



Guantai v China Far East Construction Company Limited (Employment and Labour Relations Appeal E024, E025, E026 & E027 of 2024 (Consolidated)) [2025] KEELRC 2259 (KLR) (30 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2259 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS APPEAL
E024, E025, E026 & E027 OF 2024 (CONSOLIDATED)**

ON MAKAU, J

JULY 30, 2025

BETWEEN

STEPHEN KIOGORA GUANTAI APPELLANT

AND

CHINA FAR EAST CONSTRUCTION COMPANY LIMITED RESPONDENT

(Being an appeal from the Judgments and decrees of Hon. (Ms) J. Irura, Senior Principal Magistrate, Kigumo delivered on 19th August, 2024)

JUDGMENT

Introduction

1. These appeals herein arise from alleged employment relationship between the appellants and the respondent. The appellants filed separate suits before Senior Principal Magistrates Court at Kigumo seeking the following reliefs: -
 - a. A Declaration that their employment was unlawfully terminated by the respondent.
 - b. An order for the respondent to pay the claimants compensatory damages and accrued employment benefits.
 - c. Costs and interest.
2. The respondent denied any employment relationship with the appellants and the alleged unlawful termination and prayed for the suits to be dismissed with costs.
3. During the hearing each appellant gave evidence but the respondent called one witness, whose evidence applied across the four suits.



4. In brief, the appellants adopted their witness statements as their evidence in chief and each produced one demand letter as the only exhibit in their respective suits. They alleged that they were employed by the respondent during Road Construction work until the respondent unlawfully terminated their employment on diverse dates between July 2018 and July 2020. On cross examination, they all confirmed that they had no written contract or other form of documentary evidence to prove that they were employed by the respondent. They also called no witnesses to support their allegations.
5. On the other hand, the respondents' witness, Ms. Bao Luri denied that the appellants were employed by the respondent. She further stated that the appellant did not produce any documentary evidence to prove that they were employed by the respondent.
6. After considering the evidence and submissions, the trial court (Hon. Irura SPM) concluded that the appellants did not prove that they were employed by the respondent as alleged and dismissed the suits with costs.
7. The appellants were aggrieved by the said decision and appealed vide separate Memorandum of Appeal dated 17th September 2024 citing the following grounds:
 1. The Learned Magistrate erred in law and fact by finding that the Appellant was not an employee of the Respondent despite the Respondent's own pleadings and testimony clearly showing he was an employee.
 2. The Learned Magistrate showed extreme prejudice by ignoring the Appellant's testimony on issues of law and fact thereby arrived at an erroneous decision.
 3. The Learned Magistrate showed extreme prejudice by ignoring the submissions of the Appellant's Advocates on issues of law and fact thereby arrived at an erroneous decision.
8. The appeal seeks for the impugned decision to be set aside and substituted with the awards of damages as sought in the Lower court. The appeals were consolidated by the consent of the parties on 10th February 2025. The consolidated appeals were then disposed of by written submissions.

Submissions on the Appeal

9. It was submitted for the appellants that the trial court erred in failing to find that an employment contract can also be entered into orally. It was further submitted that the respondents' witness (Ms. Bao) admitted during cross examination that the appellants were paid all their terminal dues. It was further submitted that the appellants produced Bank statements to prove payment of salary by the respondent. Consequently, it was submitted that the trial court erred in finding that the appellants had not proved that they were employed by the respondent.
10. It was further submitted that the respondent had a legal obligation to act fairly before terminating the appellants employment. It was submitted that their services were terminated for no valid reason and they were not accorded fair hearing as provided under section 41 of the [Employment Act](#). They were also not served with any notice before the termination.
11. To fortify the submission that the termination was unlawful, reliance was placed on the case of [Alphonse Maghanga Mwachanya v Operation 680 Limited \(2013\) eKLR](#) where the court discussed the procedure for terminating employment by an employer under section 41 of the Act. Finally, the court was urged to allow the appeal and award the damages sought.
12. On the other hand, it was submitted for the respondent that the appeal lacks merits as the trial court was right in concluding that the appellants were not employees of the respondent. It was submitted that



there was no evidence that they were issued with employment letters. They further failed to produce any bank statements to prove receipt of regular salary or call any witnesses to verify that indeed they were employed by the respondent. The only documents they produced were demand letters.

13. It was submitted that the respondent's witness stated in evidence that the appellants were casual employees who were not employed for more than three months. It was observed that RW1 stated in evidence that the respondent deals with construction and it employs casuals for three months.
14. It was submitted that under section 107 of the *Evidence Act* the appellants had the burden of proving that they were employed by the respondent but they did not. They also did not prove the alleged unlawful termination because they did not prove the existence of their employment by the respondent. Consequently, the court was urged to dismiss the appeal with costs.

Issues for determination and analysis

15. This being a first appeal, the mandate of the court is to re-evaluate the evidence on record and arrive at its own independent conclusion, while appreciating that it did not see the witnesses when they gave their testimonies. I gather support from

Selle v Associated Motor Boat Company Ltd (1968) EA 123 where the court held thus: -

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

16. Guided as above, I have considered the evidence on record, pleadings and submissions. The following issues fall for determination: -
 - a. Whether the appellants were employed by the respondent as alleged in their pleadings.
 - b. If the answer to (a) is in the affirmative, whether the employment was unlawfully terminated.
 - c. Whether the appeal should be allowed and the reliefs sought in the lower court granted.

Employment relationship

17. Section 107 of the *Evidence Act* provides that: -

“whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.”

18. In this case, the appellants alleged that they were employed by the respondent in various capacities and on diverse dates during construction of Makomboki-Gituru-Waiyaki Junction. They also alleged that the respondent paid them regular salaries through the bank. Pursuant to section 107 of the *Evidence Act*, the appellant had the burden of proving the said allegations on a balance of probabilities.
19. Having carefully considered the evidence on record it is clear that except demand letters, no other documents were produced as exhibits to prove the alleged employment relationship. I appreciate that



a contract can be oral or even implied, but the appellant did not adduce any evidence to prove oral or implied contract. In the circumstances, I find that the appellants did not prove by evidence that they were employed by the respondent and that they were paid any salary by the respondent.

20. RW1 emphatically denied knowledge of the appellants and further denied that they were employed by the respondent. However, during cross examination, she contended that the appellants were paid all their dues. She further stated that they could not be paid the dues if they were not employees. However, she admitted that she had nothing to prove that the appellants were paid any dues.
21. I have seen in the record of appeal documents which were not in the list of documents for the claimants in the lower court. The list of documents dated 29th January 2021 indicated demand letters as the only document relied upon, and any other documents with the leave of the court.
22. The court proceedings indicated that only one witness (claimant) testified in each case and only the demand letter was produced as exhibit 1 in each suit. Consequently, I find that any other documents included in the record of appeal without leave of the court cannot be considered.
23. I have also seen submissions for the respondent which address issues which were not mentioned by RW1. The court fails to understand the motivation doing that and also why the counsel never protested against the inclusion into the record of appeal of documents not produced as exhibits during the trial.
24. Having considered all foregoing matters, I hold that the appellants did not prove, on a balance of probability, that they were employed by the respondent as alleged. Consequently, I affirm the trial courts finding that the appellant did not prove that they were employed by the respondent as alleged in the pleadings.
25. In view of the foregoing all the appeals collapse and they all stand dismissed with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 30TH DAY OF JULY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

