



**Munyili v CMC Motors Group Limited (Civil Appeal E086 of 2022)
[2025] KEELRC 1161 (KLR) (24 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1161 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL E086 OF 2022**

**L NDOLO, J
APRIL 24, 2025**

BETWEEN

JAMES MUTHAMA MUNYILI APPELLANT

AND

CMC MOTORS GROUP LIMITED RESPONDENT

*(Appeal from the judgment of Hon E. Wanjala, PM delivered
on 10th June 2022 in Nairobi CMEL Cause No 694 of 2018)*

JUDGMENT

1. On 10th June 2022, Hon E. Wanjala, PM delivered judgment in favour of the Appellant in sum of Kshs. 59,400 being compensation for unfair termination of employment.
2. Being dissatisfied with the award, the Appellant filed the present appeal. In his Memorandum of Appeal dated 4th July 2022, he cites the following grounds of appeal:
 - a. That the learned Magistrate erred in law and in fact in arriving at contradictory findings of unfair termination for want of due process and on the other hand in finding that the Respondent had reasonable grounds for termination of employment, contrary to the pleadings, testimony and evidence produced before the Court;
 - b. That the learned Magistrate erred in law and in fact in arriving at contradictory findings of unfair termination for want of due process and on the other hand awarding only one-month salary for unfair termination;
 - c. That the learned Magistrate erred in law and in fact in failing to award one-month salary in lieu of notice having already established and found that the Respondent failed to follow the laid down procedure before terminating the Appellant's employment;



- d. That the learned Magistrate erred in law and in fact by failing to appreciate the period of employment before the wrongful termination and failing to appreciate that the Appellant was never paid his terminal dues;
 - e. That the learned Magistrate erred in law and in fact by failing to appreciate the evidence before the Court therefore dismissing all the other heads of claim for compensation made by the Appellant despite evidence in support of the several claims having been produced;
 - f. That the learned Magistrate erred in law and in fact in failing to appreciate that the reason proffered by the Respondent for the unfair dismissal was illogical and failing to award damages as appropriate;
 - g. That the learned Magistrate erred in law and in fact in failing to award costs of the suit to the Appellant despite having already established and found that the Respondent failed to follow the laid down procedure before terminating the Appellant's employment and having awarded judgment in favour of the Appellant.
3. This is a first appeal and my duty is therefore to re-evaluate and re-analyse both the facts and the law on the strength of which the trial court rendered its judgment.
 4. In its judgment in *The German School Society v Ohany & another* [2023] KECA 894 (KLR) the Court of Appeal re-affirmed the duty of a first appellate court as follows:

“This being a first appeal, we are cognizant that our primary role is to re-evaluate the evidence before the ELRC and draw our own conclusions. A first appeal is a valuable right of the parties and unless retracted by law, the whole case is open for reconsideration both on questions of fact and law. The judgment of the appellate court must reflect this court's conscious application of its mind and record findings supported by reasons, on all the issues arising with the contentions put forth, and pressed by the parties for the decision of this Court. The first appellate court has jurisdiction to reverse or affirm the findings of the trial court. While reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. A first appellate court is the final court of fact ordinarily and therefore a litigant is called to a full, fair, and independent consideration of the evidence at the appellate stage.”
 5. The factual background of the case before the trial court, from which this appeal proceeds is that the Appellant was an employee of the Respondent, the relevant period of service being from 1st May 2001, when he was employed in the position of Sales Representative to 29th March 2016, when his employment was terminated.
 6. The Appellant rose through the ranks and by letter dated 4th November 2015, he was transferred from Nairobi to Mombasa, in the position of Senior Sales Consultant.
 7. On 21st December 2015, the Appellant took 29 days' annual leave, which was to terminate on 28th January 2016. He testified before the trial court that in the course of his leave, he suffered ill health and could not therefore report back to duty as scheduled. He claimed to have sent a memo dated 18th February 2016, asking for review of the decision to transfer him to Mombasa.
 8. From the evidence on record, the Appellant's transfer to Mombasa was not recalled and on 9th March 2016, he was issued with a show cause letter, requiring him to explain his absence from work. In



response, the Appellant sent an inter-office memo letter dated 2nd April 2016, raising a number of complaints and inquiries.

9. The Appellant's employment was subsequently terminated by letter dated 29th March 2016, stating as follows:

“Dear Mr. Muthama,

Termination Of Employment

Reference is made to your leave application (whose approval was incomplete) whereby you applied to proceed on leave for 29 days from 21st December 2015 to 28th January 2016. You were supposed to report to your duty station on 29th January 2016. However, you did not report back on duty as expected despite several verbal and written complaints in the past regarding your absence from work (both before and after your transfer to Mombasa). Moreover, despite being in Nairobi (as alleged by you) you have never made any attempt to pass by the office and explain your whereabouts and it is strange that you even went further to write an appeal letter which you copied to the Group CEO requesting to have your transfer to Mombasa rescinded and purported that you had written the letter on 18th February 2016 and the Group HR Manager had failed to respond to it while in actual fact it isn't until 14th March 2016 when you sent the letter on email.

It is instructive to note that you accepted the transfer to Mombasa and never objected to it at any point though since the transfer you only reported for a few days in the month of December prior to your vacation.

Moreover, we received your sick off chits much later covering periods 29th February 2016 to 14th March 2016 and 15th March 2016 to 31st March 2016, however you did not account for an extended period that you were away neither did we receive any communication from your end. In addition, a show cause letter dated 9th March 2016 was forwarded to you which you have not cared to respond to.

In view of the above, management has no option but to terminate your employment with effect from 29th March 2016. Upon this termination, you will be paid your dues owed to you less statutory deductions that may be lawfully effected as follows;

- a. Salary up to and including 29th March 2016.
- b. Salary for 17.38 days leave earned up to and including 29th March 2016. Please note this is after deducting the days that were unaccounted while you were away.

You are expected to hand over any Company property in your possession to your immediate supervisor and the Medical Insurance Cards for yourself and your family members (if any) to the respective Departments.

Yours faithfully

CMC Motors Group Ltd.

(signed)

Ben Sifuna

Group Human Resource Manager



10. The Appellant's grounds of appeal, as listed in his Memorandum of Appeal dated 4th July 2022, may be condensed into two broad categories; reason for termination and quantum of award.
11. In its judgment, the trial court found that the Respondent had established a valid reason for terminating the Appellant's employment but faulted the disciplinary process.
12. The latter finding by the trial court was disturbing because in the same breath, the court found that the Appellant had failed to respond to the show cause letter. This finding is supported by the evidence on record as the only communication from the Appellant in response to the show cause letter was an inter-office memo dated 2nd April 2016, by which the Appellant raised several complaints and queries, while avoiding the real subject matter of the show cause letter being, unauthorised absence from work.
13. By failing to offer an explanation regarding the charge of unauthorised absence as documented in the show cause letter, the Appellant squandered the opportunity for a complete disciplinary process offered by his employer.
14. In its decision in *Mbuthu v De La Rue Currency and Security Print Limited* [2024] KEELRC 965 (KLR) this Court affirmed that an employee who squanders the opportunity offered by the employer to respond to an administrative charge at the shop floor cannot come to court complaining that they were not heard.
15. Regarding the validity of the reason for termination as contemplated under Section 43 of the *Employment Act*, the trial court rightly held that the Appellant had absented himself from duty without prior authorisation.
16. The Appellant claims to have been unwell during the subject period, and asserts that the Respondent was well aware of this. However, the sick off chits and an application for review of his transfer to Mombasa availed by Appellant, were submitted to the Respondent late in the day, well after the disciplinary process had been initiated.
17. As held by Rutto J in *Wandera v Agility Logistics Limited* [2023] KEELRC 1083 (KLR) Section 30 of the *Employment Act*, which provides for sick leave, places an obligation on the affected employee to notify the employer of the reasons for absence on account of ill health, as a precondition to entitlement to sick leave.
18. It was therefore not open to the Appellant to assume that the Respondent was aware that he was on sick off, while he himself had failed in his duty to notify the employer of his whereabouts, as required by law.
19. Regarding the claim for notice pay, I agree with the trial court but for a different reason being, that the Appellant himself squandered the opportunity to be heard and cannot therefore blame the Respondent on this account.
20. As found by the trial court, the Appellant did not adduce any evidence to support the claims for commissions, unlawful salary deductions, commuted mileage allowance, medical reimbursement, acting allowance, leave pay and severance pay.
21. On the whole, this appeal fails and is dismissed with an order that each party will bear their own costs.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF APRIL 2025

LINNET NDOLO

JUDGE

