appellant was in contempt of court having disobeyed the stay order of Justice Nzioki Wa Makau in ELRC Misc.E081 OF 2023. That the Appellant did not seek an extension of time to deposit the decretal amount outside the ordered time and did not pay the amount of the decretal amount for the part of the claim that was settled by agreement of the parties; the appeal was based untrue grounds; the certificate of delay dated 31st July 2024 was irregular and was not supported by evidence; they sought the appellant’s advocates to release the decretal sum.
4. The court directed the preliminary objection be canvassed together with the main appeal as it was based on contentious facts.

Background To The Appeal

5. The Respondents filed a joint claim against the appellant vide statement of claim dated 29th December 2019 seeking for the following reliefs: -
- a. A declaration that the respondent act of terminating the claimant’s employment was unprocedural and amounted to unfair termination of the claimants
 - b. Kshs. 1,122,962.00 against the respondents as particularised in paragraph 4 of the statement of claim.
 - c. Costs so of the suit
 - d. Interest on (b)and (c)
 - e. Such further or other reliefs as this Honourable Court may deem fit (page 87 of RoA)
6. The case was heard before the trial court with each party calling its witnesses of facts who testified on oath and were all cross-examined (pages 187-196 were the proceedings). The parties were directed to file written submissions after the hearing.
7. The trial court delivered its judgment on the 9th March 2023 in favour of the claimants having found unlawful and unfair termination awarding the equivalent of 12 months’ salary as compensation to each of the claimants with costs of the suit and interest from the date of judgment and certificate of service (page 202 of RoA).



Determination

8. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:- “The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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 the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point 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.”

Issues for determination

9. The appellant identified the following issues for determination in the appeal:- Whether the Appeal is properly on record. The Magistrate erred in law and fact in finding the redundancy unfair. The trial court issued excessive damages.
10. The respondent identified the following issues for determination in the appeal: -
- i. Whether appellant’s appeal was filed out of time without leave?
 - ii. Whether the appellant’s business exists or was demolished?
 - iii. Whether we are entitled to further relief and costs?
11. The court having considered the grounds of appeal and the notice of preliminary objection by the respondent discerned the issues for determination in the appeal were:-
1. Whether the Appeal was properly on record,
 2. Whether the trial court erred in holding the termination was unlawful and unfair,
 3. Whether the respondent were entitled to the reliefs granted.

Whether the Appeal was properly on record

12. The Court observed that this was an issue raised in the preliminary objection by the respondents to the effect that the appellant did not seek leave of the court for the appeal to be admitted out of time, the memorandum of appeal having been filed on the 5th July 2024 more than a year after the statutory period of 30 days. The judgment was delivered on the 9th March 2023

Respondent’s submissions on their notice of preliminary objection

13. The Respondent submitted that the appellant’s case was that the court deemed the annexure marked as DO-7 in the supporting affidavit of Denny Ogogo sworn on 11th April, 2023 in ELRCMISC/ E081/ 2023 as a duly filed Memorandum of Appeal; (paragraph 12 of the affidavit of Denny annexed). Annexure marked as DO-7 was filed before the appellant obtained leave. Such filing of an appeal is not permitted in law. The Respondent reiterated the authority cited in their written submissions dated 5th December, 2024 of the decision in *Peter Mathenge t/a Imperial Water Services - v- Juma (Employment and Labour Relations Appeal E210 of 2023)* [2024] eKLR. Further the document filed as annexure and marked as DO-7 cannot amount to a pleading as such would mean we have two appeals on record from the same judgement, that is this appeal and the appeal of Case No. ELRCMISC/ E081/ 2023 before



Hon. Justice Stephen Radido. In ELRCMISC/ E081/ 2023 the Court granted leave to appeal out of time because at the time the delay then was not inordinate, and appellant had informed the court it would avoid further delays in filing of its appeal; (paragraph 17-18 of the affidavit of Denny) That it was not in dispute that the Memorandum of Appeal dated 11th April, 2023 was filed and paid for on 5th July, 2024 in ELRCCA/ E189/ 2024 in the judgment of 9th March, 2023. The period between 9th March, 2023 and 5th July, 2024 was inordinate and not explained; The Respondent annexed the invoice and receipt of payment issued by court at the time of filing. It is not true that Appeal was filed in ELRCMISC/ E081/ 2023; The respondent referred the court to read ground two (2) of the Notice of Motion in ELRCMISC/ E081/ 2023 which stated: - “The Applicant has filed a Notice of Appeal indicating its intend to appeal the entire decision and has requested certified copies of the proceedings to assist in the appeal process. The Applicant intends to pursue the appeal and is taking all necessary steps to ensure that it is filed in a timely and effective manner.” Also, see paragraph 14 of the Replying Affidavit of Joy Impano sworn on 10th April, 2024 in ELRCMISC/ E279/ 2023 annexed on page 6 of their submissions dated 5th December, 2024 herein which states: - “The Respondent is keen on pursuing its appeal and has appeared in court severally (23 November 2023, 29 January 2024, 26 March 2024) in ELRC Misc. 081 of 2023 in which it has sought the help of the court to facilitate the typing of the Magistrate’s Court proceedings to facilitate the filing of the Memorandum of Appeal...”

Appellant’s submissions

14. The Appellant submitted that the appeal had been properly filed following compliance with the orders of the court and procedural requirements. The Respondents’ contention that the appeal is out of time is misplaced, as the Appellant acted within the confines of the law. The Appellant acknowledged that the appeal was initially filed out of time. To address this, the Appellant filed an application in Miscellaneous Case E081 of 2023, seeking leave to file the appeal out of time and for the Notice of Appeal dated 6th April 2023 and the Memorandum of Appeal dated 11th April 2023 to be deemed as duly filed. This application was allowed by the Honourable Justice Nzioka wa Makau through a ruling delivered on 12th July 2023. The court order granting leave cured any procedural defect regarding the timing of the appeal. It is settled law that once leave to appeal out of time has been granted, the appeal cannot be deemed improperly filed. (See Nicholas Kiptoo Korir Arap Salat v IEBC & 7 others [2014] eKLR).
15. The appellant contended that, following the ruling of 12th July 2023, the Appellant took the necessary steps to file the record of appeal. On 6th April 2024, the Appellant wrote to the court requesting typed proceedings, a prerequisite for compiling the record of appeal. The court was invited to take judicial notice of the inherent delays in the typing of proceedings in courts across the country, which necessitates the issuance of Certificates of Delay. This reality is recognized under Rule 82 of the Court of Appeal Rules. The Appellant diligently followed up on the status of the typed proceedings through several mentions in court on 23rd November 2023, 29th January 2024, and 26th March 2024. During these mentions, the Appellant sought the court’s assistance to expedite the issuance of the proceedings, demonstrating good faith and commitment to prosecuting the appeal. The proceedings were eventually supplied to the Appellant in July 2024, after which the Appellant promptly filed the Record of Appeal on 3rd September 2024. The Appellant complied with the procedural requirements for appeals: Leave was granted to file the appeal out of time, the Notice of Appeal and Memorandum of Appeal were regularized, typed proceedings were requested, followed up, and promptly acted upon once received. The appellant submitted that this diligent approach aligns with the principles laid out in *Leo Sila Mutiso v Rose Hellen Wangari Mwangi* [1999] 2 EA 231, where the court emphasized that extensions of time should be granted where there is no undue delay, and a reasonable explanation for delay exists.



16. The Appellant contended that the Respondents had not demonstrated any prejudice suffered as a result of the delay. The delay, attributable to court processes beyond the Appellant's control, was neither inordinate nor unreasonable. The Appellant had acted with all due diligence, and the interests of justice warrant the appeal to be heard on its merits. In any event, in order to secure its leave to file the appeal out of time, the Appellant deposited security, being the decretal sum, in an account jointly held by the Appellant's counsel and the Counsels then on record for the Respondents, Messrs. Lemmy Regau & Company Advocates and the same continues to accrue interest. Should the appeal be determined in favour of the Respondents, they will have access to the said sum. The Appellant urged that the court finds the appeal properly filed and proceeds to hear it on merit in the interest of substantive justice. The procedural delays were adequately addressed throughout by the leave granted, and the Appellant has demonstrated diligence and good faith in the process.

Decision

17. The court noted that vide ruling dated 12th July 2023 produced by the Respondent at page 13 of their written submissions pursuant to a Misc. Application by the appellant, among others, seeking for leave of the court to file appeal out of time and for the draft memorandum of appeal dated 11th April 2023 to be deemed as duly filed; the court Justice Nzioki Wa Makau through vide ruling delivered on 12th July 2023 allowed the application and granted leave to the Appellant to file the appeal out of time. The court finds that the issue of whether the appeal was proper was moot as the appeal dated 11th April 2023 was deemed to have been filed and properly on the record according to the ruling. The certificate of delay is a document of the court and a party cannot answer on its credibility. Once a party applied for the certificate and it was granted that is a court record. A notice of preliminary objection would not be a proper way to move the court to question the credibility of a certificate of delay. A notice of preliminary objection is on points of law as held in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:..."A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration." At page 701 paragraph B-C Sir Charles Newbold, P. added the following:"A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...." The court for the foregoing reasons held the notice of preliminary objection to be without merit and dismissed the same with costs in the cause.

Whether the trial court erred in holding the termination was unlawful and unfair

18. The trial court held that the reason for the declaration of redundancy to the employees was not sufficient.

Appellant submissions

19. In 2018, the Appellant received notices from National Environment Management Authority (NEMA) that three of its shops were constructed on riparian land and were scheduled for demolition. This, coupled with the financial challenges the Appellant was experiencing, the Appellant had to restructure to remain afloat. On 10th December 2018, the Appellant wrote to its employees and the Ministry of Labour and the Kenya Union of Commercial Food and Allied Workers Union (the Union) to which the Respondents were members, giving them notice of intended redundancies (See pages 74 and 75 of the Record of Appeal). At that point, the appellant anticipated that about 60 of its employees would



be affected, among them the Respondents herein. What ensued were discussions with the Union (See correspondence dated 7th February 2019 to the Union at page 76 of the Record of Appeal) in which consultations the number of affected employees was reduced to 26.

20. That on the 14th February 2019, the Appellant shared its proposed computation of terminal dues for the 26 agreed employees with the Union for confirmation (See page 78 to 80 of the Record of Appeal) so as to facilitate the conclusion of the process. The 1st Respondent, testifying on her own behalf and on behalf of the other two at the trial court confirmed during hearing that she had attended the meetings with the Union and was therefore aware of the consultative discussions held between the Appellant and the Union (See page 190 of the Record of Appeal, being the trial court's proceedings). The Appellant then subsequently issued redundancy notices dated 28 March 2019 to the affected employees, including the Respondents herein, referencing the discussions that began in December the preceding year. Instead of providing one month's notice, the Appellant opted to pay in lieu of the notice as indicated in the termination letters (See Pages 52, 61 and 68 of the Record of Appeal).
21. The Union then disputed the redundancies in April 2019 and registered a Trade Dispute with the Ministry of Labour and Social Protection (See Pages 84 and 85 of the Record of Appeal). The Labour Office considered the positions presented by the Union as well as the position presented by the Appellant and, in a decision dated 12 June 2019 (See pages 86 and 87 of the Record of Appeal) found the redundancy process to be proper and in compliance with the *Employment Act*.
22. The Respondents then filed the suit at the Magistrate's court in which the trial court found the redundancy process unfair on the basis that it was the Appellant's obligation to 'convince the Respondents of the need for the redundancy'. The Appellant submitted that the trial court imposed an undue burden on the Appellant, exceeding the requirements of the *Employment Act*. The law permits an employer to declare redundancies provided it complies with statutory obligations, which the Appellant stated it fully satisfied. The obligation is to present valid reasons for the redundancy, not to ensure the affected employees are subjectively "satisfied" or "convinced" by those reasons. The appellant contended that the termination of employment is inherently emotive, particularly in redundancy cases where employees are not at fault. It is unrealistic to expect employers to achieve employee satisfaction in such situations, as redundancies often result in discontent regardless of the employer's reasoning. To demand that employers "satisfy" employees creates an impractical standard, effectively undermining lawful restructuring processes and placing an impossible burden on employers seeking to adapt to genuine operational needs.
23. The appellant urged the court to consider the implications of the trial court's reasoning on legitimate business as decisions. Employers often restructure operations to address economic or operational challenges, which was the case here. The law seeks to balance the rights of employees with the operational needs of employers. Placing an additional burden on employers to satisfy employees beyond legal restructuring compliance would hinder this balance, potentially discouraging businesses from pursuing lawful processes due to fear of subjective challenges.
24. The appellant submitted that the court had consistently held that the focus in redundancy cases is whether the whether an employer had adhered to statutory requirements and provided valid reasons for the decision, and not that the employees had subjectively accepted or agreed with those reasons. To do otherwise would be to rewrite the law under the guise of interpretation, which is outside the court's mandate. The Appellant relied on the Court determination in the case of *Aga Khan University Hospital Nairobi v Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA)* which it contended reaffirmed the principle that organisations have the mandate and freedom to conduct their businesses according to their own business plan and should not be stopped from restructuring, especially if the organisation has followed the procedures provided for within the



law. The *Employment Act*, 2007 (Kenya) only requires an employer to provide valid reasons and notify the employee, union, and labor office as outlined under Sections 40 and 45. There is no statutory requirement to provide audited financial accounts to employees. Audited accounts are often sensitive and confidential. Employers should not be compelled to disclose financial details unless specifically mandated by law, as this could undermine business operations and competitive interests.

25. The Appellant further relied on the decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, where the Court of Appeal held that redundancy is valid if the employer complies with procedural requirements. The court emphasized that redundancy decisions are primarily demonstrated management prerogatives and should not be unduly interfered with if procedural fairness is complied with. While employers must provide valid reasons for redundancy, compelling them to disclose audited financial accounts imposes an unnecessary burden and risks breaching confidentiality. Companies must protect proprietary and sensitive financial information, which is for disclosure unless the law or a court specifically requires it. In *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR, the court held that redundancy decisions must be respected as long as the employer adheres to statutory provisions and acts in good faith. It is not the role of the court to delve into operational decisions unless there is clear evidence of malice or unfairness. The court's role in redundancy cases is to assess whether procedural requirements under Section 40 were met and whether the employer acted in good faith. Employers cannot be expected to "convince" employees beyond providing valid and lawful reasons. The Court of Appeal in *Kenya Airways v Aviation Workers Union* (supra) reinforced that redundancy must not be used as a disguise for unlawful termination. However, the court acknowledged that procedural safeguards, such as notification to the labor office, already provide adequate checks and balances. The Appellant demonstrated that while it began with an initial list of 60 employees to be declared redundant, that was subsequently reduced to 26 following discussions with the Union, on behalf of its members. Having consulted with the Union, the Appellant was not obligated to consult with the employees again as the union legally acted on behalf of the affected employees as was the finding of the Court of Appeal in *Kenya Airways v Aviation Workers Union* (supra). The appellant urged the court to find that the redundancy undertaken by the Appellant was both substantively and procedurally fair.

Respondent's submissions

26. On whether appellant's business exists or was demolished? The Respondent submitted that paragraph 14 of appellant's written submissions dated 19th December, 2024 avers that appellant received notice of demolition. No proof of demolition had been given. It was untrue that appellant suffered financial constraints at the time of our termination due to demolition of buildings along riparian land. During then, appellant only had stores at Gikomba along Kombo Munyiri Road, where its head office is located. The Respondent contended that they had learnt that in the year 2019 when they were terminated from employment services of the appellant, it expanded, it now operates another ASL (trading) Limited outlet on Sheikh Karume Road here in the Nairobi CBD. The growth is proof of its financial success. That they had made several visits to their former place of work, at its offices at Gikomba, which is conspicuously labelled ASL (trading) Limited, to collect their Certificates of Service together with cheques for the part of the claim that was settled between employer and the union, that is Kshs. 70,000 for each person, but were unsuccessful. That the appellant's current staff informed them that the business owners left the country. They managed to obtain appellant's CR12 certificate from registrar of companies and have established that the appellant exists but is trading under a different name, that is, ASL (trading) Limited; (the CR12 certificate was annexed to the submissions).



Decision

27. The role of the appellate court is to re-evaluate evidence before the trial court as held in *Selle* decision (supra). It is settled law that submissions are not pleadings and as such the Respondents could not introduce new evidence via submissions and as such the court discarded the said documents annexed to the submissions. The Court cannot admit documents produced under written submissions.
28. Redundancy is defined under *Employment Act* as; "redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;" The procedure for redundancy is according to section 40 of the *Employment Act* to wit:- "40. Termination on account of redundancy
- (1) 1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—
 - (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
 - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
 - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
 - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
 - (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
 - (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service."
29. Section 45(2) of the *Employment Act* provides the basis on which termination of employment is allowed for whatever reasons as follows:- "45 (2) A termination of employment by an employer is unfair if the employer fails to prove—
- (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and



- (c) that the employment was terminated in accordance with fair procedure.” Redundancy falls under operational requirements of the employer and that is what the employer must justify together with procedural fairness in disputes on redundancy. The employee is faultless.
30. The court on evaluation of the evidence before the trial court found that the appellant complied with the provisions of section 40 of the *Employment Act* and upheld the conciliator’s decision of 12th June 2019. The court found that the trial court overreached by stating the claimants ought to be satisfied of the reasons for the redundancy yet they were represented by the union which participated in the entire process. The court agreed with the appellant that the trial court imposed an undue burden on the Appellant, exceeding the requirements of the *Employment Act*. The law permits an employer to declare redundancies provided it complies with statutory obligations, which the Appellant fully satisfied. The obligation is to present valid reasons for the redundancy, not to ensure the affected employees are subjectively "satisfied" or "convinced" by those reasons. The requirement for the claimants to be issued with financial accounts statement when they were represented by the union was an overreach and beyond the requirements of section 40 and 45(2) of the *Employment Act*. The role of the court in redundancy cases is on the compliance with the provisions of section 40 and 45(2) of the *Employment Act* as held in *Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR*, that redundancy decisions must be respected as long as the employer adheres to statutory provisions and acts in good faith. It is not the role of the court to delve into operational decisions unless there is clear evidence of malice or unfairness. The involvement of the union and the Ministry of Labour office in the dispute afforded adequate safeguards against abuse of the process by the appellant. In this case, the dispute was placed before a conciliator of the ministry of labour who found the redundancy process to be in compliance with the law. The union never challenged the decision before court.
31. The *Employment Act* required the employer to pay the affected employees under redundancy as follows:- section 40(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash; (f) the employer has paid an employee declared redundant not less than one month’s notice or one month’s wages in lieu of notice; and (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.”
32. The respondent produced the payment tabulations before the trial court but there was no evidence that the same had not been paid to the claimants. RW confirmed the same. The court then finds that these amounts having been in the claim ought to have been awarded. The tabulations were done in conjunction with the union. The same are payable as tabulated at pages 55, 63 and 73 of the Record of appeal with interest from judgment date.
33. On the issue of demolition of shops the trial court held at paragraph 23 of the judgment:- ‘on the reasons for demolition of stores , this is a matter of fact and if none was demolished as of now the claimant would have proved.’ There was no cross-appeal. The trial court having held there was no prove of non-demolition and the respondent having not cross- appealed on the finding then the issue cannot be raised in defence of the appeal.
34. In the upshot the appeal is held merited for the foregoing reasons. The judgment of the lower court is set aside and substituted as follows:-
- Judgment is entered for the claimant for payment of terminal dues as per the tabulations before the trial court by the Appellant and the 2nd respondent jointly and severally :-
- Mirima Tungani gross pay of Kshs. 60,091 with interest at court rates from the date of the judgment of the lower court,



Eunice Khayesi Gross pay at Kshs. 88,572 with interest at court rates from the date of judgment,

Paul Chuma Gross pay of Kshs. 78,069 with interest at court rates from the date of judgment.

Costs of the suit.

35. The amounts above to be tabulated and Decree drawn for payment under the decretal sum held by the advocates in joint account within 30 days of judgment.
36. Each party to bear own costs in the appeal.
37. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 5th DAY OF FEBRUARY, 2025.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Appellant: - Impano

Respondents: Miriam Tungani representing herself and other two respondents

