Maina v Hakika Transport Services Limited (Appeal E170 of 2024)
[2025] KEELRC 1926 (KLR) (30 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1926 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

APPEAL E170 OF 2024

M MBARŨ, J

JUNE 30, 2025

BETWEEN

JAMES MUCHUNU MAINA ..... APPELLANT

AND

HAKIKA TRANSPORT SERVICES LIMITED ..... RESPONDENT

(Being an appeal from the judgment of Hon. G. Sogomo delivered on 5 July 2024 in Mombasa CMELRC No. E241 of 2021)

JUDGMENT

1. The appeal arises from the judgment delivered on 5 July 2024 in Mombasa CMELRC No. E241 of 2021. The appellant is aggrieved by the judgment on the grounds that the learned magistrate erred in law and fact by finding that there was fair procedure in the termination of employment and by assigning a reason. It was in error to hold that the appellant was liable for the claim arising from the termination of employment when there was no due process under the law. The failure to award compensation, notice pay, leave pay, and underpayment was erroneous.

2. The appellant is seeking that the judgment be set aside and the claims be allowed with costs.

3. The appellant's case was that he was employed as a clerk in the operations department from October 2004 until 25 June 2019. He received a monthly wage of Ksh. 37,979. On 25 June 2019, he reported to work but was instructed to leave the work site without any explanation or justified cause, resulting in an unfair termination of his employment. At that time, the appellant was underpaid contrary to the Wage Orders; he did not receive rest days, was not permitted annual leave, and worked overtime without compensation. Despite the monthly wage, no housing allowance was provided. The appellant claimed the following:

    a. 12 months' compensation Ksh.455,748,

b. Notice pay Ksh. 37,979,

c. Service pay Ksh 265,853,

d. Unpaid leave Ksh. 372,129,

e. Public holidays Ksh 389,915,

f. Overtime Ksh 8,188,229,

g. House allowance 000

h. Underpayment 000

i. Costs of the suit.

4. In response, the respondent denied the claims, asserting that the appellant's employment was not terminated due to error and negligence that caused loss. He received a notice to show cause, which indicated that he had violated the company's rules and regulations by permitting the company vehicle KCR 403L to be overloaded, resulting in its apprehension by the authorities at the Port of Mombasa. This led to a loss of Ksh 226, 685. He was permitted to attend a disciplinary hearing and provide a response, which ultimately resulted in his termination of employment. The response indicated that the appellant was paid above the minimum wage, including statutory remittances. He did not work weekends or public holidays or receive overtime pay. A house allowance was granted, as stated in the payslips.

5. The trial court delivered judgment and dismissed the claim with costs.

On the appeal, the appellant submitted that

6. The appellant submitted that the trial court's decision was erroneous because the Respondent failed to subject him to a fair hearing by not adhering to qualitative and procedural requirements. The Appellant emphasises that the Respondent's witnesses conceded the absence of a proper disciplinary process, including the lack of a detailed charge sheet and witness statements from his accusers. Consequently, he argues the case should have been determined in his favour. In the case of Donald Odeke v Fidelity Security Limited [2012] Keelrc, the court held that a termination is "ipso facto unfair" if the employee is not heard, regardless of the alleged offence. In Gilbert Nyabuto Mosome v Standard Limited [2012] KEELRC 67 (KLR), the court affirmed an employee's entitlement to a hearing even when termination is not based on the four common grounds: misconduct, poor performance, physical incapacity, or summary dismissal.

7. The Appellant reiterates that his termination was wrongful, unlawful, illegal, unprocedural, unfair, and irregular. He asserts he was never issued a proper warning, termination notice, or procedurally summoned to answer charges. Furthermore, he states he was not presented with documentary evidence nor afforded an impartial opportunity to defend himself, formally charged, or furnished with clear reasons for termination. In this regard, he cites the case of Prof. Macha Isunde v Lavington Security Guards Limited [2017] eKLR, where the Court of Appeal held:

> " The Act, which was enacted in 2007, clearly places a heavy obligation on employers in matters of summary dismissal (Emphasis mine) for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating (section 43)—prove that the grounds are justified (section 47 (5), among

other provisions. A mandatory and elaborate process is then set up under section 41, requiring notification and a hearing before termination."

8. The Appellant claims the disciplinary process was choreographed, as he was summoned to a hearing without being furnished with a Notice to Show Cause as held in Makau Mbondo v Crown Industries Limited [2013] KEELRC 936 (KLR), the court underscored the necessity of providing an adequate opportunity for an employee to respond to charges, stating that a guillotine type procedure where the Employee is taken through some form of a whirlwind at the end of which he finds himself jobless will not suffice.

9. The Respondent submits that the trial court's judgment, which affirmed the lawfulness of the Appellant's termination and the Respondent's adherence to the *Employment Act*, should be upheld. The Appellant's termination was fair, meeting procedural fairness and substantive reason requirements. It elaborates that the Appellant was summarily terminated due to negligence that resulted in a Kshs. 226,685/- fine from the Kenya National Highways Authority, a fact which was confirmed by Rajab Yeri Kombe, the Respondent's Human Resource Manager, confirmed the Appellant's responsibility as supervisor.

10. The Respondent contends that the termination was procedural. A Notice to Show Cause was issued on 14 June 2019 detailing the charge of truck overloading and subsequent financial loss. A disciplinary hearing was held on 19 June 2019, where the Appellant appeared with an employee of his choice and made representations, conceding that a fault occurred. Moreover, the Appellant himself confirmed receiving a show cause letter and a hearing. Therefore, the termination was justified.

11. Respondent submitted with regard to Notice pay that the Appellant is not entitled to notice pay due to summary termination, citing Mary Chemweno Kiptui v Kenya Pipeline Company Limited [Nairobi] Cause No. 435 of 2013 [eKLR], the court held that Summary dismissal can take place when an employer terminates the employment of an employee without notice or with less notice than that which any statutory provision or contractual term entitles the employee.

12. On the claim for underpayment, the Respondent maintains that the trial court correctly dismissed it, stating that such claims require specificity and strict proof, which the Appellant failed to provide.

13. On Leave pay, the Respondent states that the Appellant's 30 unutilized leave days were factored into his terminal dues and paid via the June 2019 pay slip, with Kshs. 38,000/—allocated explicitly for 21 days' leave for 2018 and 9 days for 2019.

14. With regard to service pay, the Respondent asserts that service pay is not applicable because the Appellant was a registered member of the National Social Security Fund, to which the Respondent made monthly remittances.

15. In respect to holiday pay, the Respondent denies the claim, stating that no employee works during public holidays, and the Appellant did not provide particulars of alleged work on public holidays.

16. The Respondent also refutes the claim for KES. 8,188,229.28 in overtime, deeming it highly implausible as it would imply the Appellant worked 18 hours daily. In any event, it provided sample payslips (R Exh 25-31), and its witness testified that any overtime worked was included in the payslips, giving an example of April 2019, when the Appellant received both "Overtime" and "Fixed Overtime."

17. The Respondent requests the court to disallow the claim for house allowance as it was not raised as a ground of appeal. Regarding the prayer for Certificate of Service, the Respondent states that the Appellant is not entitled to this prayer as he was issued a Certificate of Service dated 25 June 2019.

Determination

18. As this is a first appeal, the court must consider the evidence presented before the trial court, evaluate it, and draw its conclusions, bearing in mind that the trial court had the opportunity to hear and observe the witnesses who testified. See Selle & Another v Associated Motor Boat Company Ltd & Others [1968] EA 123.

19. The respondent filed work records, including an undated letter of appointment indicating that employment commenced on 1 March 2007 as a clerk. Payslips for December 2018 reflect a wage of Ksh. 000 and for June 2019, Ksh. 000.

20. The letter of employment commencing on 1 March 2007 serves as the initial employment record. Under sections 8, 9, and 10 of the *Employment Act* (the Act), the employer may issue a written letter of employment, which constitutes sufficient evidence of employment.

21. A letter terminating employment was issued on 25 June 2019. The reasons are that, following a disciplinary hearing on 19 June 2019, the respondent established that the appellant breached company regulations by allowing the company truck with registration number KCL 403L to be overloaded, resulting in apprehension. The respondent further noted that it had discovered you had failed to indicate the tonnage of the HRC that was on board the said truck on the delivery note. Your action resulted in a loss of Ksh. 685 ...

22. In his evidence in court on 23 August 2023, the appellant testified that before his employment was terminated, he was issued a notice to show cause and invited to a disciplinary hearing.

23. In Ali v National Health Insurance Fund & 2 others; Transparency International *& 2 others (Interested Parties) (Cause E714 of 2022*) [2022] KEELRC, courts will only interfere with the exercise of the employer's managerial prerogative where there is evidence that the employer's actions breach the law or an internal regulation within the workplace, or where there is evidence of a manifest abuse of power. The rationale is that employers enjoy broad powers to make decisions that affect the workplace, as held in Irungu v Kenya Pipeline Company Limited [2023] KEELRC 459 (KLR).

24. In this case, the respondent regulated the loading of its vehicles, and the appellant was the responsible officer. He was required to ensure that the vehicles were not overloaded; however, he failed in this duty, which led to apprehension and a loss of Ksh. 685. He was issued a notice to show cause and invited to a disciplinary hearing. The respondent heard the appellant and established the same unsatisfactory conduct, leading to the termination of his employment. A notice was issued to this effect, contrary to the appellant's claim that he was verbally dismissed.

    Due process was followed, resulting in the termination of employment.

    The claim for notice pay and compensation is not due.

    The appellant admitted that he was paid his house allowance.

25. Statutory payments were made to the NSSF and NHIF. Section 35(5) of the Act states that service pay is not owed.

26. Regarding the claim for work during public holidays, the Memorandum of Claim does not specify the days worked on public holidays. These are not general days; the Minister gazettes them and must be clearly outlined. The general claim cannot suffice.

27. On the claimed overtime, the appellant stated that he worked an additional hour each day for a week, accumulating this for the entire period of employment. This calculation did not consider the days taken as leave and the days off, thus constituting an exaggeration.

28. In the case of Peter Kimilu & another v Kenya Petroleum Oil Workers Union [2013] eKLR, the court held that,

> "... There is a tendency for parties coming to the Industrial Court to highly exaggerate monetary claims, encouraged by the absence of prohibitive filing fees. The calculation by such parties is that they have nothing to lose, as the Court may grant some of the exaggerated claims, while declining others. The Court must caution parties that the effect of such claims on the mind of the Court is to raise doubt about the veracity of the entire Claim. Parties should stick to what is legally and factually justifiable. When a party approaches the Court with such a claim as ''damages and inconveniences caused to my family of Kshs. 2,000,000'' as made by Kimilu, the result is that the Court begins to doubt other claims that may be genuine. The Court is not persuaded by the claims in the Claimants' Supplementary bundle on damages and inconveniences caused to the Claimants' respective families; compensation for foregone years; gratuity; house rent allowances; and N.S.S.F deductions. No evidence was given to give substance to these empty claims. No legal provision or contractual clause was given to support the respective claims. The Claimants have long served the Respondent and are familiar with the basic evidentiary standards in establishing employment claims. Mr. Ogendi has been prosecuting matters before this Court on behalf of the Respondent. Parties should always assist the Court by bringing concise and credible claims to the Court."

29. Making a general claim without support removes its credibility. In the case of Monica Wanza Mbavu v Roofspec & Allied Works Co Ltd [2021] KEELRC 30 (KLR), the court held that a claim for overtime or work benefits should be made within reasonable parameters.

30. The letter of employment and payment statements are attached to the claim for underpayment. The appellant was paid Ksh. 38,000, which included the house allowance. The wage paid for the clerk position is justified compared to the Minimum Wage Orders.

31. Accordingly, the findings by the learned magistrate are correct to the extent that the claims made were found without merit. The appeal is hereby without merit. Each party will bear its costs for the appeal.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30 JUNE 2025.

M. MBARŨ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and .....