



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Okumu v Coalition Security Services Limited (Appeal E062 of 2021)
[2025] KEELRC 1130 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1130 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E062 OF 2021
DKN MARETE, J
MARCH 26, 2025**

BETWEEN

GODWIN BOY OKUMU APPELLANT

AND

COALITION SECURITY SERVICES LIMITED RESPONDENT

JUDGMENT

1. This is an appeal dated 14th June, 2021 and comes out thus;
 1. ...
 2. ...
 3. ...
 - 4) The learned magistrate erred in fact by failing to analyse the evidence;
 - i. The learned magistrate erred in law by calculating the claimants award based on a salary that was an under payment in disregard of clear provisions of the law.
 - ii. The learned magistrate erred in law by failing to award the claimant in accordance to the minimum wage order pursuant to section 48(1) of the *Labour Institutions Act* 2007.
 - iii. The learned Magistrate erred in law by placing the burden of availing an Employment contract on the claimant in complete disregard of sections 9, 10 and 74 of the *Employment Act* and dismissing prayers on the basis that no employment contract has been presented.
 - i. The learned Magistrate erred in law by placing the burden of proof on special damages on an employee who is not a custodian of employment records and



in complete disregard of sections 9(1), (2), 10 and 74 of the Employment Act cap 226, laws of Kenya

- ii. The learned magistrate erred in law by failing to award the appellant his notice pay in complete disregard of section 48(112) of the Labour Institutions Act.
 - iii. The learned magistrate erred in fact and law by failing to award the appellant his annual leave in complete disregard of section 25 and 74 of the Employment Act cap 226 and section 48(1) (2) of the Labour Institutions Act.
 - iv. The learned magistrate erred in fact and law by placing the burden of proof in regards to overtime on the appellant contrary to the provisions of section 10, 18, 27 and 74 of the Employment Act cap 226.
 - v. The learned magistrate erred in law by failing to award the appellant his underpayments in complete disregard of section 48(1) (2) of the Labour Institutions Act.
 - vi. The learned Magistrate erred in fact and law by awarding the claimant three months as compensation without giving reasons as required by law.
- iv. The appellant is seeking to be awarded the following by this Honourable court.
- a. Judgement delivered by Hon. LT.Lewa on the 22 day of May 2020 be set aside.
 - b. The appellant be awarded the following
 - c. A declaration that the termination of the claimant's employment by the respondent was unlawful, malicious, unprecedural and an infringement on his constitutional rights.
 - d. Maximum compensation for wrongful dismissal,
 - e. especial damages
 - i. One month pay in lieu of notice.....
Ksh.14,420.90
 - ii. Amount for leave not takenKsh.22
142.60
2018 January
26 x 691.95 = 17,990.90
Feb - March 2018
3 x 2 x 691.95 = 4151.70
 - iii. Leave Travelling Allowance (850)
.....Ksh.830.00
 - iv. Damages for wrongful dismissal
(14.420.90 by 12 months).....
Ksh.173.050.80
 - v. Over Time at 20 hours a week for 15
months.....Ksh.192,556 80



- vi. Jan 2017 April 2017
 $(16 \times 20 \times 115.05 \times 0.5) = 55, 224$
- vii. May 2017 March 2018
 $(44 \times 20 \times 130.05 \times 1.5) = 137,332.80$
- viii. Best Days 60 days at 12 Hours each
 $(130.05 \times 2 \times 12 \times 60)$
Ksh.187,272.00
- ix. Under payment
 Ksh.81.164.00
 January 2017 - April 2017
 $(12,221.10-7,500) 4721 \times 4 = 18.884$
- x. May 2017 - March 2018
 $(14,420.90 -7,500) 6920.9 \times 9 = 62.280$
- xi. Unpaid Public Holidays
 2017 -16 days $(16 \times 12 \times 2 \times 130.05)$
 Ksh.49,939.20
 2018 - 1 day $(1 \times 12 \times 2 \times 130.05)$
Ksh.3,121 20
- xii. House Allowance 15% of 14420 90 x 15.....
 Ksh.32, 447.03
 JANUARY 2017 - MARCH 2018
 $(15\% \text{ of } 14420.90 \times 15)$
 Service Gratuity $14430.90/26 \times 18 \times 1$
Ksh.9,983.70

- f. Interest on the total.
- g. Certificate of Service
- h. Coats of the Cause
- i. Any other and further relief this Honourable Court may deem fit and just to award under the circumstances.
- j. Interest at court rates from the date of filing.
- k. Any other relief that the court might deem fit.
- l. Costs of the appeal to be awarded to the appellant.

2. This Appeal is not defended, or at all. This is despite service to the Respondent. This scenario also arose at the lower court where the claim was entirely undefended.
3. The parties did not file any submissions on the appeal.



4. I now wish to consider the appeal as follows;

On ground No. (i) and (ii), the learned magistrate calculated the claimant salary on the basis of the Appellant pleadings and evidence adduced in court. It was his claim that he earned Kshs.7,500.00 per month as a security guard. This was not disputed and formed the basis of the calculation of his award by the lower court.

5. The minimum wage order as espoused by section 48 of the *Labour Institutions Act*, 2007 and attributed to in grounds No. (iii) of the Memorandum of Appeal is not relevant, the parties having had a contract of service on their terms. Courts have no leeway or authority to re-write the contract (s)of the parties.
6. Grounds No. (ii) of Memorandum of Appeal on the burden of availing the Employment Contract does not apply. The burden of proving such allegation lay on the Appellant who sought to rely on same. Section 107 of the *Evidence Act*, chapter 80, Laws of Kenya applies. This also applies to the ground on failure to award special damages at paragraph (i) repeated on page 2 of the Memorandum of Appeal. These were not pleaded, presented or proven in evidence.
7. Ground No. (ii) at page 2 on notice pay was never pleaded in the first instance. It is not enumerated as a prayer or even mentioned as an item on the claim. This cannot therefore arise at this late stage. It fails.
8. On annual leave, ground No. (iii) at page 2 was not pleaded and therefore become untenable at this stage. This also applies to grounds (iv)-overtime, (v)-underpayment whose burden of proof was not discharged by the Appellant. He did not adduce any evidence in support of the claims.
9. Lastly, the Appellant also fails on ground No. (vi) of the Memorandum of Appeal. Whereas it is necessary for court to justify award by stating the reasons for such awards, this is not necessarily fatal in the circumstances of this award. Looking at the circumstances under which the Appellant lost his job, an alleged case of reporting to work while drunk, the learned magistrate may have considered this in his award of the claim for unlawful termination of employment. Or alternatively, this was at the back of the court's mind in exercising the judicial discretion on the award.
10. It is notable that at the lower court, just as is the situation here, the matter was not defended. In such Ascenario, the concept of formal proof as a practice in civil litigation comes in handy. In the absence of a defence and therefore contestation, the appellant was duty bound to tender evidence in support of his case on a balance of probabilities. Mere reliance on sections 9, 10 and 74 of the *Employment Act*, 2007 on the duty of the employer to maintain and produce employment record is not an excuse. In any event, this plea was not even raised at their level.
11. Again, the burden of proof as enunciated in sections 107, 108 and 109 of the *Evidence Act*, Chapter 80, Laws of Kenya does not shift on this presumption. The parties seeking to rely on any sets of facts or evidence remains duty bound to adduce such evidence in their favour.
12. This is a well-considered determination by the learned magistrate. It is not worth of any disturbance, or at all. The learned magistrate took into consideration all the material available at his discretion and arrived at a well thought out determination of the same.
13. I am therefore inclined to dismiss the appeal with orders that each party bears their cost of the same.

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

NJAGI MARETE

JUDGE

Appearances:



Mr. Wetaba instructed by Wetaba, Were & Associate Advocates for the Appellant.

No appearance for the Respondent.

