Hahanyu v China Wu Yi Company Limited (Employment and Labour Relations Appeal E031 of 2024) [2025] KEELRC 2260 (KLR) (29 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2260 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI

EMPLOYMENT AND LABOUR RELATIONS APPEAL E031 OF 2024

ON MAKAU, J

JULY 29, 2025

BETWEEN

ZACHEAS NDUNGU HAHANYU ..... APPELLANT

AND

CHINA WU YI COMPANY LIMITED ..... RESPONDENT

(An Appeal from the Judgment and Decree of Hon Ms.J.Irura, Senior Principal Magistrate, in Kigumo Law Courts on 23rd September, 2024) (Before Hon.Justice Onesmus N Makau on 29th July, 2025)

JUDGMENT

Introduction

1. The appeal herein relates to alleged unlawful termination of employment. It is brought vide the Memorandum of Appeal dated 7th October 2024 and is premised on the following grounds:

    a. The Learned Magistrate erred in law and in fact by shifting the burden of proof to the Claimant despite having proved his case on a balance of probability.

    b. The Learned Magistrate showed extreme prejudice by ignoring evidence that emerged during cross examination thereby arrived at an erroneous decision.

    c. The Learned Magistrate erred and showed prejudice by ignoring submissions of the Appellant's Advocates on issues of law and fact thereby arrived at an erroneous decision.

2. The Appeal seeks setting aside of the judgement and that it be substituted with an award of Kshs. 619,394 to the Appellant for wrongful, unfair and unlawful termination from employment.

Factual background

3. The appellant was employed by the respondent as Lorry driver in June 2021 for a monthly salary of Kshs.34,421. He worked until 11th June 2022 when his services were terminated. Subsequently, he filed suit in the lower court alleging that the termination was unlawful and unfair as there was no valid reason and fair procedure was not followed as required by the law. His terminal dues were also not paid to him for no justifiable cause. Therefore, he prayed for a certificate of service, and the sum of Kshs.618,394 including salary in lieu of notice, house allowance, leave, public holidays, rest days, service pay and compensation.

4. The respondent filed Defence denying ever terminating the appellant's employment and averred that the appellant terminated his own employment and sought to be paid his terminal dues. It further averred that it paid the appellant all his terminal dues and he confirmed that he had no further claim against it. It further averred that before quitting, the appellant had been issued with two warning letters. Therefore, it prayed for the suit to be dismissed with costs for lack of merits.

5. During the hearing, the appellant testified as PW1 and basically adopted his written statement dated 29th August 2022 as his evidence in chief and produced two documents as exhibits. In brief his evidence was that on 10th June 2022, he clocked in to work as usual at 6 PM but before he left, he was called by the Site Manager Mr. Ruang together with another Chinese man and he was told not to report back the next morning as usual but instead go for the money for the days he had worked that month. When he enquired about the reason for the turn of events, he was told the lorry he was assigned was often malfunctioning.

6. He further stated that, on 11th June 2022, he went for his money but the HR Officer, madam Winnie, gave him papers indicating payment of Kshs.15,000 for the days worked plus leave. When he declined to sign the papers, he was denied the money and he was then evicted from the premises. He reiterated that he was dismissed for no valid reason, without prior notice and without following fair procedure. He denied having been given any warning before the termination. Therefore, he prayed for the reliefs set out in the suit.

7. On cross examination, he admitted that he was not served with any termination letter and reiterated that Ruang orally informed him no to report on duty. He confirmed that he had no witness who heard Ruang telling him not to report back on duty. He denied having absconded duty and maintained that he was told not to report back on duty. He stated that the company was discontinuing employees who got three warning letters. He contended that he received only one warning letter.

8. He admitted that the respondent was remitting NSSF and NHIF contributions. He further admitted that he signed for the days he had worked for that month but denied that he waived any further claim against the company. He contended that he was never paid any money through the discharge voucher he signed. He admitted that he never wrote to the company, after signing the discharge voucher, to say that he had any further claim. He admitted that the salary he was receiving was a consolidated pay.

9. DW1 was respondent's Office Administrator, Shifang Xu who was based at Sagana Station. He adopted his written statement dated 18th August 2023 as his evidence in chief and produced 9 documents as exhibits. In brief, his case was that no one in the company terminated the appellant's employment as there was no termination letter issued to the appellant by the HR Department. He stated that the appellant approached the respondent and requested to leave his job because he had already received two warning letters. He contended that had the appellant received a third warning, disciplinary action would have been taken against him. He admitted the appellant had a supervisor called Ruang in the field where he was working.

10. RW1 maintained that the appellant was never dismissed but went to the office saying he did not wish to continue working and demanded for his money which was paid to him in full. He then acknowledged receipt of all his dues and confirmed in writing that he had no further claim against the respondent. Consequently, he prayed for the suit to be dismissed with costs for lack of merits.

11. On cross examination, he contended that some employees verbally resign and they are only interested in the money and not obeying the rules. He confirmed that the appellant's supervisor and the HR manager were not witnesses in the suit. Finally, he contended that the appellant was aware that he was not to get extra pay as house allowance.

12. After considering the evidence and the submissions filed by both sides the trial court (Hon. Irura SPM) concluded that the appellant had failed to prove, on a balance of probabilities, the alleged unfair termination. She further concluded that the appellant had signed an acknowledgement that he had received all his dues and benefits from the respondent and confirmed that he had no further claims against the respondent.

Submissions on the Appeal

13. The Court was urged to evaluate whether the Claimant's employment was terminated and whether the Respondent complied with the provisions of section 41 of the *Employment Act*. It was contended that there was no evidence adduced by the Respondent that it received the Claimant's resignation.

14. It was argued that the Respondent did not explain the reasons for termination to the Claimant prior to the termination and neither was he accorded a hearing.

15. It was submitted that the Claimant never signed the discharge voucher and even if he did, it did not take away his right to compensation for unfair termination. It was further submitted that the voucher does not provide that there is no claim for unfair termination against the Respondent. It was contended that the document having been prepared by an employer takes away the equality of bargaining strength as an employee has to sign to receive his salary and leave pay. Reliance was placed on the case of H. Young & Co. E.A Ltd & another vs Mwangi & another [2023] KEELRC 1001 (KLR) in urging this Court to find that the discharge voucher did not waive the Appellant's right to damages and to find that the termination was unfair.

16. The Respondent, on the other hand raised the issues on whether the Appellant proved that he was unfairly terminated and whether having signed a discharge voucher, could claim any dues. On the first issue, it was submitted that the Appellant confirmed on cross examination that he did not receive any letter from the Respondent. It was further submitted that the Appellant did not call any witnesses to prove that indeed he was asked not to return to work.

17. It was also submitted that RW1 confirmed that Mr. Ruang was not a manager but a supervisor who could not hire or terminate employment as that was a preserve of the HR department. Besides, the Appellant had only received 2 warning letters and under the company policy no termination would be done until 3 warning letters were issued. Consequently, it was argued that it was the Appellant who went to the office and indicated that he wanted to quit and be paid all his dues.

18. As regards the settlement agreement and waiver of further claims by the appellants, it was submitted that the voucher contained the Appellant's name, signature, ID number and thumb print which also appear under the tabulation of dues. It was argued that the same formed a binding contract as the Appellant did not allege coercion at any point meaning he understood the terms of the voucher. Consequently, the Court was urged to dismiss the appeal with costs.

Mandate of this court

19. This being a first appeal my mandate is to re-evaluate the evidence and make my own independent conclusions while warning myself that I never saw the witnesses while giving their evidence. I gather support from Selle v Associated Motor Boat Company Ltd (1968) EA 123 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."

Issues for determination and analysis

20. Having considered the evidence on record there is no dispute that the appellant was employed by the respondent as a Driver from June 2021 to 11th June 2022. The issues in controversy are: -

    a. Whether the respondent resigned from employment or he was dismissed by the appellant.

    b. If the answer to (a) above is termination, whether termination was unfair and unlawful.

    c. Whether the appellant is entitled to the reliefs sought.

Resignation or dismissal

21. The Appellant contended that his employment was terminated by the Respondent while the latter maintained that the Appellant voluntarily left the employment without complying with the rules and requested for payment of his dues. The appellant admitted that he was not served with any termination letter and he never called any eye witness. He contended that he had received only one warning letter and termination would only occur after receiving three warning letters.

22. On the other hand, RW1 contended that the appellant was working in the field and on the material day, he went to the office to say that he did not wish to continue with work and then demanded for his dues. RW1 stated that it was normal for employees to resign without complying with the rules as all that they were interested was only their money.

23. Having considered the rival contentions, I find that the appellant left his place of work at the site and went to the respondent's office to communicate his resignation and demand for his dues. Although he alleged that his supervisor had told him not to report to work and instead go for his money in the office, he never protested to the HR manager or the RW1 if at all he was unlawfully stopped from working. His conduct was not consistent with that of a person offended by a fellow employee in the field. The appellant lied under oath that he was only served with one warning letter but RW1 proved that the appellant had received two warning letters. If he lied under oath about the warning letter, he could also lie about resignation.

24. Under section 107 of the *Evidence Act*, the burden of proof was upon the appellant to prove on a balance of probability that he was dismissed from service by the respondent and not the respondent to prove that it never dismissed him. I have already made a finding of fact that he never produced any

termination letter, never called any eye witness and he never protested to the HR manager about the stoppage of his job by his field supervisor, M. Ruang. Consequently, I find that the appellant did not prove on a balance of probability that he was dismissed by the respondent but instead hold that he voluntarily left his job on 11th June 2022.

Reliefs

25. The appellant admitted that he signed for the days he had worked during the last month and he was paid for that month. He admitted that he signed a discharge voucher and he never wrote to the respondent to indicate that he had any further claim. The document signed by the appellant is copied below:

> " Acknowledgement
>
> This Is To Confirm That I Have Received All My Dues And Benefits In Full From China Wu Yi Kenya Central Region Road Project Management And There Will Be No Further Claims With Regards To Notice, Nhif, Nssf, Paye Or Compensation For Injury Or Medication.
>
> Date
>
> Name
>
> Id
>
> Designation
>
> Signature"

26. The appellant did not plead in his Claim that he was incapacitated when he signed the above document. He also did not plead and prove that the signing of the document was not voluntary. Consequently, I find that the applicant acknowledged in writing that he had received all his dues and benefits from the respondent, and he had waived any claims for notice, NHIF, NSSF, PAYE or compensation for injury, treatment or medication.

27. The doctrine of waiver was defined by the Court in Serah Njeri Mwobi v John Kimani Njoroge [2013] eKLR as follows:

> " In our understanding, the doctrine of waiver operates to deny a party his right on the basis that he had accepted to forego the same rights having known of their existence....
>
> The words waiver, estoppel and acquiescence have also been defined by the Halsbury's Laws of England, 4th Edition, Volume 16. At page 992 waiver has been defined as follows: -
>
> "Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel, although, unlike estoppel, waiver must always be an intentional act with knowledge. A person who is entitled to rely on a stipulation existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration. Where the waiver is not express it may be implied from conduct which is inconsistent with the continuance of the right... The waiver may be

terminated by reasonable but not necessarily formal notice unless the party who benefits by the waiver cannot resume his position, or termination would cause injustice to him."

28. From the above, for a waiver of rights to suffice, there has to be an unequivocal representation of the intention. Unequivocal is defined in the Black's Law Dictionary 11th Ed to mean: unambiguous, clear; free from uncertainty. On the other hand, it is imaginable that such a document takes the form of an undertaking and should therefore meet the threshold of an undertaking for it to be considered binding.

29. I have already made a finding of fact that the appellant voluntarily signed an acknowledgement that he had received all his employment dues and benefits and waived certain listed claims. However, he never waived the claim for compensation for unlawful and unfair termination of his employment. Having said that, I must add that the claim for compensation for unfair termination is untenable since I have already found that the he voluntarily resigned.

Conclusion

30. I have found that the appellant did not prove on a balance of probability that he was unfairly and unlawfully dismissed by the respondent and instead found that he voluntarily resigned. I have further found that he voluntarily executed a document acknowledging receipt of all his employment dues and benefits from the respondent and waived any further claims against it in relation to notice, NHIF, NSSF, PAYE, or compensation for injury or medication. I have also found that the appellant did not waive the claim for compensation for unfair and unlawful termination and as such he could sue the respondent for the same. Finally, I have found that the claim for compensation for unfair termination is untenable because the appellant voluntarily resigned. Consequently, I find no merits in the appeal herein and dismiss it with costs.

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.