Frigoken Limited v Musotsi (Employment and Labour Relations Appeal E021 of 2024) [2025] KEELRC 2119 (KLR) (17 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2119 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI

EMPLOYMENT AND LABOUR RELATIONS APPEAL E021 OF 2024

ON MAKAU, J

JULY 17, 2025

BETWEEN

FRIGOKEN LIMITED ..... APPELLANT

AND

MAGDALINE KHAMITWA MUSOTSI ..... RESPONDENT

(Being an appeal from the Judgment of the Honourable Susan N. Mwangi (PM) delivered on 19th August, 2024 in Murang'a Chief Magistrates Court MCELRC Cause No. 7 of 2020)

JUDGMENT

Introduction

1. This appeal arose from termination of the respondent's contract of employment by the appellant vide the letter dated 21st May 2020. The appeal was through a Memorandum of Appeal dated 14th October 2024 and citing 16 grounds but which it compressed them to 3 in its written submissions namely: -

    a. Whether the learned Magistrate erred in law and in fact in finding that the respondent was terminated unfairly and on account of redundancy.

    b. Whether the learned Magistrate erred in law and in fact in failing to find that the respondent was bound by the agreement dated 13/6/2020, 7/9/2020 and 23/5/2020 and therefore had no basis to institute the claim.

    c. Whether the learned Magistrate erred in law and in fact in awarding respondent the maximum damages of 12 months salary pay for compensation for unlawful termination.

2. The appeal seeks the following reliefs: -

    a. That this appeal be allowed.

b. That this Honourable court be pleased to set aside the Judgment by Honourable Susan Mwangi dated 19th August 2024.

c. That in the Alternative, the Honourable court be pleased to reduce the award granted thereof to three months' pay.

d. That the costs of the Appeal be awarded to the Appellant.

e. Any other alternative order/relied that this Honourable court may deem fit to grant.

Background

3. The respondent was employed by the appellant as a Field Supervisor from 7th January 2007 to 31st May 2020 when his services were terminated by the appellant. The reason cited was low plantings. A meeting was held between the respondent, her manager and the appellant's HR Business partner on 21st May 2020 before the termination letter was issued. After the termination, the respondent was paid terminal dues and she acknowledged by signing two settlement/discharge agreements.

4. Subsequently, the respondent filed a Memorandum of claim dated 15th October 2020 accusing the appellant of unlawfully terminating her employment on account of redundancy and prayed for severance pay plus compensation for unfair termination. The appellant filed a memorandum of defence dated 16th February 2021 and amended the same on 13th February 2024. In brief, it averred that it terminated respondent's employment alongside other employees due to low season coupled with the severe impact of Covid-19 pandemic. It averred that exit package was negotiated and the respondent agreed by signing termination letter. Subsequently, she was paid the agreed terminal dues by signing a settlement agreement whereby she gave an undertaking that she would not make any further claim against the appellant. Therefore, the appellant averred that the suit was not merited in view of the said settlement agreement.

5. During the hearing, the respondent testified as CW1 while the appellant called its HR Business partner as its witness. The respondent testified that she received a termination letter during covid-19 pandemic citing the reason as low planting. The letter indicated the dues payable. Subsequently, she received a cheque for Kshs.45,131 and she signed a paper dated 13th June 2020. She also signed another paper dated 1st July 2022 for service pay at the rate of 15 days pay for each year of service. She admitted that she signed all the papers willingly acknowledging the payment as full and final settlement and undertaking not to lay any further claim against the appellant.

6. She further confirmed that the employer was contributing NSSF and NHIF for her. She contended that the termination came two months after receiving a warning letter and she was not served with any notice before the termination. She contended that the appellant is still doing the same business and she denied that she caused the business to go down.

7. The appellant's witness testified that the claimant's employment was terminated due to low plantings but there was intention to recall her later. She denied that the termination amounted to redundancy. However, she admitted that the low season is a natural occurrence and the respondent had nothing to do with it. She contended that an exit package was paid to the respondent as ex-gratia.

8. After the hearing, the parties filed submission and upon consideration of the material presented, the trial court (Hon.Susan Mwangi-PM) concluded that the respondent was a victim of unlawful redundancy and awarded her 12 months' salary (Kshs.224,440) as compensation plus costs and interests.

Submissions in the appeal

9. It was submitted for the appellant that the trial court erred by finding that the respondent's employment was terminated on account of redundancy without adhering to the procedure under section 40 of the *Employment Act* which rendered the termination unfair. It was argued that the termination was not on account of redundancy but due to low plantings orchestrated by the respondent's failure to diligently supervise and ensure that farmers followed procedures for spraying pesticides and fertilizers. It was argued that the termination was on account of poor performance by the respondent and not redundancy. It was argued that in redundancy, the conduct of the employee is not in issue.

10. It was further submitted that the appellant followed the procedure provided in the respondent's contract of employment dated 3rd September 2019 namely, giving one month notice or paying one-month salary in lieu of notice. In the instant case the respondent was paid one-month salary in lieu of notice. For emphasis, reliance was placed on Heritage Insurance Co.Ltd v Christopher Onyago & 23 Others (2018) eKLR where the Court of Appeal held that the termination being in accordance with terms of the employment could not be deemed to be wrongful.

11. As regards the settlement agreements, it was submitted that the respondent executed the agreement dated 23rd May 2020 expressly relinquishing her employment. The agreement dated 13th June 2020 acknowledge receipt of Kshs.45,131, agreement dated 7th September 2020 for Kshs.53,061. Further that she admitted in evidence that she signed the agreements willingly accepting the payment as full and final settlement of her employment dues. Reliance was placed on Coastal Bottlers Ltd v Kimathi Mithika (2018) KECA 523 (KLR) to fault the trial court for not dismissing the respondent's suit in its entirety.

12. Finally, it was submitted that the trial court erred in law by awarding the maximum 12 months salary as compensation for unlawful dismissal without giving any reasons contrary to section 49(4) of the *Employment Act*. The court was urged to adopt the decision in Butt v Khan (1978) eKLR where the Court of Appeal discussed circumstances where an appellate court will interfere with a discretionary award. Consequently, the appellant herein prayed for the appeal to be allowed with costs.

13. On the other hand, it was submitted for the respondent that the trial court was right in concluding that there was unlawful redundancy and in awarding compensation. It was submitted that during trial the appellant's witness was candid that the termination was due to low plantings and low season for the company.

14. It was further submitted that the computation of terminal dues after the termination was done unilaterally by the appellant. Consequently, it was submitted that the judgment was sound based on the evidence adduced and as such the appeal should be dismissed with costs.

Mandate of this court

15. 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

16. Having considered the evidence on record there is no dispute that the appellant employed the respondent as supervisor until 31st May 2020 when it terminated her services vide the letter dated 21st May 2020. The issues in controversy are: -

    a. Whether the termination was on account of redundancy.

    b. Whether fair procedure was followed.

    c. Whether the award of damages by the trial court should stand.

Redundancy

17. The respondent's employment contract was terminated by the letter dated 21st May 2020 which stated as follows: -

> " Further to the discussion between yourself, the HRBP and your Manager on 21st May 2020, this is to formally confirm that your contract will be terminated due to the low plantings.
>
> You are...
>
> Yours faithfully
>
> Frigoken Limited
>
> Esther Kamenju
>
> Human Resource Business Partner
>
> I Magdaline Khamitwa of ID 21XXX938 TelNo.0716XXX696 agree to relinquish my employment as per the terms outlined above.
>
> Signed.....dated 25/5/2020."

18. During the hearing, Ms Esther Kamenju testified on behalf of the appellant and confirmed that the respondent's contract was terminated due to low plantings and low season for the company. She also mentioned that Covid-19 pandemic had negatively affected the company. She admitted that the respondent had nothing to do with the said circumstances. It follows that the respondent was not the cause of the termination but the employer's own business decision.

19. Section 2 of the *Employment Act* defines redundancy as follows: -

> " redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment."

20. Having considered the above definition and the facts of the case, I am satisfied that there is evidence to prove that the respondent's employment contract was terminated on account of redundancy and not due to his misconduct or poor performance.

Procedure followed

21. The law entitles an employer to terminate an employee's employment on account of redundancy. However, section 40 of the *Employment Act* sets out a mandatory procedure which must be adhered to before terminating an employee's services on account of redundancy. The respondent's evidence that the procedure set out by the said section was not followed, was not rebutted by the appellant.

22. On the basis of the said unrebutted evidence, I conclude that the appellant terminated the respondent's employment on account of redundancy without following the procedure set out under section 40 of the *Employment Act* including service of one month's prior notice followed by fair selection process and payment of the requisite dues including severance pay. Consequently, I agree with the trial court's finding that the redundancy in this case was not done in accordance with statutory procedure, and it amounted to an unlawful termination.

Compensatory damages

23. The appellant objected to the suit on ground that the parties had executed a settlement agreements vide which the respondent undertook not to lay any further claim against the appellant with respect to her employment. The respondent submitted that the dues were solely computed by the appellant but nevertheless she willingly signed the settlement agreement.

24. The first settlement agreement was signed on 13th June 2020 as is copied below:

> " I Magdaline Khamitwa P/No.FWR-0XX2 ID No.21XXX938 confirm that I have received Cheque No.11XX46 of Kshs.45,131 (words) Forty five Thousand one hundred and thirty one.
>
> I confirm that the said money is a full and final settlement of all my dues with regard to my employment with M/S Frigoken Limited.
>
> I also confirm that I have understood and accepted the terms of this final settlement and I have no further claim (Monetary or otherwise) to make from m/s Frigoken limited with respect to my employment.
>
> Sign
>
> Witnessed By: -
>
> Name Magdaline Khamitwa
>
> Sign.....
>
> Date 13/6/2020"

25. The second one was signed on 1st July 2020 and is also copied below: -

> " I Magdaline Khamitwa P/NO.FWR-0XX2 ID No.21XXX938 confirm that I have received Cheque No.11XX79 of Kshs.53016 (words) fifty three thousand sixteen
>
> I confirm that the said money is a full and final settlement of all my dues with regard to my employment with M/S Frigoken Limited.

I also confirm that I have understood and accepted the terms of this final settlement and I have no further claim (Monetary or otherwise) to make from m/s Frigoken limited with respect to my employment.

SIGN

Witnessed By: -

Name

Sign.....

Date 4/7/2020"

26. The first agreement settled the terminal dues set out in the termination letter including salary in lieu of notice, salary and outstanding leave. The second agreement settled the agreed service pay in the letter dated 1st July 2020. In the first agreement, the respondent undertook to discharge the employer from further claims based on her employment but the employer thereafter offered a further payment of service pay of 15 days salary for 7 years and she accepted.

27. The said agreement was not challenged by the respondent but she in fact admitted that she understood its content and willingly signed. There is a rich jurisprudence on this matter and as such I do not need to belabour the point. In Coastal Bottlers Limited v Kimathi Mithika (2018) KECA 523 (KLR) the Court of Appeal held that: -

> "In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the respondent's termination. It is instructive to note that the respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the respondent's part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate. As it stood, the agreement was a binding contract between the parties."

28. The above binding precedent is on all fours with this appeal and I agree with the appellant that the trial court fell into error by awarding the compensatory damages when there was a settlement agreement between the parties which bound the respondent not to lay any other claims against the appellant with respect to her employment contract.

29. It is now well settled principle of law that where an employee, voluntarily executes a settlement agreement discharging the employer from further claims with respect to the employment relations, the employee is estopped from making future claims unless the employee specifically pleads and proves that the settlement agreement was tainted with any factor that vitiates a contract at common law. I did not see such factors pleaded and proved by the respondent. Consequently, the award of compensation cannot stand and is hereby set aside.

Conclusion

30. I have found that the termination of the respondent's employment contract by the appellant amounted to unlawful redundancy. I have further found that the respondent was bound by two settlement agreements and therefore estopped from laying any further claims against the appellant through her suit. Consequently, I allow the appeal, set aside the award of Kshs.224,440 being 12 months

salary compensation for the unlawful termination of the respondent's employment. Since the appeal succeeded partially, I direct that each party bears own costs of the appeal and the court below.

DATED, SIGNED AND DELIVERED AT NYERI THIS 17TH 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