



**Agunja v Master Fabricators Limited (Appeal E127 of 2024)
[2025] KEELRC 2230 (KLR) (23 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2230 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E127 OF 2024
DKN MARETE, J
JULY 23, 2025**

BETWEEN

ERNEST ODHIAMBO AGUNJA APPELLANT

AND

MASTER FABRICATORS LIMITED RESPONDENT

JUDGMENT

1. This matter arises from a Memorandum of Appeal dated 18th April 2024 challenging the judgment of the Chief Magistrate’s Court delivered on 22nd March 2024 which dismissed the Appellant’s claim against the Respondent for unfair termination, underpayment of wages, and unpaid terminal benefits. The Appellant was employed by the Respondent as a Panel Beater from 20th August, 2014 until his termination on 20th April 2018 on medical grounds.
2. The Appellant pleaded that his termination was unlawful and unfair as it was based on medical grounds without due process under Section 41 of the *Employment Act*, 2007. He contends that the Respondent failed to provide a mutual separation agreement or prove reasonable accommodation efforts, contrary to authorities like Simon Gitau Gichuru v Package Insurance Brokers Ltd [2021] KESC 12 (KLR.)
3. Again, the trial court misapplied Section 90 of the *Employment Act*, 2007 by dismissing his claims for underpayment between August, 2014 and May 2015 and unpaid CBA dues like dearness allowance, gratuity and bonus, despite filing suit within three years of termination as upheld in G4S Security v Joseph Kamau [2018] eKLR. The court disregarded his claims for unpaid April, 2018 salary, one month’s salary in lieu of notice and service pay despite evidence.
4. The Respondent defended the termination as mutual, citing minutes of a meeting on 20th April 2018 pages 153–154 of the Record) where the Appellant, accompanied by a shop steward agreed to retire due to his asthma disease, exacerbated by workplace fumes. The Respondent further submitted



payment of terminal dues, including service pay, Kshs. 44,160 and April 2018 salary at Kshs. 9,361 as reflected in the appellant's payslips at pages 158 to 159 of the Record of Appeal.

5. Lastly, the Appellant's claims for underpayment and CBA dues were time-barred under Section 90, as they accrued more than 12 months before suit filing (November 2020), per the authority of *Serah Wairimu Kihara v Nokia* [2021] eKLR.
6. The issues for determination therefore is whether the termination was mutual and fair. On this the Appellant's termination hinged on his medical incapacity. It is his case and submission that Section 41 of the *Employment Act*, 2007 mandates a hearing before termination for incapacity. The Respondent argued mutual separation, citing minutes signed by the Appellant. The authority of *William Barasa Obutiti v Mumias Sugar* [2004] eKLR provides that in situation of mutual separation requires clear terms and voluntary consent.
7. The Appellant testified that he signed the minutes under duress, with no prior notice (page 24 of the Record). The Respondent's witnesses (DW1 and DW2) admitted they did not attend the meeting (pages 32, 35). Further, the Respondent had pre-emptively sought medical retirement approval from the Kenya Medical Board on 18th April 2018 (page 152), indicating a unilateral decision. However and overall, there is overwhelming medical testimony and evidence indicating that the appellant's medical situation was not compatible with working in an environment like the Respondent. It was fummy and not agreeable with appellant's asthmatic condition. He would hardly cope and therefore the justification for the mutual separation. The Appellant has not established a case of duress or coercion in the separation agreement.
8. I am therefore inclined to dismiss the appeal with orders each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr Osiemo instructed by Lumumba & Ayieko Advocates for the Appellant.

Mr. Mogire instructed by Ombok & Owuor Company Advocates for the Respondent.

