



Accurate Steel Mills Limited v Ouru (Employment and Labour Relations Appeal E014 of 2023) [2025] KEELRC 1897 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1897 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E014 OF 2023**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

ACCURATE STEEL MILLS LIMITED APPELLANT

AND

DAVIS OBOTE OURU RESPONDENT

JUDGMENT

1. This matter arises from a Memorandum of Appeal dated 16th February 2023 challenging the judgment of the lower court which awarded the Respondent terminal benefits, including severance pay, housing allowance, leave accruals, underpayments, and compensation for unfair termination.
2. The Appellant contends that the learned Magistrate erred in law and fact by;
 - i. Mischaracterizing the Respondent’s employment termination as redundancy.
 - ii. Disregarding evidence of two prior payments made to the Respondent.
 - iii. Failing to consider that the Respondent’s fixed-term contract had expired.
3. The Appellant contends that the learned Magistrate erred in law and fact by mischaracterizing the termination of the Respondent’s employment as a redundancy. She asserts that the Respondent was employed as a casual labourer on a fixed-term contract which expired on 27th May 2020. This was not renewed due to operational challenges occasioned by the COVID-19 pandemic. The Appellant argues that the Respondent’s contract lapsed by effluxion of time and as such, the provisions of Section 40 of the *Employment Act* on redundancy do not apply.
4. The Appellant further submits that the Respondent was paid all his terminal dues in two instalments. The first payment of Kshs. 18,249 was made on 23rd June 2020, and the second payment of Kshs. 10,736 was made on 13th August 2020, both of which were calculated in consultation with the Respondent’s union representative and advocates. The Appellant produced payment vouchers and



- a dues declaration form signed by the Respondent as evidence of these payments. The Appellant maintains that the lower court disregarded this evidence and unjustly awarded the Respondent a third payment, thereby occasioning a miscarriage of justice.
4. Besides, the Appellant argues that the Respondent was not a member of the Kenya Engineering Workers Union (KEWU) and that the union's involvement in the negotiations was irregular. The Appellant relies on the authority of *Maryaret A. Oebiteng v National Water Conservation & Pipeline Corporation* [2014] eKLR, where it was held that fixed-term contracts carry no expectancy of renewal to support its position that the Respondent's employment ended lawfully upon the expiry of his contract.
 5. The Respondent maintains that his termination was procedurally flawed under Section 40 of the *Employment Act*, 2007 and that he was denied his rightful benefits. He opposes the appeal and supports the judgment of the lower court. He asserts that he was verbally employed as a general labourer on 1st June 2015 and worked continuously for the Appellant until his abrupt termination on 3rd June 2020. The Respondent denies being a casual worker and contends that he was never issued with a written contract or notified of the expiry of his employment. He further denies being a member of any trade union and argues that the Appellant's reliance on union negotiations to justify his termination is flawed.
 6. This is not accurate because the Appellant in evidence has produced a contract dubbed Weeks Employment Contract dated executed by the parties on 5th March, 2020 for two months which contract was extended to 27th May, 2020. This ideally is the evidence of the Respondent's fixed term contract with the employer.
 7. The Appellant at the onset submits that the Respondent only worked for eighteen (18) days in the month of April, 2020 and vanished never to return to work. He only resurfaced to the Appellant premises with a union representative to demand his dues. These were paid and acknowledged by the Respondent on 23rd June, 2020. Even the Respondent's further claim on terminal dues was met and was paid a final sum Kshs.10,736.00 on 13th August, 2020. The Appellant therefore deems the award by the lower court unfair and unprocedural and case of unjust and enrichment. On this, this court agrees with the Appellant. Adequate evidence was adduced on the terms of employment of the Respondent by the Appellant and also the payment made prior to the award by court.
 8. The Respondent submits that his termination was procedurally unfair as it violated Section 40 of the *Employment Act*, 2007. He was not given any notice or reasons for his dismissal nor was he personally notified of the intended redundancy as required by law. The Respondent also disputes the Appellant's claim that he was paid his terminal dues stating that he never instructed the law firm of Zablun Mokua & Co. Advocates to act on his behalf in any negotiations. He argues that the purported payments were made without his consent and that the Appellant failed to produce any evidence of his instructions to the advocates or union representatives. This again is superfluous. Having established a case of fixed term contract the case of redundancy under section 40 of the *Employment Act*, 2007 does not arise. There was nothing to necessitate the employment of the requirements of section 40 on notices in redundancy, or at all.
 9. It is therefore permissible that the Appellant complained of the misapplication and binding of redundancy in respect to the claimant termination of employment. In any event, this was not demonstrated in evidence.
 10. The denial of instructions to the advocates by the Respondent is belated. This is because the receipt of terminal dues in two instalments knowing well the involvement of the different law firms standing for



him and the union is acquiescence and disfigures later day claims on their participations. He cannot now conveniently run away from this reality.

11. The Respondent maintains that he is entitled to the terminal benefits awarded by the lower court, including severance pay, housing allowance, accrued leave, and one month's salary in lieu of notice. He relies on the Minimum Wages Order 2018 to justify the award of Kshs. 13,572.90 as his monthly salary and cites Section 74 of the *Employment Act*, 2007 which obligates the employer to maintain employment records, to counter the Appellant's failure to produce his payment records. He further urges the court to dismiss the appeal and uphold the lower court's judgment arguing that the Appellant's conduct was exploitative and in breach of statutory employment protections.
12. The sole issue distilled from the pleadings is whether the trial court erred in awarding the Respondent a third payment of terminal dues despite evidence of prior settlements and an expired contract.
13. The Appellant asserts that the Respondent was a casual worker on a fixed-term contract ending on 27th May, 2020 which was not renewed due to operational challenges. She notified the union and Ministry of Labour but the Respondent was neither a union member nor personally notified as required by Section 40(1)(b) of the *Employment Act*, 2007. The Respondent, however, claims he was a permanent employee unfairly terminated without notice or reasons. The lower court rightly held the redundancy process irregular. The Appellant further produced evidence of two payments made to the Respondent, but the Respondent disputes these, alleging lack of instructions to his purported advocates. The lower court found no proof of representation. When all is said and done, the issue of representation of the Respondent by the union and advocates does not arise in the circumstances.
14. This is because, bearing in mind the nature and terms of the employment contract between the parties, issues of redundancy and payment of terminal dues did not arise. Not when the claimant's contract lapsed by effluxion of time. Was anything payable to him in the first place? No. the Appellant just went out of her way to entrench peaceable labour relation deliberately, out of fear or by error.
15. I therefore agree with the Appellant that the learned trial magistrate erred in law on fact by misapplying the law of redundancy and the import of the expiry fixed term contract in the circumstances of the case and evidence before court.
16. I am therefore inclined to allow the appeal set aside the judgment and orders of the trial court with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Kori instructed by K. Mberia & Partners Advocate LLP for the Appellant
2. Mr. Magonda instructed by Magonda Advocate for the Respondent.

