



**Colnet Limited v Wandimi (Employment and Labour Relations Appeal E009 of 2024) [2025] KEELRC 2263 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2263 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E009 OF 2024  
ON MAKAU, J  
JULY 29, 2025**

**BETWEEN**

**COLNET LIMITED ..... APPELLANT**

**AND**

**SINA JERENTINA WANDIMI ..... RESPONDENT**

*(Being an appeal from the Judgment of the Honourable Mary Gituma (SRM) delivered on 3rd April, 2024 in Nyeri Chief Magistrates Court MELRC Cause NO. E070 of 2022)*

**JUDGMENT**

**Introduction**

1. By a Memorandum of Appeal dated 8<sup>th</sup> April 2024, the appellant challenged the judgment of lower court on the following grounds: -
  - a. The Learned Trial Magistrate erred in law by allowing the claimant’s Suit/Claim on the basis of the claimant’s evidence without according the Respondent a hearing and/or audience.
  - b. The Learned Trial Magistrate erred in law and in fact in holding that the Respondent was unfairly terminated without hearing the Respondent’s evidence.
  - c. The Learned Trial Magistrate erred in law in failing to appreciate the law and to evaluate the pleadings and evidence before her and consequently arrived at wrong conclusions.
  - d. The Learned Trial Magistrate erred in law and in fact in failing to attach any weight whatsoever to the evidence of the Appellant and its pleadings.
2. The appeal seeks the following orders: -
  - a. That this appeal be allowed.



- b. That the Judgment in ELRC Cause No.E070 of 2022 delivered on the 3<sup>rd</sup> of April, 2024 be set aside and the same be substituted with an order dismissing the suit with costs.
- c. Costs of the Appeal be awarded to the Appellant.

### **Background**

3. The appellant employed the respondent as a cleaner from 1<sup>st</sup> October 2021 and posted her at Equity Bank Nyeri Town. On 4<sup>th</sup> October 2022, the respondent sued the appellant alleging that the appellant unfairly/unlawfully terminated her employment on 11<sup>th</sup> May 2022. As at that time, her salary was Kshs.8300 per month exclusive of house allowance which she described as under payment. According to her the statutory minimum salary under the [\*Legal Notice No.2 of 2019\*](#) was Kshs.12,522.70.
4. She further averred that the termination was unlawful/unfair because there was no reason for the termination and the claimant was never given any opportunity to be heard nor was she served with show cause letter before the termination.
5. She further averred that the appellant had failed to pay her salary for May 2022, house allowance for 1<sup>st</sup> October 2021- 11<sup>th</sup> May 2022, compensation for public holidays worked and one-month salary in lieu of notice. She computed the whole claim at Kshs.65,922.59 plus compensation for the unfair termination.
6. The appellant filed Memorandum of Response dated 14<sup>th</sup> November 2022 admitting that it employed the appellant from 1<sup>st</sup> October 2021 to 11<sup>th</sup> May 2022 when she terminated her employment by failing to report to work as directed by her supervisor.
7. It denied the claim for payment of the sums set out in the claim and put the respondent to strict proof. It further averred that the respondent's salary was a consolidated pay.
8. During the hearing, the respondent merely adopted her written statement dated 28<sup>th</sup> September 2022 and produced 5 documents as exhibits. The statement reiterated the facts set out in the Memorandum of claim. The respondent and its counsel never attended the hearing and its application for reopening of the hearing before judgment was dismissed by the trial court.
9. After considering the evidence and rival submissions presented by both sides, the trial court (Hon.Gituma SRM) concluded that the respondent had proved her case of unfair termination and awarded three months salary as compensation for unfair termination. She further awarded one-month salary in lieu of notice, salary for 11 days worked in May 2022 and House allowance totalling to Kshs.46,203.30

### **In this court**

10. The appellant submitted that there was evidence that the respondent terminated her own employment by absconding, to avoid disciplinary action for insubordination. It was submitted that the trial court erred in law by allowing the respondent's case on the basis of her evidence only and failed to attach any weight whatsoever to its evidence and pleadings
11. On the other hand, it was submitted for the respondent that the suit came up for hearing on 25<sup>th</sup> October 2023 but the appellant and its Advocate never attended court. After satisfying itself that the appellant was duly served, the court ordered the matter to proceed. The respondent's case was heard and the hearing closed.



12. Subsequently, the appellant applied for reopening of the hearing but the court dismissed it on 6<sup>th</sup> March 2024. The appellant never challenged the ruling of 6<sup>th</sup> March 2024 but it is now raising the same issue in this appeal.
13. It was submitted that Rule 22 of the ELRC Procedure Rules, 2016 allowed the court to proceed with the hearing notwithstanding absence of one party if a hearing notice has been served and affidavit of service are filed. The respondent urged the court to dismiss the appeal and uphold the impugned judgment because it was well reasoned and within the law. Reliance was placed on *Selest N Kilinda v Kenya Pipeline Company Limited & Another* (2018) eKLR to urge that pleadings are not evidence.

### **Determination**

14. This being a first appeal, the mandate of this court is to re-evaluate the evidence and make independent conclusions taking into consideration the fact that the court did not see the witnesses while giving evidence. This was the position taken by the Court of Appeal in *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.”

15. Guided by the above decision, I have considered the evidence on record, the pleadings and the submission made in this appeal. The following issues fall for determination:
  - a. Whether the appellant was condemned without a chance to be heard.
  - b. Whether the trial court ought to have considered the weight in the appellant’s evidence and pleadings.
  - c. Whether the impugned judgment should stand.

### **Condemned unheard**

16. There is no dispute that on 23<sup>rd</sup> August 2023, the primary suit was allocated a hearing date by the Registry. The date was 25<sup>th</sup> October 2023 and it was taken by a representative of the respondent’s Advocate in the absence of the appellant’s Advocate.
17. The court record shows that on the day of the hearing, the respondent attended with her Advocate but the appellant and its Advocates were absent. After the trial court satisfied itself that hearing notice was served and affidavit of service filed, it allowed the claimant to prosecute her case and then closed the hearing. To that extent, this court finds that the appellant was given an opportunity to be heard but failed to be diligent. Consequently, it cannot be right to argue that it was condemned without any opportunity to be heard.



### **Failure to consider the appellant's evidence and pleadings**

18. The appellant submitted that the trial court erred when it failed to consider its pleadings and evidence and only decided the case on the basis of the respondent's case. The respondent was however of the view that the trial court was right because, where a party fails to give evidence, pleadings cannot be treated as evidence.
19. It is without dispute that the appellant filed a defence to contest the respondents' suit together with supporting evidence but failed to attend the hearing to prosecute the defence by tendering the evidence. It follows that, the defence remained mere allegations as long as there was no evidence adduced by a witness to prosecute it. I gather support from *Netah Njoki Kamau v Martin Wangugi Njoroge* (2021) eKLR where Kasango J held that:
- “The respondent did not at all call evidence to prove the defence he raised denying negligence on his part and instead lay the blame on the deceased. It follows that the respondent's defence remained mere allegations.”
20. In view of the foregoing, I find that the trial court did not err by basing her judgment on the respondent's evidence only. Even if the appellant had filed witness statement and bundle of documents, the same could be used as evidence for the appellant without a witness adopting the same as evidence in the case or if the parties admitted the same by consent.

### **Whether the judgment should stand**

21. An award of damages would not ordinarily be interfered with on appeal unless it is shown, that it was not supported by evidence or that it was arrived at without considering a material fact or by considering an irrelevant fact. I seek support from *Butt v Khan* (1978) eKLR (Law JA) where the court held: -
- “An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material aspect, and so arrived at a figure which was either inordinately high or low.”
22. In this case, it has not been shown that the trial court considered irrelevant facts or failed to consider relevant facts before arriving at the award of damages or that there was no supporting evidence. The awards were well reasoned and founded on the law. Consequently, I will not interfere with the same.

### **Conclusion**

23. I have found that the appellant was not condemned unheard as it was served with a hearing notice and failed to attend court. I have further found that the trial court was right in deciding the case on the basis of the respondent's evidence only as the appellant never tendered any evidence to prosecute its defence. Finally, I have found that the award of damages was well founded and do not warrant disturbance by this court. Consequently, I dismiss the appeal with costs to the respondent for lack of merits.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 29TH 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.

**ONESMUS N MAKAU**

**JUDGE**

