



**Nairobi City Water and Sewerage Company Limited v Njoga (Appeal E222 of 2022) [2025] KEELRC 882 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 882 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E222 OF 2022  
K OCHARO, J  
MARCH 19, 2025**

**BETWEEN  
NAIROBI CITY WATER AND SEWERAGE COMPANY LIMITED APPELLANT  
AND  
MARK ONYANGO NJOGA ..... RESPONDENT**

*(Being an appeal from the judgment and orders of the Senior Resident Magistrate Hon. Muchungi delivered on 25th November, 2022 in Milimani ELRC Cause No. E 483 of 2021 Mark Onyango Njoga vs Nairobi City Water & Sewerage Company Limited)*

**JUDGMENT**

**Introduction**

1. Before me is an appeal against the whole of the Judgment in the above sated lower court matter delivered on the 25<sup>th</sup> November, 2022. Aggrieved by the Judgment and the decree that flowed therefrom, the Appellant assailed the Judgment and decree, through a memorandum of appeal dated 16<sup>th</sup> August 2021, which was later amended on 27<sup>th</sup> March 2023, setting out nine grounds of appeal.
2. When the matter came up before this Court for directions on the hearing of the appeal, the Court directed that it be canvassed by way of written submissions. Pursuant to the directions, the parties did file their respective written submissions.

**The Respondent's case before the lower court.**

3. It was the Respondent's case before the lower court, that he was employed by the now defunct Nairobi City Council on 29<sup>th</sup> January 1990 under staff number 70244. On 5<sup>th</sup> of July 1994, he was transferred from the City Inspectorate to Water and Sewerage Department which later morphed into the Appellant Company.



4. He worked with the City Council of Nairobi up to and until 4<sup>th</sup> May 2000 when he was suspended from duty over allegations of criminal misconduct for which he was charged at Makadara Law Courts under Criminal Case Number 6957 of 2000. He was later acquitted of the charge[s].
5. He successfully appealed against the suspension and on 20<sup>th</sup> January 2011, the Nairobi City Council reinstated him back to work and his services transferred to the Appellant Company.
6. During his transfer from the Nairobi City Council to the Appellant, he transferred together with his entire benefits, rights and his staff number.
7. The Respondent contended that despite the reinstatement to duty, the Appellant unlawfully and unjustifiably failed and or neglected to pay his dues, that were withheld during the suspension period [May 2000 and May 2011, on the ground that it was treating the suspension period as unpaid leave.
8. By its acts, the Appellant violated the stipulations of Article 41 of *the Constitution* and section 18 of the *Employment Act*.
9. The Respondent asserted that he was entitled to;
  - I. A declaration that the Appellant had unlawfully and unfairly withheld his dues;
  - II. KShs. 31,442 per month x12 months x 11 years & 1 month.....KShs.4,181,786;
  - III. General damages
  - IV. Costs of the suit
  - V. Interest on the sums stated in [II] above and the costs from the date they became due.

And urged the Learned Trial Magistrate to find that he was so entitled.

### **The Appellant's Case Before the Trial Court**

10. In response to the Respondent's case, the Appellant asserted that the Respondent first came into its employment on or about 9<sup>th</sup> June 2011 having been seconded by the defunct Nairobi City Council.
11. It further asserted that it was incorporated on 2<sup>nd</sup> December 2003 and as such its responsibility over the benefits and rights of the Respondent commenced when it received him into his employment on 9<sup>th</sup> June 2011.
12. In the circumstances, it didn't suspend the Respondent at any date nor did it lift the suspension. It didn't reinstate him into employment as he asserted.
13. The Appellant denied the Respondent's allegation that it withheld any salary due to him. At all material times, after 9<sup>th</sup> of June 2011, it dutifully and lawfully paid him his dues as and when they became due.
14. The Appellant asserted that the Respondent was not entitled to the reliefs he sought. Further, his case was wholly frivolous, incompetent and unsustainable as he didn't have any cause of action against it.

### **The Trial Court's Judgment**

15. After hearing the parties on their respective cases and considering their Counsels' submissions, the Learned Trial Magistrate rendered herself on the suit through the forestated Judgment, holding that the Respondent's salary was unlawfully and unfairly withheld during the period of his suspension, the Respondent was the rightful entity to pay his owed dues, and assessed the same at KShs. 1,221,802.



## **The Appeal**

16. Aggrieved by the Judgment, the Appellant impugned the Judgment putting forth the following grounds:
- I. That the Learned Trial Magistrate grossly misdirected herself in ignoring the principles applicable and relevant authorities which were binding upon the Court vide the principle of judicial precedent and the doctrine of stare decisis cited in the written submissions presented and filed by the Appellant.
  - II. That the Learned Trial Magistrate erred in fact and law by failing to consider and or disregarding the Response to the Statement of Claim, testimony, evidence and submissions of the Appellant in support of his response and or the submissions of the Learned Counsel for the Appellant by finding in favour of the Respondent, thereby reaching wrong conclusions of law and fact.
  - III. That the Learned Trial Magistrate erred in fact and in law by failing to consider all the issues raised by the Appellant in their submissions.
  - IV. The Trial Magistrate erred in fact and in law in awarding and failing to give a statutory basis for the award of KShs. 1,221, 802.00 to the Respondent in accrued wages.
  - V. The Learned Trial Magistrate erred in fact and law by failing to appreciate that there was not prior employment engagement between the Respondent and the Appellant before June 2011 thus arriving at a wrong conclusion of the law on liability of the Appellant.
  - VI. The Learned Trial Magistrate erred in fact and law by failing to appreciate that the Appellant was not the proper Respondent, as it was not a party to the employment agreement between the Respondent and the Nairobi City County nor was it an employer of the Respondent prior to 2011.
  - VII. The Learned Trial Magistrate erred in fact and law by failing to find that the Respondent had waived his rights to pursue his dues under the doctrine of estoppel.
  - VIII. That the Learned Trial Magistrate erred and misdirected herself in fact and law by imputing and transferring the rights and obligations arising from a contract between the Nairobi City Council and the Respondent to the Appellant in complete disregard of two superior court decisions of Nairobi ERLC Cause No. 1088 of 2014- George Mwangi Karuga v- Nairobi City Water and Sewerage Company Limited & another, and Nairobi Civil Appeal No. 193 of 2019- George Mwangi Karuga v Nairobi City Water and Sewerage Company Limited & Nairobi City County, delivered on 29<sup>th</sup> October 2021 arising out of similar facts thereby reaching a wrong conclusion of law and fact on who was liable in any eventuality.

## **Analysis and Determination.**

17. I have carefully considered the memorandum of appeal and the grounds set out therein, and am of the view, that the grounds are overly and unnecessarily split. The grounds can be condensed into three issue thus:
- I. Whether the Learned Trial Magistrate ignored relevant judicial precedents, breaching the doctrine of stare decisis, and thus erring in law.



- II. Whether the Learned Trial Magistrate erred in law and fact when she held the Appellant liable to settle the Respondent's claim.
- III. Whether the Learned Trial Magistrate erred in fact and law when she granted the Respondent the reliefs she did.

**Whether the Learned Trial Magistrate ignored relevant judicial precedents, breaching the doctrine of stare decisis, and thus erring in law.**

18. The Appellant asserted and submitted that the Learned Trial Magistrate ignored two decisions that were binding on her hierarchically. The policy of the of the courts, and the principle upon which rests the authority of judicial decisions as precedents in subsequent litigations, is embodied in the maxim, stare decisis et non queita movere- to abide by the precedents and not to disturb settled points. It means that when a point of law has been once solemnly and necessarily settled by the decision of a competent court, it will no longer be considered open to examination, or ruling by the same court or those bound to follow its adjudications.
19. The reasons which underlie the doctrine were elaborately stated by Chancellor Kent in a much-quoted passage from the commentaries,<sup>1</sup> Kent Comm.475, thus;

“A solemn decision upon a point of law, arising in any given case, becomes an authority in a like case, because it is the highest evidence which we can have of the law applicable to the subject, and the judges are bound to follow that decision so long as it stands unreversed, unless it can be shown that the law was misunderstood or misapplied in that particular case. If a decision has been made upon a solemn argument and mature deliberation, the presumption is in favour of its correctness; and the community have a right to regard it as a just declaration or exposition of the law, and to regulate their actions and contracts by it. It would, therefore, be extremely inconvenient to the public, if precedents were not duly regarded and implicitly followed. It is by the notoriety and stability of such rules that professional men can give safe advice to those who consult them; and people in general can venture with confidence to buy and trust, and to deal with each other. If judicial decisions were to be lightly disregarded, we should disturb and unsettle the great landmarks of property. When the rule has been once deliberately adopted and declared, it ought not be disturbed, unless by a court of appeal or review, and never by the same court, except for very cogent reasons, and upon a clear manifestation of error; and if the practice were otherwise, it would be leaving us in a state of perplexing uncertainty as to the law.”
20. Undeniably, the Appellant cited the decision of the Court Appeal in *George Mweangi Karuga v Nairobi City Water & Sewerage Company Limited and Nairobi City County* [Civil Appeal 193 of 2019] [2021] KECA 109[KLR] [22<sup>nd</sup> October 2021] [Judgment], before the trial Court. The facts the basis for the ELRC cause, that led to the Judgment that was challenged at Court of Appeal, were in all fours similar to those the basis for the matter that was before the Learned Trial Magistrate and her Judgment thereon.
21. Inarguably, the Learned Trial Magistrate did not in her Judgment consider the formentioned Court of Appeal decision. In my view, the Court of Appeal made vital findings in the appeal, namely;
  - I. The 1<sup>st</sup> Respondent would be liable [if at all], for dues when the appellant would have been transferred to its employment that would be from 19<sup>th</sup> January, 2011 to May, 2011.



22. The finding was embodied in paragraph 38 of the Judgment and for clarity of record, I find it imperative to quote it verbatim, thus;

“The Appellant accuses the Respondents of playing the blame game of shifting liability among themselves, hinged to the contention that the cause of action arose when the Appellant was in the 2<sup>nd</sup> Respondent’s employment, and therefore that the 1<sup>st</sup> Respondent cannot be held liable for any cause of action that arose during the said employment. We take into account the 1<sup>st</sup> Respondent’s reference to the agreement dated 4<sup>th</sup> March, 2004 signed between the Respondents transferring the operational assets, staff and liabilities to the 1<sup>st</sup> Respondent. It is noteworthy that the Appellant hasn’t mentioned anything to do with the agreement in his submissions. The Appellant was employed by the 2<sup>nd</sup> Respondent on 25<sup>th</sup> February 1999 and suspended on 28<sup>th</sup> March, 2002. On 19<sup>th</sup> January, 2011 he was transferred to the 1<sup>st</sup> Respondent. We note that the effective date of transfer was 4<sup>th</sup> March 2004 whereas the claim for dues during the Appellant’s suspension is for the period between October, 2022 to May, 2011. The 1<sup>st</sup> Respondent could be liable [if at all], for dues when the Appellant would have been transferred to its employment that would be from 19<sup>th</sup> January, 2011 to May 2011.” [emphasis added].

23. Had the Learned Trial Magistrate considered the above -stated Court of Appeal decision, appreciated the, holding at paragraph 38, thereof, and the meaning and purpose of the doctrine of stare decisis, she couldn’t have, as she did, attached any liability against the Appellant. No cause of action arose against the Appellant when the Respondent was in its employment with effect from 20<sup>th</sup> January 2011, which would be said to be a basis for his claim against the Appellant.

24. The Respondent’s case ought to have failed on this point. Having said this, I find it unnecessary to proceed to interrogate the other issues identified.

25. It will be remiss of this Court, If I do not point out that I appreciate the detailed, well-researched and reasoned submissions. However, I have deliberately not brought them out fully, in this Judgment, not because I considered them unworthy, but for the reason that the appeal has been disposed of based on one ground, which was not extensively submitted on, by the parties.

26. By reason of the premises, I come to the conclusion that the appellant’s appeal is merited. The Learned Trial Magistrate erred in law and fact when she held the Appellant liable and directed that it compensates the Respondent, notwithstanding the decision of the Court of Appeal abovementioned, which was binding on her.

27. Consequently, I hereby allow the Appeal and set aside the Learned Trial Magistrate’s Judgment. In place thereof, I enter Judgment dismissing the Respondent’s case against the Appellant in the in the lower court. The Respondent shall bear the costs of this appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2025.**

**OCHARO KEBIRA**

**JUDGE**

