



**Ali v Laser Freight Limited (Appeal E012 of 2023)
[2025] KEELRC 1810 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1810 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E012 OF 2023
MA ONYANGO & DO OGAL, JJ
JUNE 12, 2025**

BETWEEN

MOHAMED MUSA ALI APPELLANT

AND

LASER FREIGHT LIMITES RESPONDENT

(Being an appeal from the Judgment of Honourable P.N. Areri, Senior Principal Magistrate in Eldoret Chief Magistrates Employment and Labour Relations Court Case No. 5 of 2022 delivered on 9th May, 2023: Mohamed Musa Ali v Laser Freight Limited.)

JUDGMENT

1. The Appellant herein was the Claimant in Eldoret CMEL No. 5 of 2022 while the Respondents was the Respondent in that suit. The Claimant sued the Respondent seeking compensation for alleged wrongful and unlawful termination of his employment by the Respondent.
2. In the Statement of Claim dated 26th January, 2022 the Appellant states that he was employed by the Respondent as a truck driver from 1st May, 2019 to 24th August, 2020. He states that the contract was never reduced into writing by the Respondent. That he reported to work at 6 am and worked till 12 midnight for 7 days a week without any rest days. That he also worked on public holidays. His salary per month was Kshs. 38,000.
3. The Appellant avers that his employment was terminated verbally on 24th August, 2020 and the Respondent refused to pay his terminal dues.
4. The Appellant stated that the termination of his employment was unfair as:
 - i. The Respondent failed to give the Claimant notice as provided under section 35(1)(c) of the Employment Act,



- ii. The Respondent failed to pay the Claimant one month pay in lieu of notice as stipulated under section 36 of the Employment Act.
 - iii. The Respondent terminated the Claimant's service without following the due procedure laid out in Section 15 and 41 of the Employment Act.
 - iv. The Respondent terminated the Claimant's employment without proving the reason for the termination was valid as provided under section 43 and 45 of the Employment Act.
 - v. The Respondent failed to pay the Claimant his 12 months wages for loss of employment as provided Under Section 49(1) of the Employment Act.
 - vi. The respondent failed to accord the Claimant any hearing and/or representation before terminating his services thus violating the Provisions and the Employment Action.
 - vii. The Respondent failed to accord the Claimant any hearing and/or representation before terminating his services thus violating the Provisions of the Employment Act.
 - viii. The Respondent failed to regulate the working hours of the Claimant and further failed to pay the claimant dues for all rest days he worked during his employment contrary to Section 27 of the Employment Act.
 - ix. The Respondent failed to pay the Claimant dues for all the annual leaves earned but were never accorded to him by the Respondent during his employment contrary to Section 28 of the Employment Act.
 - x. The Respondent failed to pay the Claimant for the overtime for all the days of his service to the Respondent.
 - xi. The Respondent denied the Claimant all his terminal benefits contrary to the provisions of the Employment Act.
5. The Appellant further stated that he worked overtime' on rest days and on public holidays without payment.
6. The Appellant particularized his claim as follows:
- a. One month pay in lieu of notice Ksh.38,000/=
 - b. Compensation for unfair termination
Gross pay x 12 months
39,000 x 12 months Ksh.456,000/=
 - c. Unpaid overtime dues
Calculated from daily overtime hours
= 8 Hours x 479 days worked.
3832 Hrs x (38,000 ÷ 1387.40) x 5 Ksh.157,437/=
 - d. Outstanding salary for 5 months May,
June, July, August, and September
the year 2019 38,000 x 5 Ksh.190,000/=



- e. Unpaid rest days 1 day per week for the period worked 64 rest days x (basic salary ÷ 30) x 2 = Ksh.162,133/=
 - f. Accrued leave earned but not taken for 2 years Monthly basic salary x no. of years of service 38,000 for 21 days x 2 years Ksh.76,000/=
 - g. Unpaid public holidays 18 unpaid public Holidays x basic salary ÷ 30 x 2 Ksh.45,599/=
- Total claim Ksh.1,125,169/=
7. The Appellant prayed for the following remedies:
- a. A declaration that the termination of employment was malicious, unlawful, unfair, unprocedural and a fundamental violation of the rights of the Claimant.
 - b. Maximum compensation as per Section 49(1)(c) of Employment Act.
 - c. An order the the Respondent pay the Claimant as per paragraph 12 hereinabove.
 - d. Costs and interest of this suit.
 - e. Any other relief(s) this Honourable Court may deem just and fit to grant.
8. It is apparent from the Record of Appeal that the Respondent did not file any response to the Statement of Claim or participate in the suit. The Appellant filed a Request for Interlocutory Judgment dated 6th May, 2022 which was granted and the suit fixed for formal proof on 7th March, 2023.
9. The Appellant testified on 7th March, 2023 and adopted his witness statement and his documents filed in court. Judgment was delivered on 9th May, 2023 dismissing the Claim.
10. The Appellant being dissatisfied with the said Judgement filed the instant appeal vide the Memorandum of Appeal dated 6th June, 2023 on the following grounds of appeal:
- a. The Honourable Learned trial Magistrate erred in law and in fact for failing to take into consideration the over whelming evidence establishing that the Appellant herein was indeed an employee of the Respondent company.
 - b. The Honourable Learned trial Magistrate erred in law and procedure for failing to find that the Appellant herein had proved his case on a balance of probability.
 - c. The Honourable e Learned trial Magistrate erred in law and facts for failing to appreciate that the cogent evidence adduced in court in support of the Appellant's assertion remain uncontroverted and unchallenged.
 - d. The Honourable Learned trial Magistrate erred in law and facts for failing to appreciate the fact that in any employment relationship it is employer who normally remains with the custody of all crucial and pertinent documents with regard to the employees and this was the same case for the Appellant in the Lower Court matter.



11. The Appellant prays for the following reliefs:
 - a. The proceedings and all the consequential orders of 9.5.2023 be set aside forthwith.
 - b. The Honourable Court be pleased to make a declaration that the Appellant was unlawfully dismissed from employment by the Respondent
 - c. The Honourable Court be pleased to proceed and compute damages for unlawful dismissal in favour of the Appellant as claimed in his Memorandum of Claim
 - d. Costs be provided for
 - e. Any other relief that this Honourable Court may deem fit and just to grant.
12. The appeal was disposed of by way of written submissions. The Appellant filed submissions dated 13th May, 2024. The Respondent did not participate in the proceedings in the appeal.

Appellant's submissions

13. In its submissions the Appellant identified and submitted on the following issues:
 - a. Whether this court has jurisdiction to hear and determine this appeal,
 - b. Whether the trial court based its decision on the evidence before it;
 - c. Whether the Appellant was unlawfully dismissed by the Respondent;
 - d. What reliefs/damages the Appellant is entitled to for unlawful dismissal as prayed in the Memorandum of Claim.
 - e. Who should be awarded the costs and interest in this suit.
14. On the first issue the Appellant submits that this court has jurisdiction to hear and determine the appeal by virtue of section 12(5) of the Employment and Labour Relations Court Act. For emphasis the Appellant relies on the decision in Musera v Mwechelesi & another (2007) KLR 159 as quoted in DPL Festive Limited v Elijah Ochieng' Rakuru
15. On the 2nd issue the Appellant submits that during the trial the Appellant produced his sworn statement where he made it clear that he was employed by the Respondent from 1st May, 2019 to 24th August, 2020 as a truck driver at a salary of Kshs. 38,000, that he worked 7 days a week and almost 24 hours a day, during public holidays and without leave. That the Appellant further produced demand letters, bank statements and Mpesa statements and also visa all showing that he worked for the Respondent at a monthly salary. That he further made it clear that his employment was terminated without a reasonable explanation and without being accorded a chance to be heard. That the Respondent never bothered to enter appearance or to refute the claims by the Appellant. That in dismissing the claim the trial magistrate did not pay attention to the evidence before the court, meriting the instant appeal.
16. On the 3rd issue for determination the Appellant submitted that the Employment Act sets the procedure and guidelines for termination of employment at section 43 and 45. For emphasis the Appellant relied on the decision in Walter Anuro v Teachers Service Commission [2013] eKLR where the court observed that for termination to pass the fairness test there must be both substantive justification and procedural fairness. He further relied on the decision in Alphonse Machanga Mwachanya v Operation 680 Limited [2013] eKLR where the court set out the procedure for



fair termination of employment. He submitted that the Respondent did not comply with the said procedure. That it is therefore clear that the termination of the Appellant's employment was unfair.

17. On the reliefs sought the Appellant submitted that having established that the termination of his employment was unfair he was entitled to the remedies as claimed in his Statement of Claim.
18. On who should pay costs the Appellant submitted that having proved his claim and the same having been unopposed, he is entitled to costs and interest and prayed that the same be awarded.

Determination

19. I have considered the record of appeal, the Memorandum of Appeal and the submissions of the Appellant. As already stated, the Respondent did not participate in the trial in the lower court and in the appeal.
20. The issues which I have identified for determination are whether the trial court erred in dismissing the Appellant's claim based on the pleadings and evidence before the trial court and if the Appellant is entitled to the prayers in his Memorandum of Appeal.
21. In dismissing the Appellants claim the trial court held as follows:

In the instant case the claimant alleged that he was employed by the defendant, that he was terminated from employment and that his dismissal was unfair and unlawful.

I have considered the evidence before me and the exhibits produced and I find there is nothing to prove there was a relationship of employment between the claimant and the defendant as alleged. There is nothing to show the claimant was earning a monthly salary of Ksh.38,000, that the claimant was dismissed or terminated as alleged. The evidence before me is mere allegations which have not been specifically proved as required. I proceed to dismiss the claim herein and order each party to bear is own costs.

22. In employment cases, the Employment Act provides at section 47(5) that:

“For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

23. This means that an employee must first prove that there was an employment relationship capable of being terminated before they can prove that such relationship was terminated. If there is no proof of an employment relationship then there can be no termination of an inexistent employment relationship. In a case where there is no response to the claim by an employer, the burden of the Claimant is even higher as the Claimant must prove every allegation in the claim.
24. The Appellant has submitted that he produced his sworn statement where he made it clear that he was employed by the Respondent from 1st May, 2019 to 24th August, 2020 as a truck driver at a salary of Kshs. 38,000, that he worked 7 days a week and almost 24 hours a day, during public holidays and without leave. That the Appellant produced demand letters, bank statements and Mpesa statements and also visa all showing that he worked for the Respondent at a monthly salary. That he further made it clear that his employment was terminated without a reasonable explanation and without being accorded a chance to be heard. That the Respondent never bothered to enter appearance or to refute the claims by the Appellant.



25. I have looked at the evidence adduced by the Appellant. None of the documents produced can be connected with the Respondent. The Bank Statement from Diamond Trust Bank does not make any reference anywhere to the Respondent. The references to salary in the statement do not disclose by whom the salary was paid. The source of the salary is indicated as Electronic Funds Transfer. The money could have come from anybody.
26. The court further noted that such payments were made only on 27th September, 2019, 1st November, 2019, 3rd December, 2019, 24th December, 2019, 4th February, 2020 and 28th February, 2020, being a duration of only 6 months, yet the Claimant alleges that he was in employment from 1st May, 2019 to 24th August, 2020.
27. I have further keenly gone through the Mpesa statements from pages 32 to 127 of the Record of Appeal and did not see any reference to the Respondent. The Appellant did not bother to point to any specific entries in either the bank statement or the Mpesa statement linked to the Respondent.
28. The fact that the Appellant stated that the Respondent was his employer in his pleadings does not prove that such an employment relationship existed.
29. The court further notes that there is no evidence adduced connecting the Appellant to a vehicle owned or in the possession of the Respondent which would have formed alternative proof of employment relationship.
30. I have also taken time to look at the affidavits of service. All of them only state that the service was effected on a receptionist who is not named. It is not indicated the building and floor or door number at which service was effected. There is no indication that she was asked if she was authorised to accept service on behalf of the Respondent. It is doubtful whether any service was effected upon the Respondent at all or if the person served with the court documents was the correct person authorised to receive the documents.
31. From the foregoing, there is no basis upon which I would disagree with the trial court that the Appellant did not prove that there was an employer-employee relationship between him and the Respondent that was capable of being terminated in the manner alleged in the Appellants claim. It is my finding that the trial court correctly found and held that on the basis of the evidence adduced before him there was no proof that the Appellant was an employee of the Respondent.
32. Upon the failure of proof of the existence of an employment relationship the whole of the Appellants claim collapses as all the other issues are premised on the existence of an employment relationship.
33. For the foregoing reasons I find that there is no merit in the appeal and dismiss the same.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE

