



**Ngode v Transfleet Limited (Formerly Mugoya Construction Company)  
(Cause 706 of 2019) [2025] KEELRC 2024 (KLR) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2024 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 706 OF 2019**

**JW KELI, J  
JULY 4, 2025**

**BETWEEN**

**FRANCIS ADHIAMBO NGODE ..... CLAIMANT**

**AND**

**TRANSFLEET LIMITED (FORMERLY MUGOYA CONSTRUCTION  
COMPANY) ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed a memorandum of claim against the respondent dated and amended on the November 22, 2019 seeking for the following reliefs:-
  - a. This Honourable Court is therefore prayed to be pleased to find that the Claimant suffered unlawful termination of services after he had worked for the Respondent for many years from 1985 to November 2018 and award him twelve (12) months' salary in accordance with the provisions of Section 49 (c) of the *Employment Act* 2008 (Revised 2012/2014) (Kshs.250,000 x 12 months) totaling to Kshs. 3,000,000/=.
  - b. This Honourable Court is prayed to be pleased to award the Claimant against the Respondent one (1) month's salary in lieu of notice @Kshs.250,000/= as per the provisions of Section 36 of the *Employment Act* 2008 (Revised 2012/2014).
  - c. This Honourable Court is also prayed to award for the Claimant against the Respondent Service pay in terms of the provisions of Section 35 (5) read together with Sub-Section 35 (6).
  - d. This Honourable Court is further prayed to award the Claimant Kshs.2,750,000/= as accumulated unpaid salary for eleven (11) months (January 2018 to November 2018) @Kshs.250,000/=.



- e. This Honourable Court is prayed to further award interest on amounts in 5.4, from November 2018 to date of filing this claim.
  - f. In addition this Honourable Court is prayed to award that all claims be settled within three (3) months from the date of the award with a rider that interest be chargeable for outstanding amounts at the court rate after the three (3) months.
  - g. Costs of this claim.
  - h. Any other reliefs this Honourable Court may deem necessary and just to award.
  - i. In the alternative to 5.1 (award of 12 months' salary compensation), 5.2, 5.3 this Honourable Court may be pleased to award re-instatement of the Claimant to his previous position/roles without loss of benefits and seniority with a rider that there should be no witch-hunt and or reprisal by the Respondent on the Claimant.
2. The claimant in support of the claim filed his verifying affidavit, his witness statement dated 22<sup>nd</sup> November 2019 and list of documents of even date and the bundle. The claimant further filed supplementary list of documents dated 6<sup>th</sup> May 2022.
  3. The claim was opposed by the respondent who entered appearance through the law firm of TripleOKLaw LLP Advocates and filed amended statement of response dated 18<sup>th</sup> December 2019, witness statement of James Abiam Mugoya Isabirye dated 22<sup>nd</sup> December 2019 and a list and bundle of documents dated 22<sup>nd</sup> November 2019.

### **Hearing and evidence**

4. The claimant's case was heard on the 28<sup>th</sup> January 2025 when the claimant testified on oath, adopted his witness dated 22<sup>nd</sup> November 2019 and produced documents under his lists of documents dated 22<sup>nd</sup> November 2019 and 6<sup>th</sup> May 2022 respectively as his evidence in chief. He was cross-examined by counsel for the respondent, Moriasi and re-examined by his counsel, Ms. Kubai.
5. The respondent did not call a witness. The parties by consent of 6<sup>th</sup> November 2024 agreed that the respondent's amended statement of response dated 18<sup>th</sup> December 2019, witness statement of Mugoya dated 22<sup>nd</sup> November 2019 and documents dated 22<sup>nd</sup> November 2019 being the termination letter and certificate of incorporation of Transfleet be adopted as respondent's evidence without calling a witness. The defence case was then closed.

### **The claimant's case**

6. The Claimant was employed in 1985 by Trans fleet limited, then going by the name Mugoya Construction Company as a building superintendent/site agent for the respondent's construction business. From 2002 to 2003 the Claimant was assigned site superintendent/site agent jobs in the construction of the American Embassy a project undertaken by the respondent (then Mugoya construction) in conjunction with J A Jones construction a foreign company and at the successful completion of the construction works the respondent's partner J.A Jones Construction issued him with a letter of commendation (refer to annexure marked KM-FAN 1). On the 28th of December 2006 the respondent issued the Claimant with a termination letter, which was more of a commendation letter. The termination letter to the Claimant was prompted by the fact that the respondent's company was being put under receivership. On the 15th of February 2014 the Claimant rejoined the respondent and the Claimant continued to be retained until January 2019. It is notable that from January 2018 to November 2018 the claimant was not paid his salary, his attempts to have the respondent pay



him all his salaries fell on deaf ears, in fact as from January 2019 the respondent started to evade the respondent completely prompting him to file the present suit to seek for his accumulated unpaid salary and compensation for unlawful termination

### **The respondent's case**

7. The witness statement of James Abiam Mugoya Isabibye, a director of the Transfleet Limited was adopted by consent of the parties. It stated as follows:-
  1. There is now shown to me, the Respondent's List and Bundle of documents to which I shall refer to in this Witness Statement.
  2. I am aware that the Claimant was employed by Mugoya Construction and Engineering Limited from 1st August 1985 to December 2006 when his employment was terminated. A copy of the letter of termination appears on page 1 of the Respondent's List and Bundle of Documents.
  3. I wish to state that during this period I was not the Claimant's employer nor did I employ him subsequently thereafter.
  4. Upon termination of his employment with Mugoya Construction and Engineering Limited, the Claimant was, from time to time, engaged as an independent contractor on various projects undertaken by Transfleet Limited but was never employed by Transfleet Limited.
  5. I am aware that the Claimant was assigned the role of Site Superintendent or Site Agent in the construction of the American Embassy at Gigiri by Mugoya Construction and Engineering Limited. After the collapse of Mugoya Construction and Engineering Limited, the Claimant as well as all other persons engaged in the construction were paid their dues by the Government of the United States of America.
  6. I am aware that Transfleet Limited is a limited liability company which is a separate legal entity and as such distinct from both Mugoya Construction and Engineering Limited and myself. A copy of Certificate of Incorporation of Transfleet Limited appears on page 2 of the Respondent's List and Bundle of Documents.
  7. I wish to state that the Claimant remains in possession of a double-cabin Pick-Up motor vehicle worth Kshs. 1,500,000.00 which is the property of Transfleet Limited.

### **Determination**

Issues for determination

8. Having taken into account the issues identified by the parties and having heard the case the court finds that the issues for determination in the dispute are-
  - a. Whether the claimant was an employee of the respondent
  - b. If the answer is positive, whether there was termination of employment and
  - c. Whether the claimant was entitled to reliefs sought .

### **Whether the claimant was an employee of the respondent**

9. The claimant relied on the definition of contract of service under section 2 of the *Employment Act* to demonstrate he was in an employment relationship with the respondent. He submitted that in an indeterminate period of time from 2014 to January 2019 he had been engaged to work as a site



superintendent under the directions of Mugoya trading as Tranfleet and earning a consolidated wage of Kshs. 250,000. He submitted that he was provided with tools of work being a Motor Vehicle. He relied on the decision in *Christine Adot Lopeyio v Wylsiffe Mwanthi Pere 2013 e KLR* on the control test, ownership of tools, chance of profit and risk or loss, integration test as proof of existence of contract of service. The claimant stated that he was directed to report on site at certain time and on when to leave.

10. The respondent pleaded privity of contract and relied on the certificate of incorporation which indicated Transfleet was registered in the year 1988 way before the alleged receivership of Mugoya construction company in 2006 of which the claimant had indicated had employed him. The respondent denied existence of employment employee relationship stating the claimant was engaged from time to time as an independent contractor.
11. During the hearing the claimant produced a letter of termination from employment of Mugoya Construction and Engineering Ltd dated 28<sup>th</sup> December 2006. He stated he was re-engaged by the respondent vide email of 18<sup>th</sup> February 2014. The email was by Mugoya addressed to a person called Grace to the effect that the claimant and others had bene re-engaged with the primary aim of completing House 19 at Mugoya Academy, South C Mugoya Estate phase 3.
12. The claimant told the court that he believed Transfleet was the former employer, Mugoya Construction and Engineering Co. Ltd. He asserted that in 2004 the company was taken by the receiver but had no evidence. He confirmed that the respondent's company was registered on the 9<sup>th</sup> June 1988. He relied on payment vouchers as proof of employment and payment of monthly salary. He confirmed that he only produced 3 petty cash vouchers for sum of Kshs. 250,000 each for 13<sup>th</sup> August 2014, 27<sup>th</sup> July 2014 aNd 4<sup>th</sup> July 2014(July – August 2014). The claimant had no other payment evidence from 1985 to 2019. He confirmed the vouchers did not indicate the respondent or Mugoya construction but asserted they were signed by Mugoya stating that was his signature. They did not have a name.
13. The claimant had no documents recalling him to work in 2019. He relied on the email to Grace of 2014. He confirmed all the vouchers were for 2014. The claimant confirmed it was correct to say that the respondent called for his services on need basis. He confirmed that Mugoya took the motor vehicle after an accident. The claimant on re-examination stated that some of the documents of 2019 indicated Mugoya construction and others Transfleet and concluded that Mr. Mugoya was operating both companies.

## Decision

14. The court finds that the contract of service which ended in 2006 was by a different company from the Respondent and there was no evidence before the court to effect that the said company was also the respondent. Secondly any claims under the said employment (Mugoya Construction) which ended in 2006 as per the termination letter which the claimant called commendation expired within 3 years of termination under section 89 of the *Employment Act* to wit –‘89. Limitations

Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

15. The court on the claims by the Claimant of having been engaged from 2014 to January 2019 established that the only evidence before court of payment was petty cash payments for period of July-August 2014. The claimant was paid a total sum of Kshs. 750,000 for 2 months hence more than the



alleged monthly salary of 250,000. The claimant admitted that it was correct to say he was called on service need basis. That court found, being engaged on need basis, explained why the claimant was paid three times of the alleged salary between July to August 2014. The claimant had no evidence of the alleged continuous engagement from 2014 to January 2019. The court concluded he was a piece meal worker engaged on need basis. The claimant had no prove of having worked entire of 2018. He only produced an LPO for 2<sup>nd</sup> October 2018 and 8<sup>th</sup> October 2018. A party who seeks an order from the court has the burden to prove under section 107 of the *Evidence Act*. There was no prove of the alleged continuous engagement of the claimant by the Respondent from 2014 to 2018 . The court found the claimant did not prove on balance of probabilities that he was an employee under contract of service with the respondent. The court established existence of evidence of piece meal work as paid vide the petty cash vouchers of July -August 2014.

16. Consequently, the court holds that there was no prove of employer employee relationship between the claimant and the respondent. The claim of continuous employment was hinged on a terminated contract with a third party. The documents of 2014 relied on was a piece meal contract for a specific project of which the claimant was paid vide petty cash vouchers. Consequently, having so held the other issues are moot and there is no need for their determination.
17. The claim is dismissed. The court considered the fact that the respondent did not call a witness in the matter and believed Mr. Mugoya had a type of relationship (not employer- employee) with the claimant. The court taking the foregoing into account made no order as to costs. The claim is dismissed with no order as to costs. The file is marked as closed.
18. It is so ordered.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4<sup>TH</sup> DAY OF JULY 2025.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Claimant –Ms Kubai

Respondent: Moriasi

