



Olivado EPZ Limited v Iraki (Employment and Labour Relations Appeal E002 of 2024) [2025] KEELRC 2229 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2229 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E002 OF 2024**

DKN MARETE, J

JULY 23, 2025

BETWEEN

OLIVADO EPZ LIMITED APPELLANT

AND

ESTHER IRAKI RESPONDENT

JUDGMENT

1. This appeal and cross-appeal arise from the judgment of the Chief Magistrate's Court in CMELRC No. E17 of 2021 delivered on 7th December 2023. Here, the trial court found the Respondent's termination unfair and awarded her two months' salary as compensation plus one month's salary in lieu of notice, totaling Kshs. 210,000.
2. The Appellant, being dissatisfied with the entire judgment appeals to this Court seeking to set aside the judgment and have the Respondent's claim dismissed. The Respondent has filed a cross-appeal seeking enhancement of the compensation awarded by the trial court.
3. The Respondent was employed by the Appellant from 17th October 2016 as an Accounts Administrator and was later promoted to Accountant in November 2019, earning a monthly salary of Kshs.70,000. Her employment was terminated on 27th November 2020 following disciplinary proceedings initiated over allegations of insubordination and misconduct.
4. The Respondent challenged her termination in the lower court, contending it was both substantively and procedurally unfair and unlawful. The trial court agreed with the Respondent hence this appeal.
5. The Appellant's memorandum of appeal dated 3rd January 2024 raises the following grounds;
 1. The learned Trial Magistrate erred in law finding that the termination unfair while the Respondent absconded the disciplinary hearing.



2. The learned Trial Magistrate erred in law and in fact for holding that appellant breach Section 41(2) of the Employment and [Labour Relations Act](#), while the respondent failed to attend disciplinary hearing.
3. The learned Magistrate erred in faulting the Appellant for withholding documents, requested by a stranger to the disciplinary hearing proceedings.
4. The learned Trial Magistrate erred in fact in failing to consider and appreciate that condescending conduct of the Respondent.
5. The Learned Trial Magistrate erred in law and in fact in disregarding the evidence on record hence resulting in a wrong decision.
6. The Appellant prays for orders that;
 - a. This appeal be allowed.
 - b. The entire judgment delivered on 7.12.2023 be set aside in its entirety and be substituted with an order dismissing the claim.
 - c. The Appellant be awarded the costs of this appeal
7. The Respondent's cross-appeal dated 7th October 2024 seeks:
 - a. The Cross Appeal be allowed.
 - b. This Honorable court be pleased to interfere with the discretion of the learned Magistrate and enhance the award of compensation under section 49 of the [Employment Act](#), 2007.
 - c. That the Cost of the Appeal and the Cross Appeal be granted.
8. Looking at the parties pleadings and submissions, the following issues arise for determination;
 1. Whether the Respondent's termination was procedurally and substantively fair.
 2. Whether the trial court erred in its award of compensation.
 3. Whether the cross-appeal on enhancement of compensation is merited.
 4. Who bear the costs of the appeal and cross-appeal.
9. On issue No.1 above, procedural fairness, it is noteworthy that Section 41 of the [Employment Act](#), 2007 sets out the procedural requirements for termination. It provides that before terminating employment on grounds of misconduct, the employer must explain the reasons for termination in a language the employee understands, allow the employee to have a representative present and hear and consider any representations by the employee.
10. The Respondent contended that the disciplinary process was fundamentally flawed because she was not given adequate notice of the allegations, new allegations were introduced during the hearings without prior notice and critical documents requested by herself to prepare her defense were or withheld by the Appellant. Besides, the hearings were conducted with undue haste without affording her adequate opportunity to prepare for the disciplinary proceedings.
11. The record of appeal indicates that the Respondent was first summoned to a disciplinary hearing on 6th November, 2020 over allegations of insubordination. The hearing was adjourned to 13th November, 2020 when new allegations were introduced. On 16th November 2020, she was served with a show cause letter containing additional allegations. Despite incessant requests, the Appellant failed



to provide documents needed for her defense. The final hearing proceeded on 25th November 2020 in her absence after she declined to attend due to the issue of unveiled document by the Appellant.

12. The Appellant argues and submits that the Respondent's failure to attend the final hearing vitiated her claim of unfairness. However, the right to fair hearing includes the right to adequate facilities to prepare a defense. The Respondent could not reasonably be expected to attend a hearing where she was denied access to material evidence. The introduction of an advocate by the Respondent, though not strictly provided for under Section 42(1), did not invalidate the process. The core issue was the denial of documents, which rendered the process unfair.
13. On the issue of substantive fairness of termination, Section 43(1) places the burden on the employer to prove the reasons for termination. The Appellant's sole witness, Catherine Amoiti was an HR consultant who joined after the Respondent's termination. In as much as this is not per se a default, it is notable that she had no direct knowledge of the history and allegations against the Respondent. The Appellant failed to call key witnesses like the Group Finance Manager, Teresa Woolf to corroborate the allegations. Without such evidence, the Appellant failed to discharge its burden under Section 43(1.)
14. On the award of compensation, the trial court awarded two months' salary as compensation plus one month's notice pay. In assessing compensation under Section 49, the court must take into consideration the length of service, circumstances of termination and the employee's opportunities for alternative employment. This is besides the employee's conduct in the entire saga. In this case, the Respondent served for five years. The termination was both procedurally and substantively unfair. There was no evidence she has secured or has plausible chances of securing alternative employment. The two months' award was therefore inordinately low considering these circumstance and factors.
15. Having considered and evaluated the evidence and submissions, this Court finds that the termination was procedurally unfair due to denial of material documents and introduction of new allegations without notice. The disciplinary proceedings were also unduly rushed. Besides the termination was substantively unfair as the Appellant failed to prove valid reasons for such termination. The trial court's award of two months' salary as compensation for unlawful termination of employment was manifestly inadequate in view of the prevailing circumstances of the case.
16. I am therefore inclined to dismiss the appeal and on the same note allow the cross appeal on the following terms as to awards;
 - i. The award of two months' salary is set aside and substituted with an award of six months' salary (Kshs.190,000.00) as compensation for unfair termination; that is Kshs.70,000.00 x 6 months.....Kshs.420,000.00.
 - (ii) The award of one month's salary in lieu of notice (Kshs. 70,000) is upheld.
Total of awardKshs.490,000.00
 - (iii) The costs of Appeal, cross Appeal at the Trial Court shall be borne by the Appellant.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr Mbugua instructed Mbugua Ngigi & Company Advocates for the Appellant

Mr. Amalemba instructed by Amalemba & Associates Advocates for the Respondent.

