



REPUBLIC OF KENYA



KENYA LAW
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**Karani v ISL Kenya Limited (Employment and Labour Relations Appeal
005 of 2020) [2025] KEELRC 1639 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1639 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
EMPLOYMENT AND LABOUR RELATIONS APPEAL 005 OF 2020**

MA ONYANGO, J

MAY 29, 2025

BETWEEN

JOB MOGAKA KARANI APPELLANT

AND

ISL KENYA LIMITED RESPONDENT

*(Being an appeal from the Judgment of the Chief Magistrates' Court at Mavoko by Honourable
C. Oluoch, Chief Magistrate, delivered on 4th December, 2020 in ELRC No. 22 of 2019)*

JUDGMENT

1. This is an appeal from the judgment and decree of the Chief Magistrates' Court at Mavoko by Hon. C. Oluoch, Chief Magistrate dated 4th December, 2020 in ELRC No. 22 of 2019. The Appellant who was the Claimant before the trial court, sued the Respondent (the defendant in the lower court) through the Claimant's Memorandum of Claim dated 24th January, 2019 alleging unlawful/unfair dismissal from employment.
2. It was the Appellants averment in the Memorandum of Claim that he was employed by the Respondent in February, 2015 at a daily wage of Kshs. 484 per day translating to Kshs. 12,584 per month. That on 31st March, 2017 he reported to work as usual but was denied entry/access into the workplace by the Respondent's security guard on the Respondent's instructions without any explanation or prior notice. That his attempts to get an explanation from the Respondent's Human Resource Manager bore no fruits.
3. The Appellant stated that on 5th April, 2017 the Respondent paid him Kshs. 10,000 purporting the same to be in full and final settlement of his terminal dues.
4. The Claimant set out the particulars of his unfair dismissal to be: -
 - a. The claimant had done absolutely nothing wrong to warrant his dismissal/termination.



- b. No hearing ever took place before the decision to dismiss/terminate the claimant was reached.
 - c. no plausible reason was given to the claimant before the decision to dismiss him was reached.
 - d. dur process was disregarded in haste to dismiss the claimant
 - e. the decision to dismiss the claimant was harsh, unwanted, inhumane and unjustified considering the claimant had served the respondent without blemish for over 2 years.
5. The Appellant set out his claims against the Respondent to be
- i. One month's salary in lieu of notice Ksh.12,584/=
 - ii. Unpaid/untaken leave for the entire duration of service
(Ksh.12,584/= x 2 years x 21/30.....Ksh.17,618/=
 - iii. Unpaid house allowance for the entire period of service
(15/100 x 12,584/= x12 months x 2 years).....Ksh.45,302/=
 - iv. Unfair termination – 12 month's Salary (12 x 12,584/=.....Ksh.151,008/=
 - v. Service/gratuity pay for the entire period of service
(18/30 x 12,584/= x 2 yearsKsh.15,101/=
6. The Appellant sought the following remedies from the Respondent
- a. A declaration that the termination of Claimant's employment was unlawful and unfair
 - b. A declaration that the respondent's calculation/tabulation of the claimant's terminal/final dues was inaccurate and erroneous.
 - c. An order for the respondent to pay to the claimant his due terminal benefits and compensatory damages as pleaded or as may be calculated by the court.
 - d. Costs and interest of the suit
 - e. Any other relief that this Honourable Court may deem fit and just to grant.
7. The Respondent filed a Statement of Defence dated 9th July, 2019 in which it admitted that the Appellant was its employee having been engaged as a casual labourer at its factory at a daily wage of Kshs. 484 paid at the end of the week and dependent on the number of days which the Appellant turned up for work during the week.
8. The Respondent denied unlawfully dismissing the Appellant. It averred that during the months of February to April, 2017 the Respondent was in distress following the Government banning of manufacture of twisted steel bars in favour of ribbed steel bars for reinforcement of concrete. That as a consequence the Respondent was forced to lay off all the workers.



9. The Respondent averred that it informed all the workers including the Appellant and the area labour officer of the intention and convened a meeting with the workers' representative to discuss how much would be paid to each employee.
10. The Respondent averred that on 5th April, 2017 it convened a meeting in which the Respondent's General Manager, Human Resources Manager, Managing Director and the Workers' representative Mr. Evan Ochengo were in attendance at which it was agreed that each worker would be paid Kshs. 10,000 in full and final settlement of their dues. That after the said meeting the Respondent convened a meeting with all the employees including the Appellant and informed them that it would close its business each of them would be paid Kshs. 10,000 and that each employee had a choice of taking or rejecting the offer. That on 31st March, 2017 the Claimant chose to accept the offer, received and acknowledged the receipt of the said Kshs. 10,000, thereby terminating the employment by mutual agreement.
11. The Respondent prayed that the Claim be dismissed with costs.
12. After a full trial, the trial court rendered its decision where it found that the termination of the Appellant's employment was fair and awarded him only leave allowance for 2 years at Kshs. 17,617.60 and Kshs. 2,584 being balance of one months 'salary in lieu of notice. The rest of the Appellants prayers were found to be without merit and dismissed. The Appellant was awarded costs.
13. The Appellant was aggrieved by the judgment and filed a Memorandum of Appeal dated 9th December, 2020 in which he raised the following grounds of appeal: -
 - a. That the learned magistrate erred in law and fact by not holding that the claimant's/ Appellant's termination was unlawful and unfair.
 - b. That the learned magistrate erred in law and fact by failing to decisively determine the issue of the appellant's date of employment hence arrive at the wrong decision.
 - c. That the learned magistrate erred in law and fact by holding that the Kshs.10,000/= paid to the appellant on 5.4.2017 was one month's salary in lieu of Notice yet the payment Sheet/ discharge voucher clearly stated that the same was in full and final settlement i.e an all-inclusive amount.
 - d. That the learned magistrate erred in law and in fact by holding that the reason for termination was valid and could not be blamed on the respondent yet the reasons advance by the respondent was "redundancy" and the same was not specifically raised in the respondent's defence/ response to the claim.
14. The Appellant prayed that the appeal be allowed with costs and the Judgment of the trial court be set aside.
15. The Appeal was disposed by way of written submissions. The Appellant's submissions are dated 24th February, 2022 while the Respondent's submissions are dated 25th April, 2022.

Appellant's submissions

16. In his submissions, the Appellant set out the issues for determination to be
 - a. What was the date of employment of the Appellant by the Respondent?
 - b. Whether or not the Appellant's employment was continuous/whether the Appellant attended work base on the availability of production materials?



- c. Whether the termination from employment was fair/by consent of parties or whether it was unfair termination?
 - d. Whether the “Payment sheet of Ksh.10,000/= in full and final settlement” can preclude this Court from enquiring into the fairness of the termination and calculation of dues?
 - e. Whether the court award should be disturbed?
17. Relying on the decisions in Meshack Kiio Ikulume v Prime Fuels Kenya Limited [2013] eKLR and Josephine M. Akinyi O. v Farhiyo Mohamed [2016] eKLR the Appellant submitted that the law places the obligation of issuing contract of employment on the employer as provided in sections 8, 9(1) and (2), 10 and 74 of the *Employment Act*.
 18. On the second issue the Appellant submitted that the Respondent having failed to produce employment records the court should hold his position that he was employed in February, 2015 to be the correct position.
 19. On the third issue the Appellant submitted that he was called and presented with a typed document to sign and then paid Kshs. 10,000. That when he inquired how the figure was arrived at he was told to take it or leave it and since he needed money he signed and took the money.
 20. The Claimant submitted that according to the Respondent the termination was a redundancy but the Respondent did not comply with the provisions of section 40 of the *Employment Act*.
 21. He submitted that contrary to the Respondents averments there were no minutes to prove that any meeting took place at which employees were informed of the intended redundancy. That there was further no evidence that the Appellant and his colleagues appointed Mr. Evans Ochengo to represent them.
 22. On issue number 4 the Appellant submitted that he was compelled to accept the sum of Kshs. 10,000 and the alleged discharge payment was not consensual, that a discharge voucher per se cannot absolve the Respondent of its statutory obligations under section 40 of the Act. He relied on the decisions in Simon Muguku Gichingi v Taifa Sacco Society Limited [2012], Muthaiga Country Club v Simon Wachira Muhoro [2009] eKLR, Charles Nyangi Nyamohanga v Action Aid International [2015] eKLR and Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR.
 23. The Appellant submitted that there was justification for the court to disturb the decision of the trial court and prayed for orders as per the Amended Memorandum of Claim.

The Respondent’s submissions

24. For the Respondent the issues for determination were extracted as:
 - a. Whether the Appellant was employed by the Respondent;
 - b. Whether the Appellant was unfairly or unlawfully terminated;
 - c. Whether the Appellant was entitled to the reliefs sought in the Amended Memorandum of Claim dated 14/07/2020; and,
 - d. Who should bear costs of this appeal and costs of the proceedings before the trial court.
25. On the date of employment of the Appellant the Respondent submitted that the Appellant did not produce a written contract to prove that he was employed in February, 2015. That RW1 had testified that the Appellant joined the Respondent’s service in July, 2015.



26. It was submitted that the learned trial court had made a finding that the Appellant's employment had become permanent by operation of the law under section 37 of the Act but did not make a finding on the date of employment. The Respondent submitted that section 9 and 10 of the Act apply only to written contracts and did not apply to oral contracts, relying on the decision in Peter Ngunjiri Kariuki v Board of Management, Mogomano Secondary School [2022] eKLR.
27. On whether the termination was unfair or unlawful the Respondent submitted that the termination was by mutual consent and as such was not unfair or unlawful. That the Appellant accepted payment of Kshs. 10,000 in full and final settlement of his terminal dues.
28. The Respondent submitted that the Appellant never pleaded that he was coerced or forced to execute the Payment Sheet. That he admitted he was asked to "sign them or leave the Respondent's Premises". This therefore means that he had at all times the choice of declining the offer: a choice he never took because he "had no money". This position was confirmed by the DWI who stated that on 5th April, 2017, in the meeting with the workers, all employees agreed to the said offer and none of them, including the Appellant herein, raised any issue.
29. The Respondent further submitted that the Payment Sheet signed on 5th April, 2017 effected a contract to terminate the Appellant's employment in accordance with the terms set out therein. The Payment sheet stated " I have received full and final settlement". That the Court in William Barasa Obutiti vs Mumias Sugar Company Limited Kisumu CACA No. 194 of 2004 (2006) eKLR held that it was perfectly in order for an employer and employee to terminate the employee's services by mutual agreement at any time during the currency of employment. The Court in National Bank of Kenya vs Hamida Bana & 703 others Nairobi CACA No. 72 of 2017 (2077) eKLR held that such an agreement to terminate would valid and enforceable notwithstanding
30. On the reliefs sought the Respondent submitted that the Appellant is estopped from claiming any of the reliefs as the payment made was by consent of the parties relying on the decision in Gilbert Mugambi v Muchimikuru Tea Factory Limited [2018] eKLR.
31. On the prayer for severance pay it was the Respondent's submission that the trial court's judgment should not be interfered with.

Analysis and Determination

32. The duty of an appellate court of first instance was set out in the case of *Selle and another Vs Associated Motor Board Company and Others* [1968] EA 123 as follows: -

“ An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial Court's finding of Fact if it appears either that he failed to take account of particular circumstances or probabilities or if the impression of demeanor of a witness is inconsistent with the evidence generally.”
33. Upon analyzing the Memorandum of Appeal, the Record of Appeal and the rival submissions of the parties herein, the issues that fall for determination in this appeal are:
 - a. whether the trial court erred in failing to determine the date of appointment of the Appellant;
 - b. whether the trial court erred in failing to find that the termination of the Appellants employment was unlawful and unfair;
 - c. whether the Appellant is entitled to payment as prayed for in the Amended Memorandum of Claim.



34. On the issue of date of employment of the Appellant, the Appellant's evidence was that he was employed in February, 2015 while according to the Respondent the Appellant was employed in July 2015.
35. From the evidence on record I find that the Appellant did not adduce sufficient evidence to enable the trial court find in his favour on the date of his employment by the Respondent. It is further my opinion that a finding on the date of employment of the Appellant whether it is February or July 2015 would not materially affect the outcome of this suit and therefore was not a material factor for purposes of determination of this suit as he was granted leave for the two years he worked for the Respondent and did not suffer any prejudice because of the indecision of the trial court on this issue.
36. On the second issue whether the trial court erred in failing to find that the termination of the Appellant's employment was unlawful and unfair, the finding of the trial court was that the reason for the termination was valid and that the same could not be blamed on the employer as the employer could not have given the employees the requisite one months' notice. It was further the trial court's finding that the only issue for determination was whether the payment of Kshs. 10,000 was sufficient.
37. As pleaded by the Respondent and supported by the evidence on record, the termination of the Appellants employment was by way of a redundancy which is defined by section 2 of the Employment Act as the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.
38. The procedure for redundancy is provided for in section 40 of the Employment Act as summarized in the case of Thomas De La Rue (K) Ltd v David Opondo Omutelema (supra).
39. In the case of Jane I. Khalechi v Oxford University Press E.A. Ltd the court held as follows: -
- “Court is further guided by the provisions of Section 40 of the Employment Act, which provisions give the conditions precedent before one is declared redundant: these conditions outlined in the law are mandatory and not left to the choice of an employer. Redundancies affect workers livelihoods and where this must be done by an employer, the same must put into consideration the following:
- a. Give notice to the Union or labour officer a month before the process commences
 - b. For those not unionised, personal letters copied to the labour Officer;
 - c. Use a criteria of seniority, abilities and reliability of each employee;
 - d. Where there is a CBA the same should not disadvantage any employee;
 - e. Leave days due should be paid in cash;
 - f. One month notice or one month pay in lieu of notice; and
 - g. Severance pay not less than 15 days for each year of service.
40. In the instant case the Claimant was stopped from accessing the work premises on 31st March, 2017. The redundancy notice to the Ministry of Labour is dated 31st March, 2017, the same date that the Claimant was stopped from reporting for duty which is therefore the date of termination. The notice reads:



31st March 2017

To Sub-County Labour Officer,

Box 555-00204

Athi-River/EPZ

Dear Sir,

RE: Notice for Closure of Business

We refer to the above captioned matter. Sir, we do hereby write this letter informing you of the entire closure of the company. The closure has been entirely affected by the harsh political climate ahead of the general elections in August 2017 and also the government directive to stop the production of twisted reinforcement steel bars.

This directive was posted on the daily newspaper on 22nd November, 2016 (Daily Nation Newspaper) and also through a letter from the Kenya Bureau of Standards (KEPBS) Referenced KEBS/NAR/SM/2391/1 and dated 29th March 2017. Sir, these issues came concurrently forcing us to arrive at this painful decision.

Sir, we are looking forward to install a new TMT MACHINE that will produce ribbed bars instead of twisted bars and at the same time we are also observing the political climate as time goes by. We therefore hope that you will understand our predicaments and give us a positive reply.

Yours faithfully

Signed

Mr. John Okelo,

Human Resources and Administration Manager

Cc

County Labour Office, Machakos.

41. According to the Respondent, on 5th April, 2017 a meeting was held between the Respondent's General Manager, Human Resource Manager and the Managing Director at which Mr. Evans Ochege, the representative of the workers was in attendance where it was resolved that each of the workers would be paid Kshs. 10,000 in full and final settlement of their dues.
42. It is further the Respondent's averment that after the said meeting the Respondent convened a meeting with all the employees including the Appellant at which they were informed that the business would be closed and each employee would be paid Kshs. 10,000, an offer which they had a choice to accept or reject. That on 31st March, 2017 the Appellant chose to accept the offer, collected the money and acknowledged receipt, thereby terminating his employment contract by mutual agreement.
43. The Respondent avers that in view of the mutual termination of his employment contract the Appellant is estopped from claiming any further payment other than the Kshs. 10,000 offered by the Respondent which was in full and final settlement.
44. The wording of section 40 is in mandatory terms that an employer SHALL comply with the provisions thereof before declaring an employee redundant.
45. Further, section 3(6) of the [Employment Act](#) provides as follow:



- (6) Subject to the provisions of this Act, the terms and conditions of employment set out in this Act shall constitute minimum terms and conditions of employment of an employee and any agreement to relinquish, vary or amend the terms herein set shall be null and void.
46. Section 26(1) also provides:
26. Basic minimum conditions of employment
- (1) The provisions of this Part and Part VI shall constitute basic minimum terms and conditions of contract of service.
47. Redundancy is provided for in part PART VI of the Act. Any agreement to pay terms that were less favourable than the minimum provided by law was thus null and void.
48. The Appellant was not notified of the intention to declare him redundant at least one month before the redundancy. The notice to the Labour officer was issued on the same date that the Appellant was declared redundant without being notified of the reason for the same. He was not paid his terminal dues at the time of redundancy. What he was paid later on 5th April, 2017 was not in accordance with the provisions of section 40(1) of the Act.
49. From the foregoing it is evident that the Respondent did not comply with the requirements for redundancy as set out in section 40 of the Act. The redundancy was therefore un-procedural and therefore unlawful.
50. The averments by the Respondent that the Appellant accepted payment of Kshs. 10,000 in full and final payment and is therefore estopped from claiming his terminal dues or that the redundancy was lawful would not stand in the face of the mandatory provisions of sections 3(6), 26(1) and 40(1) of the Act.
51. The finding by the trial court that the Respondent could not have given a redundancy notice was erroneous because the Respondent had notice of the banning of twisted steel bars from November, 2016 and the letter dated 29th March, 2017 was only a reminder to manufacturers who had not complied. the Respondent cannot use its failure to comply with the law to deny the employees their statutory benefits.

Remedies

52. The Appellant was awarded the following by the trial court:
- i. Pay in lieu of leave Kshs. 17, 617.60
 - ii. balance of pay in lieu of notice Kshs. 2,584
Total Kshs. 20,202
 - iii. Costs of the suit.
53. I will now consider each of the Appellant's prayers:
- i. One months salary in lieu of notice
As held by the trial court, the Claimant is entitled to one months pay in lieu of notice which I award him at Kshs. 12,584 as prayed
 - ii. Unpaid/untaken leave for the duration of service



It was the Appellant's averment that for the entire period he worked for the Respondent he was never allowed to go on annual leave. The Respondent's evidence was that the Claimant was paid in lieu of leave at the end of every year before breaking for the festivities and that in any event the sum of Kshs. 10,000 paid to the Appellant was in full and final satisfaction of all terminal dues. The Respondent did not adduce any evidence that the Appellant took leave or was paid in lieu. I uphold the award to the Appellant by the trial court on annual leave for 2 years of Kshs. 17,617.60.

iii. Unpaid House Allowance

This prayer fails as the daily rate of pay is inclusive of house allowance. I thus uphold the decision of the trial court though for a different reason as stated.

iv. Compensation

Having found the termination of the Appellant's employment unfair, he is entitled to compensation. Taking into account the totality of his case and all the relevant factors under section 49(4) of the *Employment Act* I award the Claimant 4 months' salary at Kshs. 58,080.

I have specifically taken into account the fact that the Appellant was treated as a casual throughout the time he worked and that he had taken home nothing after working for the period he did. I have further taken into account the conduct of the Respondent and the manner in which the Appellant's employment was terminated which was without any fault on his part.

v. Service/Gratuity pay

The Appellant did not rebut the averment of the Respondent that it paid NSSF for the Appellant. He is thus not entitled to service pay. I uphold the decision of the trial court.

54. In summary, I declare the termination of the Appellant's employment unfair and award him the following:

Unpaid/untaken leave for the duration of service

a. One month's salary in lieu of notice Kshs. 12,584

b. Unpaid/untaken leave for the duration of service
Kshs. 17,617.60.

c. Compensation Kshs. 58,080.

Total Kshs. 88,281.60

55. The Respondent shall bear the Appellant's costs of this appeal. The award for costs in the lower court is upheld.

56. The lower court decision is reviewed to the extent set out herein.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 29TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

