



**Samuel v Blessed Bakanja A Mecea College (Appeal E181 of 2023)
[2025] KEELRC 1131 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1131 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E181 OF 2023
DKN MARETE, J
MARCH 26, 2025**

BETWEEN

JUSTUS MUSYIMI SAMUEL APPELLANT

AND

BLESSED BAKANJA A MECEA COLLEGE RESPONDENT

JUDGMENT

1. This matter came to court by way of an Amended Memorandum of Appeal dated 22nd February, 2024. It comes out as follows;
 1. Misapplying section 90 of the *Employment Act* No. 11 of 2007 by severing the appellant's claim despite the suit having been filed within 3 years from the date of termination thereby arriving at an absurd conclusion.
 2. Overlooking precedents of superior courts thereby applying wrong principles to disallow the Appellant's claim for unpaid dues from January 2005 to July 2017.
 3. Finding that the Appellant's termination was fair despite the Respondent allowing the Appellant to be on its employment beyond 31 July 2020 after the lapse of the employment contract.
 4. Dismissing the Appellant's claim for outstanding salary for the month of August 2020 despite the glaring evidence on record indicating that the Appellant was in the Respondent's employment.
 5. Disregarding the weight of evidence adduced by the Appellant regarding the unpaid service pay dues for October 2004 to December 2004 January 2005 to June 2005, December 2005, June 2006, September 2006, June 2013 to September 2013 thereby failing to award the same.



6. Disregarding provisions of the *Labour Institutions Act*, the Regulation of Wages (General) (Amendment) Order for the years in dispute and precedents of superior courts regarding calculation of underpayment arrears thereby arriving at the wrong assessment of the Appellant's underpayment arrears.
 7. Disregarding the totality of evidence placed before her thus occasioning travesty of justice by denying the Appellant gratuity underpayment.
 8. Falling to take into account the Respondent's terms and Condition of service manual for support staff and totality of evidence placed before her thus arriving at a wrong concluding regarding the Appellant's claim for annual travelling allowance.
 9. Denying the Appellant salary for serving as a driver from February 2013 to August 2020 despite the Respondent's admission and the Appellant's evidence was not controverted at the hearing.
 10. Misapplied the law regarding the computation of overtime dues of the Appellant.
2. Reasons Whereof the Appellant asks this Court for orders that:
- a. The Appeal be and is hereby allowed.
 - b. The judgment and decree of the Magistrate Court issued on 4th September 2023 be and is hereby set aside.
 - c. A declaration that the Appellant's termination by the Respondent was unlawful and unfair.
 - d. The Appellant be and is hereby awarded:
 - i. 12 months Compensation based on minimum wage of 17,572.90 x 12 months..... Kshs.210.874.80;
 - ii. Salary in lieu of notice..... Kshs 17,572.90;
 - iii. 1 month redundancy notice.....Kshs 17,572.90;
 - iv. Severance pay (675.88 x 15 x 16 years)..... Kshs. 162.211.20;
 - v. Unpaid salary balance for August 2020 @ (17,572.90-9536)Kshs. 8.036.90;
 - vi. Service pay for months in the years 2004, 2005, 2006, 2013 and 2020 (675.88 x15 x 1 year and 6 months).....Kshs. 15,207.30;
 - vii. Underpayment of salary arrears (from January 2005 to August 2020).....Kshs. 266,334.10;
 - viii. Gratuity underpayment.....Kshs. 28,651.86;
 - ix. Unpaid annual travelling allowance from 2009 to 2020 2,000 per year (2.000 x 11 years) Kshs. 22,000
 - x. Salary for serving as a driver according to minimum wage From February 2013 to July 2020 @ 18,319.50 x 7^{1/2} years.
(18.319.50 x 17.5 years x 12 months).....Kshs. 1,648.755;
 - xi. Overtime (minimum hourly wage x 1.5 times x 2 hours overtime a day x number of days worked -121.30 x 15 x 2 hours x 4.992 days.....Kshs, 1,816.588.80;



xii. Certificate of service.

3. The Appellant opens by faulting the learned magistrate for misapplying Section 90 of the *Employment Act*, 2007. This was by severing the appellant's claim despite the suit having been filed within three (3) years from the date of termination and thereby arriving at an absurd conclusion. This as follows;
 4. The Appellant worked for the Respondent from October 2004. He was issued with an employment contract in January 2005 which was later converted to a fixed term contract in 2007. He worked under fixed term contracts which were continuously renewed by Respondent up, to 4th September 2020 when he was terminated. He filed his claim on the 22nd of July 2021 which was within the 3 years required under section 90 of the *Employment Act*.
 6. ...the Appellant claims for unpaid dues go as far as the year 2005: the said outstanding dues are admissible and can be granted by this ...Court provided his suit was filed within 3 years from the date he was terminated pursuant to section 90 of the *Employment Act*.
4. The Appellant in further buttressing his case seeks to rely on the authority of *G45 Security (K) Limited v Joseph Kamau & 468 others* [2018] eKLR where the Court of Appeal at paragraph 26 of its judgment sustained and upheld the trial court's judgment regarding payment of terminal dues of 5 claimants who were terminated in 2011 and 2012 and who filed their claims in 2014 within 3 years prescribed under section 90 of the *Employment Act*. The 5 claims sought for accrued terminal dues before May 2008 when they worked for Armor Group (K) Limited.
5. The Appellant further buttresses the Court's position by relying on authority of Ogembo in his book *Employment Law: Guide for Employers*, at page 38 where it is observed as follows:

Accrued benefits earned by the employee over the continuous years of service must be paid at the point of exit of the employee. These accrued claims cannot be severed and subjected to different days of accrual for the purposes of applying limitation of time provisions. II. for example house rent or salary arrears remained unpaid in the employee's records, the same become payable on the date of termination or exit of service,
6. The Respondent in answer to the appeal submits that the issue of jurisdiction of the lower court in dealing with this matter was satisfactorily dealt with at that level. This is because the employment of the Appellant was by fixed term contracts which are independent of each other. These do not carry any rights or expectation after the terminate dates. It is clear that the circumstances of the cases and authorities cited by the Appellant are irrelevant and not applicable to the current situation and circumstances.
7. The Respondent in finality submits that the Appellant claim under the fixed term contract was only actionable during a period of three (3) years after lapse of the contract. No claim was ever filed against the Respondent during the respective statutory period relating to the fixed term contract that terminated by effluxion of time and therefore the court rightly declared these statute barred.
8. The judgment of court is to the extent that the Respondent vide a letter dated 4th September, 2020 notified the Appellant of the reasons why it would not renew his contract. At the time, the Appellant was on leave and did not work for the Respondent. Therefore, this is the dated of termination of the Appellant's last fixed term contract and would count for the limitation period. The Respondent's case therefore takes sway as against the Appellant.



9. I have also looked at the elaborate judgment of the lower court made on the 4th September, 2023 and do not fault it whatsoever. The learned magistrate noted that the Appellant contract of employment was not unfairly terminated as alleged but lapsed through effluxion of time. The letter of 4th September, 2020 simply elicited reasons for non-renewal. The Respondent is therefore not in any default.
10. The learned magistrate also went out to elaborately make awards and offered justification for such and also for denial of other awards prayed for. I therefore find no fault with the proceedings and judgment of the lower court. I have no reasons for in any way interfering with the findings and awards made thereof.
11. Overall, I find the appeal wanting for want of basis and reasoning. The itemised grounds of appeal are not substantiated or proven.
12. I am therefore inclined to dismiss the appeal with orders that parties bears their costs.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF MARCH 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Osiemo instructed by Lumumba & Ayieko Advocates for the Appellant.

Mr. Situma instructed by KW EW Advocates LLP for the Respondent.

