



**Mwadori v Milly Glass Works Limited (Appeal E035 of 2025)  
[2025] KEELRC 2312 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2312 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E035 OF 2025**

**M MBARŪ, J  
JULY 31, 2025**

**BETWEEN**

**FURAHA MWADORI ..... APPELLANT**

**AND**

**MILLY GLASS WORKS LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. J. B. Kalo delivered  
on 20 February 2025 in Mombasa CMELRC No. E603 of 2023)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 20 February 2025 in Mombasa CMELRC No. 603 of 2023. The appellant seeks the judgment to be set aside and his claim allowed with costs. In the alternative, the claim may be reconsidered on merit.
2. The appeal is on grounds:
  1. The learned magistrate erred in law and fact by citing their lack of jurisdiction without basing it on any specific law or statute.
  2. The learned magistrate erred in law and fact by failing to evaluate the evidence of the parties before concluding that there was no jurisdiction.
  3. The learned magistrate erred in applying the law and fact by singling out the appellant's exhibit as their reason for lack of jurisdiction without deciding on its applicability in the suit.
  4. He learned magistrate erred in law and fact by failing to issue a judgment based on the merits of the case.
3. The appellant's claim before the trial court was that he was employed as a general worker in September 2016 and then placed under a one year contract on 1 September 2017. The contract was periodically



renewed until 20 May 2021 when the respondent terminated his employment. At the time, he was earning Ksh.15, 609 per month. His claim was that there was a Collective Bargaining Agreement [CBA] between the union and the respondent, Kenya Chemical Workers Union, and which CBA was applicable to his employment.

4. The appellant's case was that on 11 May 2021, he was suspended from duty over allegations of staff sabotage. He was invited to a hearing and then termination of employment. His claim was that this was unfair and unlawful and thus claimed;
  - a. 2 months' notice pay Ksh.31,218
  - b. Gratuity per clause 23 of the CBA for 5 years Ksh.54,030.60
  - c. Leave travelling allowance per clause 12[b] of the CBA for 5 years Ksh.15,000
  - d. Balance of contract period for 7 months Ksh. 109,263
  - e. 12 months' compensation Ksh.187,308
  - f. Costs of the suit.
5. In reply, the respondent denied the claims and stated that the appellant was under a one-year contract, which was lawfully terminated. He was not a member of the trade union to justify the claims made.
6. The learned magistrate heard the parties and delivered judgment, and held that:

" The claimant states that a collective bargaining agreement exists between the respondent and the Kenya Chemical Workers Union, which she asserts is directly or by implication part of her contract of employment.

In so far as the claimant relies on a collective bargaining agreement between the respondent and the Kenya Chemical Workers Union, this court lacks jurisdiction to hear and determine the claim herein. Consequently, the court shall dismiss its proceedings."
7. On the judgment and appeal, the appellant submitted that the trial court erred in declining jurisdiction on the basis that there was a CBA with the Kenya Chemical Workers Union. Under Section 9 of the Magistrates Court Act, the trial court was clothed with the requisite jurisdiction to hear the claimant. Under section 29 of the Industrial Court Act [since repealed], the Chief Justice allowed the trial court to preside over employment claims. Under section 10 and 26 of the *Employment Act*, his employment particulars and claims were properly before the trial court.
8. The appellant submitted that the termination of his employment was without justification and the trial court should have addressed the claim on merit as held in Janet Chepkempi Machira & another v Laikipia University [2011] eKLR. The court should assess his claims for general damages and compensation, notice pay, gratuity, balance of contract term and leave travelling allowance.
9. There are no written submissions by the respondent.

### **Determination**

10. Being a first appeal, the court must review the record, reassess the findings, and make its conclusions. However, it must also take into account that the trial court had the chance to hear the witnesses.
11. The primary issue of appeal is that the learned magistrate erred in declining jurisdiction and failing to consider the claim on its merits. There is no response to the appeal.



12. The learned magistrate was brief and precise in the judgment. The finding that there was no jurisdiction was on the basis that the appellant's employment was regulated under a CBA between the Union, Kenya Chemical Workers Union and the respondent. Although the learned magistrate gives no details, the lack of jurisdiction led to the finding that the court had to put down its tools.
13. The appellant filed his claim on the basis that the respondent employed him under a term contract of one year. His claims were based on terms under the CBA, including clauses 23 and 12[b], which provided the benefit of gratuity and leave travelling allowance, respectively.
14. Although the respondent replied to the claim and denied that the appellant was unionised, the payment statement filed and issued by the respondent demonstrates otherwise. The appellant was unionised and making remittances to the Kenya Chemical Workers Union. The payment statement for March 2021 is sufficient evidence of this fact.
15. The appellant also filed the CBA between Kenya Chemical Workers Union and the respondent for the period 1 January 2019 to 31 December 2020. Under the terms of the CBA, being a general worker, the appellant was converted under the CBA. The terms and conditions of the CBA applied to the appellant.
16. Any dispute arising out of the employment relationship between the appellant and the respondent, being unionised under the Kenya Chemical Workers Union, becomes a trade dispute rather than an employment claim.
17. A trade dispute is defined under Section 2 of the [Labour Relations Act](#).

" 'trade dispute' means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union;"
18. The trial court is restricted to hearing employment disputes only.
19. The legal Notice No. 6024 of 2018 is that;

" Disputes arising from contracts of employment [excluding trade disputes under the [Labour Relations Act](#), 2007] where employees' gross monthly pay does not exceed Kshs. 80,000/= as commenced and continued in accordance with the Employment and Labour Relations Court [Procedure] Rules 2016."
20. The appellant's claim, based on the CBA terms and conditions, being unionised, the trial court had no jurisdiction. It was proper to put down its tools at that instance.
21. In *Onyango v Ken Knit Kenya Limited* [2024] KEELRC 1569 [KLR] and *Kenga Equatorial Hotels t/a Mombasa Continental Resort v Chege* [2025] KEELRC 162 [KLR], the courts have emphasised that [Legal Notice No.6024 of 2018](#) conferred jurisdiction upon the magistrates concerning employment disputes only. The court retains original jurisdiction over all employment and labour relations disputes, including trade disputes.
22. The court has original jurisdiction in this case. The learned magistrate correctly assessed the matter and made correct findings.



23. On the other part of the appeal, the claims made should be addressed on the merits. As this is an appeal, the appellant, having filed his claim before a court without jurisdiction, would deny the respondent a fair chance at a hearing before the appropriate court if he were to hear and assess the matter afresh.
24. On the claim, the appellant contested that his employment was terminated unlawfully and unfairly. His case was that he was accused of sabotage. In evidence he testified that he was victimized for joining the trade union. However, the records filed talk of a different story. He was suspended following an incident on 6 May 2021 whereby two bottles of 750 Kvint were found with mud in a packed pallet at the cold end awaiting dispatch to the customer. He was invited to a disciplinary hearing and through notice dated 20 May 2021, his employment was terminated for failing to give a satisfactory explanation for the conduct. It was noted that the appellant had previously received complaints from Mega Beverages Tanzania, the customer. Employment was terminated under the provisions of section 44[4] [c] of the *Employment Act*, being acts of gross misconduct.
25. In his evidence in court on 11 September 2024, the appellant did not challenge the grounds leading to the termination of his employment under Section 44 of the *Employment Act*. He maintained that he was victimized for joining the trade union.
26. An employer is permitted to terminate employment under Section 44 of the *Employment Act* if the employee is guilty of gross misconduct. Employee protection is provided in section 41[2] of the Act, which requires that they be given notice of any allegations and be allowed to attend and make their representations. See *Roadtainers [Msa] Ltd v Munuve* [2025] KECA 1302 [KLR] and *Elsa's Kopje Limited v Mwendwa* [2025] KECA 725 [KLR] — the courts have held that summary dismissal is justified when an employee is guilty of gross misconduct. If the employee is invited to make representations and fails to provide satisfactory explanations for their conduct, employment may be lawfully terminated under section 43 of the *Employment Act*.
27. In this case, the respondent relied on section 44[4] [c] of the *Employment Act* to maintain employment. In the case of *Geoffrey Gikonyo Mathu v Intex Construction Company Limited* [2017] eKLR, the court held that;

" This list is not exhaustive as Section 44[4] of the *Employment Act* allows an employer to further make regulations expanding the grounds that may constitute gross misconduct."
28. The conduct of the appellant was thus defined as gross misconduct. The resulting termination of employment was justified.
29. Notice pay or compensation is not available in this case.
30. On the claim for gratuity and remainder of the term contract, employment terminated lawfully and under the CBA, gratuity is not available upon summary dismissal.
31. On the claim for leave travelling allowance, the claim is for 5 years. Under clause 12[b] of the CBA, leave travelling allowance is payable subject to the employee taking a minimum of 15 days of leave. The allowance is Ksh. 3,000 in the 1st year and Ksh. 3,000 in the 2nd year.
32. The payment of the leave travelling allowance was therefore conditional. The appellant has not explained his circumstances to justify the claim for leave travelling allowance for 5 years. In his evidence and written submissions, there is no effort whatsoever to address the claims.
33. The trial court correctly assessed the claim and properly declined jurisdiction.
34. The claims assessed based on the record are without merit.



35. Accordingly, the appeal is without merit and is hereby dismissed. The respondent did not file any submissions as directed. Each party to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

