



REPUBLIC OF KENYA



Mutunga v Manek & 2 others (Employment and Labour Relations Cause E860 of 2021) [2025] KEELRC 1761 (KLR) (18 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1761 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E860 OF 2021**

HS WASILWA, J

JUNE 18, 2025

BETWEEN

JOSEPH MUTUNGA CLAIMANT

AND

KAUSHIK MANEK 1ST RESPONDENT

KIRIT THAKKER 2ND RESPONDENT

TRUCKMART AFRICA LIMITED 3RD RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide an Amended Statement of Claim dated 30th October 2022 for wrongful and unfair termination of his employment contract and prays for judgment against the Respondents for:
 - a. The sum of Kshs.1,920,000/= being damages for wrongful and unfair termination of employment contract.
 - b. The sum of Kshs.600,000/= being unpaid salary.
 - c. The sum of Kshs.480,000/= being three month's salary in lieu of notice.
 - d. The sum of Kshs.320,000/= being service pay for the 4½ years of service by the by the Claimant.
 - e. A declaration that the 3rd Respondent's corporate veil is lifted.
 - f. A declaration that Truckmart Africa Limited is the successor to Truckmart East Africa Limited.



- g. A declaration that liability on the 1st and the 2nd Respondents' continues even after dissolution of Truckmart East Africa Limited and the same is enforceable against them.
- h. A declaration that the Respondents' actions were unlawful, improper and fraudulent.
- i. Issuance of the Certificate of Service.
- j. Interest at court rates on (A), (B) and (C) from the date of Judgement until payment in full.
- k. Costs of and incidental to the suit.

Claimant's Case

2. The Claimant avers that 1st and 2nd Respondents were at all material times the Directors/Shareholders of the Truckmart East Africa Limited, a limited liability company incorporated and registered under the *Companies Act*, Chapter 486 of the Laws of Kenya (now repealed).
3. The Claimant avers that he was employed by the Truckmart East Africa Limited as a Chief Accountant on a gross month salary of Kshs.160,000 on or about 1st July 2014.
4. The Claimant avers that between March 2018 and December 2018, he was underpaid by a total of Kshs.600,000 for the services he rendered to the Truckmart East Africa Limited, contrary to the express terms of the employment contract.
5. The Claimant avers that vide a letter dated 30th November 2018, he was un-procedurally and unfair terminated from employment on the basis that the Truckmart East Africa Limited had become insolvent.
6. The Claimant avers that Truckmart East Africa Limited failed to give him three months' notice of intention to terminate the employment contract or pay him three month's salary in lieu of notice; it further failed to pay him service pay for the 4 and ½ years of service and issue him with a certificate of service.
7. The Claimant avers that vide Gazette Notice No. 12735 dated 22nd August 2018, Truckmart East Africa Limited was dissolved pursuant to Section 897(4) of the *Companies Act* on the basis of its own application to have its name struck off the Register of Companies.
8. Upon dissolution, the 3rd Respondent took over the operations, premises and business contacts of Truckmart East Africa Limited and on 18th December, 2018, the 3rd Respondent offered him the position of Chief Accountant on the basic monthly salary of Kshs.180,000.
9. It is the Claimant's case that despite the 3rd Respondent succeeding Truckmart East Africa Limited upon its dissolution and numerous demands by the Claimant, the Respondents have refused and or neglected to settle the unpaid dues and terminal benefits owed to the Claimant.
10. The Claimant avers that the incorporation of Truckmart Africa Limited and subsequent dissolution of Truckmart East Africa Limited was done with the intention of evading the contractual obligations that Truckmart East Africa Limited had.
11. The Claimant avers that he has made several demands and issued notices of intention to sue but the Respondents have persisted in their refusal to make good the Claimant's claim.
12. The Claimant avers that by a letter dated 2nd January 2019 Truckmart East Africa Limited and the 3rd Respondent were one and the same entity as the CEO, one KIRIT THAKKER clearly indicated Truckmart East Africa Limited has rebranded to trade as Truckmart Africa Limited .



13. It is the Claimant's case that the dissolution of Truckmart East Africa Limited and the subsequent termination of his employment contract whilst incorporating the 3rd Respondent and the refusal to pay his terminal dues under the guise of insolvency was a deliberate violation of his legal and labour rights.
14. The Claimant avers that the 1st and 2nd Respondent and the directors of the 3rd Respondent through collusion masterminded the illegalities herein and had Truckmart East Africa Limited dissolved, liability of each director of the company continues as if the company has not been dissolved.

Respondents' Case

15. In opposition to the Claim, the Respondents filed an Amended Memorandum in Response dated 28th September 2023.
16. The Respondents deny that they are directors and shareholders of Truckmart East Africa Limited.
17. The Respondents aver that the 3rd Respondent is a limited liability company incorporated with its separate corporate identity and it has no association with Truckmart East Africa Limited having been incorporated on 19th July 2018.
18. It is the Respondents' case that the Truckmart East Africa Limited was dissolved and the provisions of Section 67(b) of the Employment Act applied to it; the Claimant ought to have applied for the application of Sections 68 to 73 of the Employment Act.
19. The Respondents aver that the Claimant cannot sustain this claim against the Respondents and they will apply in limine to strike out this claim.
20. The 3rd Respondent avers that it did not succeed the Truckmart East Africa Limited as it was incorporated before dissolution of the company.
21. It is the 3rd Respondent's case that it offered the Claimant employment in its agreement which he accepted, however, he subsequently resigned from work on his own; and the registration and/or termination of employment is not before this court.
22. The Respondents aver that the Claimant admits to have been paid his final dues in the letter dated 22nd March 2021 annexed to his documents. The Claimant discharged the companies when he was paid on 19th May 2021 and therefore has no claim against the Respondent.
23. The Respondents aver that the Claimant was the accountant in charge of payment, prepared vouchers for his salary to be paid to his wife which were duly paid and this he cannot have the alleged claim for unemployment. The 1st and 2nd Respondent will seek leave the court to issue summons against her.
24. The Respondents aver that the 3rd Respondent and Truckmart East Africa Limited are not one and the same, as the 3rd Respondent was incorporated in July 2018 with different directors from Truckmart East Africa Limited.
25. The Respondents aver that at the incorporation of the 3rd Respondent, Truckmart East Africa Limited was still in existence and as such it had its corporate obligations under the Companies Act and thus the Claimant ought to have sued Truckmart East Africa Limited.

Evidence in Court

26. The Claimant (CW1) adopted his witness statement dated 30th October 2022 as his evidence in chief and produced his filed documents dated 30th October 2022 as his exhibits 1 to 12.



27. During cross-examination, CW1 testified that his contract of employment was terminated by Truckmart East Africa Limited on grounds that the company was dissolved.
28. CW1 testified that Truckmart East Africa Limited paid all his dues.
29. CW1 testified that the directors of Truckmart East Africa Limited are not the same with the directors of the 3rd Respondent.
30. CW1 testified that the 3rd Respondent was incorporated in July 2018 before Truckmart East Africa Limited was dissolved
31. CW1 testified that he took up employment with the 3rd Respondent and he refused to renew the contract with it.
32. The Respondent's witness Fahima Saleh (RW1) testified that she is the 3rd Respondent's Marketing Manager and prior to this employment, she was an employee of Truckmart East Africa Limited
33. RW1 adopted her witness statement dated 13th December 2023 as her evidence in chief and produced the Respondent's filed documents as exhibits no. 1 to 5.
34. During cross-examination, RW1 testified that it was not true that he had to sign to work for the 3rd Respondent by relinquishing his benefits from Truckmart East Africa Limited
35. The Respondent's second witness, Jayesh Manek (RW2) testified he is a director and shareholder of the 3rd Respondent as a Security Officer. He adopted his witness statement dated 26th September 2022 as his evidence in chief.
36. RW2 testified that he was never a director shareholder of Truckmart East Africa Limited and the 3rd Respondent settled all the Claimant's claim.
37. RW2 testified that the 2nd Respondent was never a director shareholder of the 3rd Respondent but was an employee who since left the company.
38. Upon cross-examination, RW2 testified that the 3rd Respondent did not take over issues of Truckmart East Africa Limited.
39. RW2 testified that in respect to the letter dated 2nd January 2019, there are no minutes negating the takeover although the company held meetings with resolutions

Claimant's Submissions

40. The Claimant submitted on three issues: whether the 3rd Respondent took over the operations and thus obligations of Truckmart East Africa Limited; whether the Claimant was unfairly terminated and the remedies thereto; and who is entitled to the costs of this suit
41. On the first issue, the Claimant submitted that the content of the letter dated 2nd January 2019 announced that the 3rd Respondent announced the rebranding of Truckmart East Africa Limited to trade as Truckmart Africa Limited . RW2 alleged that letter was not the position of the 3rd Respondent company but admitted that he did not have the 3rd Respondent company's resolution negating the content of the letter.
42. It is the Claimant's submission that the letter coupled with the sworn evidence of the Claimant leaves a strong legal inference of probative value pointing to the import and meaning of the communication to customers, employees and all cannot be ignored by the court or wished away. Further, no contrary evidence was furnished by the Respondents.



43. The Claimant submitted that the legal burden of proof as provided in Section 107 and 109 of the [Evidence Act](#) lays on the 3rd Respondent.
44. The Claimant submitted that whereas the Respondents denied the existence of a relationship with the Claimant, it was confirmed under oath the the 2nd Respondent who signed the Claimant's employment letter dated 14th June 2014, is the same office who signed the Claimant's employment letter with the 3rd Respondent on 19th December 2018 to which the former company had 'rebranded'.
45. The Claimant submitted that the Respondent never adduced any evidence to support their claim that the former company was actually insolvent. The material evidence placed before this court can only lead to the legal inference that Truckmart East Africa Limited was 'rebranded' to the 3rd Respondent. No evidence was presented in court such as minutes or resolutions to substantiate the claim of winding up of the former company under the provisions of the applicable law which the Respondent should have done if they wished the court to make a finding to that effect.
46. It is the Claimant's submission that in spite of the dissolution of a company, Section 897(6)(a) of the [Companies Act](#) provides for the liabilities of its former directors and managing officers and is sustained.
47. The Claimant submitted that Truckmart East Africa Limited having been rebranded, the Claimant could not sue a non-existing entity.
48. It is the Claimant's submissions that the 3rd Respondent assumed control over the operations and obligations of Truckmart East Africa Limited and the two entities are one and the same. The transition was merely a rebranding effort involving the change of business name.
49. On the second issue, the Claimant submitted that the 3rd Respondent having taken over the operations of Truckmart East Africa Limited and the two entities being one and the same as relates to the obligations owed to the Claimant, it follows that the court should assess the conduct of the Respondents in terminating the Claimant's employment under Truckmart East Africa Limited. This assessment is necessary to determine the terminal dues owed to the Claimant.
50. The Claimant submitted that the insolvency claim asserted by the Respondents appears to be a ploy intended to escape liabilities owed to him. The legal principles surrounding terminations are clear, and attempts to avoid responsibility though insolvency claims should not overshadow the rights of employees to seek redress for unpaid dues or wrongful dismissal.
51. It is the Claimant's submission that having demonstrated that Truckmart East Africa Limited was not declared insolvent but merely underwent a rebranding to become Truckmart Africa Limited ; the employer had no justifiable grounds to terminate the Claimant's contract and shirk responsibility over dues accrued under its old name. Additionally, Truckmart East Africa Limited failed to issue the required three months' notice as stipulated in the employment contract in contravention with Section 45 of the [Employment Act](#).
52. The Claimant submitted that his termination was unfair for reasons that at the time of termination, the Employer could not have genuinely believed they were insolvent and instead used the insolvency as an avenue to escape their liabilities. This a violation of the Claimant's labour rights, he is therefore entitled to damages for wrongful and unfair termination of employment contract.
53. On costs, the Claimant submitted that Section 27 of the [Civil Procedure Act](#) provides that costs should follow the event unless the court for some reason orders otherwise.



Respondents' Submissions

54. The Respondents submitted on three issues: whether the Amended Statement of Claim dated 14th October 2022 is merited; whether the Claimant was unfairly terminated; and who is entitled to costs of the suit
55. On the first issue, the Respondents submitted that the Amended Statement of Claim is unmerited as it does not raise triable issues. The claim is against Truckmart East Africa Limited that does not have any association with the 3rd Respondent owing to the fact that the 3rd Respondent was incorporated on 19th July 2018 as a separate and distinct legal corporate entity under the *Companies Act* with different directors. Additionally, Truckmart East Africa Limited was still in existence when the 3rd Respondent was incorporated, therefore, the Claimant ought to have claimed his dues from the said company and not from the 3rd Respondent.
56. The Respondents submitted that the claim herein addresses issue that do not in any way concern the 3rd Respondent and it can therefore not be held liable for a claim just because the names of the two companies seems similar in the Claimant's eyes. Section 19 of the *Companies Act* stipulates that once a company has been incorporated or registered, it obtains a legal entity separate from the owners and the people running the company; this can also be said to include other companies.
57. The Respondents submitted that the 3rd Respondent's corporate veil cannot be lifted because it does not fall in the circumstances stated in the Supreme Court case of *Gatuma v Kenya Breweries Limited & 3 others* [2024] KESC 52 (KLR) as follows:
- “The corporate veil can only be pierced or lifted in exceptional circumstances, such as when the court is construing a statute, contract or other document which requires the veil to be lifted; when it can be shown that the company is being used as a mere façade or sham to perpetrate fraud, avoid legal obligations, or achieve some other improper purpose and, when it can be established that the company is an authorised agent of its controllers or its members, corporate or human.”
58. The Respondents further submitted that the directors cannot be sued in their individual capacity, the Claimant should apply to court for the corporate veil to be pierced first then he can sue the directors. They relied in *Ukwala Supermarket v Jaideep Shah & another* [2022] KEHC 2207 (KLR) where the court cited *The Halsbury's Laws of England*, 4th Edn para. 90 which addresses the issue of piercing the veil of incorporation and states:
- “Notwithstanding the effect of a company's incorporation, in some cases the court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but, in all cases, where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case, the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual's connection with a company may cause a transaction with that company to be subjected to strict scrutiny, the corporate veil will not be lifted.”
59. It is the Respondents' submission that he who alleges must prove as enshrined under Sections 107 and 108 of the *Evidence Act*. The Claimant failed to produce in court any CR12 to prove his claims of the



- relationship between the two companies; in such absence, the Claimant cannot move this court for such substantive orders in pure innuendo and conjecture.
60. The Respondents submitted that there is no nexus between the Respondents and Truckmart East Africa Limited which was dissolved pursuant to Gazette Notice No. 12735 dated 22nd August 2018 as the two are distinct entities with different contractual obligations. The Claimant failed to prove the existence of any relationship between the two companies as alleged in his Amended Statement of Claim thus it is unmerited and ought to be dismissed with costs.
 61. On the second issue, the Respondents submitted that it is not privy of the employment contract between the Claimant and Truckmart East Africa Limited and they cannot speak to the veracity of the Claimant's claim.
 62. The Respondents submitted that Truckmart East Africa Limited was dissolved and the provisions of Section 67(b) of the *Employment Act* would apply to it and the 1st and 2nd Respondent were also employees of Truckmart East Africa Limited and therefore they were not in control of the affairs of the company. The Claimant ought to have applied for the application of Sections 68-73 of the Employment which provides that an employee of an insolvent company may apply to the Cabinet Secretary for Labour and Social Protection to pay an amount of the debts of the employer owes the employer; these payments are made out of the National Social Security Fund.
 63. The Respondents submitted that the Claimant's claim is already overtaken by events to institute the suit against the insolvent company within regard to the limitation of actions provided under Section 90 of the *Employment Act*.
 64. The Respondents submitted that the 3rd Respondent did not terminate the Claimant but he resigned on his own and the Claimant's claim is directed to Truckmart East Africa Limited which the 3rd Respondent is a stranger to. Therefore, the Claimant should not have laid a claim to the 3rd Respondent but rather to Truckmart East Africa Limited.
 65. On the final issue, the Respondent submitted that under Section 27(1) of the *Civil Procedure Act*, the discretion to award costs lies with the court in any suit. This discretion must be exercised judiciously and it is trite law that where the court denies costs to a party who is successful in a suit, reasons for such decision must be clearly stated.
 66. I have examined all the evidence and submissions of the parties herein. The claimant has sued the 3rd respondent herein whom he aver was the employer after he was terminated by Trukmart East Africa Ltd due to insolvency. The 3rd respondent aver that they employed the claimant and he took up a new job with them and that they are not related to Trukmart East Africa Ltd.
 67. The 3rd respondents aver that they have no relationship with Trukmart East Africa which was in existence even at the time the 3rd respondent was incorporated on 19/7/2018 as a separate and distinct entity. I have looked at the employment contract between the claimant and 3rd respondent. The contract is clear that the contract was between the 3rd respondent and claimant and therefore is no indication that the contract was an extension of the employment between the claimant and truck Mark East Africa Ltd. The period of the contract was 1/1/2021 to 31/12/2022. When the contract ended, the respondents paid off the claimant his terminal dues and released him.
 68. The claimant has also not produced any documents to prove that the directors of the two companies were one and the same. The claim for terminal dues by the claimant as against Truckmart East Africa Ltd cannot therefore be directed at the 3rd respondent as there is no indication that the two companies are one and the same.



69. I find that the claim is therefore not tenable. I dismiss it accordingly. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

