



**Ken Knit (Kenya) Limited v Sarara (Employment and Labour Relations Appeal E025 of 2023) [2025] KEELRC 848 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 848 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E025 OF 2023  
MA ONYANGO, J  
MARCH 13, 2025**

**BETWEEN**

**KEN KNIT (KENYA) LIMITED ..... APPELLANT**

**AND**

**JOSEPHAT MOSETI SARARA ..... RESPONDENT**

*(ng an appeal from the Judgment of the Honourable Dennis Mikoyan, Chief Magistrate in CMELRC No. 154A of 2021 delivered on 16th August 2023)*

**JUDGMENT**

1. The Appellant herein was sued by the Respondent in Eldoret CMEL No. 154A of 2021 vide a Memorandum of Claim dated 22<sup>nd</sup> April 2015 wherein the Respondent sought terminal dues for the alleged unfair termination of his employment on account of redundancy.
2. Upon hearing the parties the Trial Court decided in favour of the Respondent.
3. The Appellant being aggrieved by the decision of the Trial Court, filed this appeal vide the Memorandum of Appeal dated 14<sup>th</sup> September 2023 on the following grounds:
  - i. The learned trial magistrate erred in law and fact in finding that the Respondent had proved his case on a balance of probabilities contrary to the evidence on record.
  - ii. The learned trial magistrate erred in law and fact in failing to dismiss the Respondent's claim.
  - iii. The learned trial magistrate erred in law and fact in awarding the Respondent severance pay contrary to the law and evidence on record and without proof of the same.
  - iv. The learned trial magistrate erred in law and fact in awarding the Respondent overtime payment contrary to the law and evidence on record and without proof of the same.



- v. The learned trial magistrate erred in law and fact in failing to find that the Respondent had been fully paid his dues.
  - vi. The learned trial magistrate erred in law and fact in shifting the burden of proof from the Respondent to the Appellant.
4. The Appellant prayed for orders that:
- a. The Lower court judgment be set aside.
  - b. An order be made dismissing the Respondent's case with costs.
  - c. Costs of this appeal be awarded to the Appellant.
5. The appeal was disposed of by way of written submissions. The Appellant filed its written submissions on 27<sup>th</sup> February 2024 while the Respondent filed his submissions on 29<sup>th</sup> February 2024.

### **Analysis**

6. I am required to re-evaluate the evidence on record and reach my own conclusions on the issues raised in the case. I must however remain alive to the fact that I neither saw nor heard the witnesses testify and must make due allowance for this as was held in *Moses Odhiambo Muruka & another v Stephen Wambembe Kwatenge & another* [2018] eKLR
7. Vide his Memorandum of Claim, the Claimant (now the Respondent) averred that he was employed by the Respondent on 21<sup>st</sup> June 1996 and he worked until 4<sup>th</sup> October 2014 when the Appellant unlawfully terminated his services and refused to pay his dues.
8. The Respondent averred that the termination of his employment was unlawful on the following grounds: -
- i. The Claimant's trade union was not informed of the intention to declare the Claimant redundant.
  - ii. No leave pay was given.
  - iii. No three month's salary in lieu of notice was paid
  - iv. The required severance pay was not paid.
  - v. The Claimant was never accorded a chance to be heard and he was never given the reason for termination of service.
9. The Claimant further contended that during his employment with the Respondent he was grossly underpaid; he worked overtime without payment and that he worked on public holidays without due pay.
10. The Claimant tabulated his terminal benefits which he itemized as follows:
- a. 3 months' pay in lieu notice ..... Kshs. 55,275
  - b. Severance pay ..... Kshs. 144,198
  - c. Overtime dues ..... Kshs. 479,160
  - d. Compensation for unfair termination ..... Kshs.221,100



11. The Claimant therefore sought the following reliefs on the basis of the unfair and unlawful termination of his employment:
  - a. A declaration that the termination process as carried out by the respondent is unlawful and that during his employment with the respondent, he was not remunerated as required by law.
  - b. Payment of the sums of money claimed under paragraph 10 above.
  - c. Costs and Interests.
  - d. Any other relieve the Honourable may deem fit to grant.
12. The Appellant (the Respondent in the lower court suit) on its part filed a Reply to Statement of Claim dated 20<sup>th</sup> July 2015 denying the averments made by the Respondent in his claim. According to the Appellant, the Respondent's employment was terminated lawfully and he was paid all his dues which he acknowledged receipt.
13. It was the Respondent's case that the Claimant is not entitled to any of the reliefs he sought in his Memorandum of claim and the court was urged to dismiss the Claimant's suit with costs.

### **The Evidence adduced**

14. At trial the Respondent testified as CW1 and adopted his witness statement recorded on 22<sup>nd</sup> April 2015 as his evidence in chief. It was his testimony that he was paid Kshs. 117,000 when he left employment.
15. On cross examination, the Respondent stated that he paid NSSF. He stated that he was not paid overtime during the course of his employment.
16. The Appellant called Rebecca Cheluget, its Human Resource Manager who testified as RW1. She adopted her witness statement recorded on 18<sup>th</sup> July 2021 as her evidence in chief. It was her evidence that the Respondent was terminated from employment on account of redundancy and that due process stipulated in law was followed in the termination of his employment. In response to the Claimant's claim for overtime, RW1 stated that the Claimant never worked on holidays and weekends and was therefore not entitled to the claim for overtime.
17. After hearing the parties, the trial court delivered its judgment on 16<sup>th</sup> August 2023 and held that the termination of the Respondent on account of redundancy was lawful. The trial court however found that the Claimant was entitled to severance pay at Kshs. 144,198. The Claimant was also awarded Kshs. 479,100 as overtimes dues on the basis that the Appellant did not prove that the Claimant was paid overtime.
18. This judgment is the subject of this appeal.

### **The Appeal**

#### **Appellant's submissions**

19. In its submissions, the Appellant identified the issues for determination to be:
  - i. Whether the learned trial magistrate erred in in law and fact in failing to dismiss the Respondent's claim.
  - ii. Whether the learned trial magistrate erred in law and fact in awarding the Respondent severance pay, contrary to the evidence on record.



- iii. Whether the learned trial magistrate erred in awarding the Respondent overtime payment.
  - iv. Whether the learned trial magistrate erred in law and fact in failing to find that the Respondent had been fully paid his dues.
20. On the first issue, it is the Appellant's submission that the Respondent was terminated from employment on account of redundancy and that it had demonstrated that the Respondent's position was rendered redundant due to the economic hardships in the textile industry at the time which was a valid and genuine reason for declaring the Respondent's position redundant. It is the Appellant's submission that the termination of the Respondent on account of redundancy was justified and the procedure used to lay off the Respondent was compliant with the law on redundancy.
  21. On the second issue whether the learned trial magistrate erred in law and fact in awarding the Respondent severance pay, contrary to the evidence on record, the Appellant submitted that it paid the Respondent severance pay and receipt of the payment was duly acknowledged.
  22. With regard to the third issue, the Appellant submitted that the trial court erred in awarding the Respondent overtime payment as the Appellant did not operate beyond working hours and further that the company was never open over holidays and/or weekends. The Appellant submitted that the overtime chits produced by the Respondent were not authentic as the same did not bare anything from the company.
  23. Lastly, on the issue whether the learned trial magistrate erred in law and fact in failing to find that the Respondent had been fully paid his dues, the Appellant submitted that its witness testified that the Respondent had been paid all his dues which were inclusive of severance pay and one-month salary in lieu adding up to Kshs.117,371.
  24. The Appellant submitted that it had duly demonstrated that it lawfully and procedurally terminated the Respondent's employment on account of redundancy.
  25. The court was thus urged to allow the appeal.

### **The Respondent's submissions**

26. On his part, the Respondent identified the issues in his submissions to be:
  - i. Whether the Respondent proved his case as to the required standard.
  - ii. Whether or not the trial court erred in awarding the Respondent severance and overtime payments.
  - iii. What orders should this court issue
27. On the issue whether the Respondent proved his case as to the required standard, the Respondent submitted that upon being terminated from employment he was paid Kshs 117,371 which amount according to the Respondent was not enough since he had worked for the Appellant for almost over 20 years. The Respondent submitted that he had claimed for overtime and severance pay which he was not paid and that he produced the overtime sheet which was not disputed by the Appellant.
28. It was the Respondent's submission that the trial court was right in finding that the Respondent worked overtime and that he was eligible to be paid.
29. On the second issue, the Respondent submitted that in his testimony before the trial court, he stated that he was employed as a driver on 21<sup>st</sup> June 1996 on permanent basis and was terminated from



employment on 4<sup>th</sup> September 2014 on account of redundancy. He thus urged the court to uphold the award of Kshs.144,198/= having been calculated based on 15 days for each year worked.

30. Regarding the issue of overtime payment granted by the trial court, the Respondent submitted that he produced overtime sheet as Exhibit 5 which was not challenged by the Appellant. The Respondent submitted that the overtime sheet is sufficient proof that he worked overtime and ought to be paid.
31. It is the Respondent's submission that the trial court acted in accordance with the law and evidence in awarding the Respondent the prayer for overtime and severance pay.
32. On what orders should issue, the Respondent while citing the case of Stephen Kathenya v Keroche Breweries Limited [2019] eKLR urged the court to uphold the award of the trial court and to dismiss the instant appeal with costs to the Respondent.

### **Analysis and determination**

33. Upon careful consideration of the Appeal herein, the six grounds of appeal can be condensed into one main issue being whether the Respondent was entitled to the awards granted to him by the trial court.
34. From the record, it is not in dispute that the Respondent was terminated from employment on account of redundancy. The only contention made by the Respondent was that due process was not followed in the termination of his employment and that he was not paid his terminal dues.
35. The Appellant on its part refuted the Respondent's claim that he was unprocedurally terminated from employment and maintained that it complied with the process set out in the law in the termination of the Respondent's employment. The Appellant further contended that the Respondent was paid Kshs. 117,371 as terminal dues which he acknowledged receipt of.
36. The trial court awarded the Respondent Kshs. 144,198 as severance pay and Kshs 479,100 as overtimes dues. To determine whether or not the Respondent deserved the awards, I will proceed to analyze each award and reach my own finding on the same.

a. Severance pay

Section 40(1)(g) provides thus: -

“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.”

The Claimant acknowledged receipt of severance pay upon his redundancy at Kshs. 117,000 but alleged that the severance pay was not enough. The Respondent was entitled to rate of 15 days per years of service calculated as follows 15 days x years worked x basic/30 days, that is 15x18 years x 16,022/30 totaling to Kshs. 144,198 as sought by the Respondent in his claim. The award by the trial court ought to be Kshs. 144,198. The Respondent was paid Kshs. 117,000.

Although the Appellant did not produce or explain to court the tabulation of the terminal dues paid to the Respondent, the court takes judicial notice of the fact that income tax was deductible from the terminal dues. The court therefore makes the presumption that the difference between the tabulation and the payment received by the Respondent constituted lawful statutory deductions made by the Respondent.

The court thus finds that the Respondent was paid severance pay and the award of the same by the trial court was in error.



b. Overtime pay

It was a ground of appeal that the trial court erred in law and fact in awarding the Respondent Kshs. 497,100 as overtime. The Respondent in his testimony stated that he worked overtime and was not paid overtime dues. The Respondent produced motor vehicle logs indicating when he left the Appellant's premises with the vehicle and when he reported back.

From the said records it is clear that the Respondent worked overtime on most days. He routinely left the Appellant's premises around 10 am and reported back after 10 pm. There are occasions when he worked on Saturdays and Sundays as clearly indicated in the documents filed.

It is the court's observation that the claim by the Respondent which was at the rate of 27 hours per week worked on 6 days was an understatement of the actual number of hours worked overtime per week from the logs filed.

The Appellant did not adduce any evidence to rebut the evidence on record as produced by the Respondent.

The Appellant's list of documents includes a muster roll. RW1 agreed under cross examination that a muster roll is not an attendance card and that the same does not indicate the number of hours worked. Further, she admitted that the same was not filed.

RW1 further admitted that the Respondent was on the road for long hours and that the Appellant had not availed proof of payment of overtime.

From the evidence on record, I find no reason to interfere with the award of overtime by the trial court. The award of the trial court is thus upheld.

37. Consequently, the judgment of the trial court is reviewed as follows: -

- i. The award of severance pay in the sum of Kshs. 144,198 is set aside.
- ii. The award of overtime payment of Kshs. 497,100 is confirmed.

38. The total award to the Respondent is payable with interest at Court rates from the date of judgment in the trial court.

39. Each party to bear its cost of appeal.

40. The award of costs in the lower court is sustained.

**DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 14<sup>TH</sup> DAY OF MARCH 2025.**

**MAUREEN ONYANGO**

**JUDGE**

