



**Chemorion v Stecy Group Limited & another (Appeal E085 of 2022)  
[2024] KEELRC 34 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 34 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E085 OF 2022  
AK NZEI, J  
JANUARY 25, 2024**

**BETWEEN**

**JOHN KIBET CHEMORION ..... APPELLANT**

**AND**

**STECY GROUP LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from part of the decision of Hon. M.L. Nabibya  
– PM in Msa ELRC E067/2020 delivered on 27th September 2022)*

**JUDGMENT**

1. This is an appeal against Mombasa Chief Magistrate’s Court judgment delivered on 27/10/2022 in the said Court’s Employment Case No. E67 of 2020. The Appellant herein had sued the Respondents in the said Employment suit claiming:-

- a. Salary for December 2018 to January 2019.....ksh. 69,000
- b. 26 days salary for February 2019.....ksh. 34,500
- c. One month gross salary in lieu of notice.....ksh. 34,500
- d. House allowance (March 2015 to February 2019).ksh. 216,000
- e. Annual leave for 4 years .....ksh. 111,461.50
- f. Compensation for unlawful termination  
(12 months gross salary).....ksh. 414,000



- g. A declaration that termination of the Claimant's employment by the 1<sup>st</sup> Respondent was wrongful, unlawful, malicious, unprocedural, unfair and/or unjustified.
  - h. General and exemplary damages for unlawful arrest, false imprisonment and malicious prosecution against the Respondents, jointly and severally.
  - i. Costs of the suit to be paid by the Respondents jointly and severally.
  - j. Interest at Court rates until payment in full.
  - k. An order that the 1<sup>st</sup> Respondent do issue a Certificate of Service to the Claimant.
  - l. Any other relief that the Court may deem fit to grant.
2. The Appellant had pleaded in the said trial Court:-
- a. That he was employed on permanent basis by the 1<sup>st</sup> respondent in March 2015 as operations Manager and was at the time of termination of his employment earning a basic salary of ksh. 30,000.
  - b. That from December 2018, the 1<sup>st</sup> Respondent stopped paying the Claimant's salary without any valid reason, but the Claimant continued working until 21/2/2019 when he demanded for his salary arrears from the 1<sup>st</sup> Respondent.
  - c. That instead of paying the Claimant's salary, the 1<sup>st</sup> Respondent lodged a report at Nyali police station accusing the Claimant of breaking and stealing following an incident that had occurred on 18/9/2018 at Fairdeal Plaza, Kisimani, Mombasa, which was being guarded by the 1<sup>st</sup> Respondent's security guards.
  - d. That following the 1<sup>st</sup> Respondent's complaint, the Claimant was arrested on 26/2/2019 and charged with six counts of breaking into a building and committing a felony in Shanzu (Court) Criminal Case No. 336 of 2019, whereupon he was detained at the police station and at Shimo La Tewa Prison from 26/2/2019 to 15/11/2019 when he was acquitted under Section 210 of the *Criminal Procedure Code*.
  - e. That the acquittal was based on utter absence of evidence.
  - f. That upon the Claimant's arrest on 26/2/2019, his employment was terminated by the 1<sup>st</sup> Respondent as the Claimant did not thereafter receive his salary, allowances and/or benefits from the 1<sup>st</sup> Respondent.
3. The Appellant further filed in the trial Court his written witness statement dated 22/10/2020 and an evenly dated list of documents, listing 4 documents. The listed documents included the Claimant's bank statements, proceedings in Shanzu Criminal Case No. 336 of 2019, demand letter dated 16/3/2020 and a notice of intention to sue dated 11/9/2020.
4. The 1<sup>st</sup> Respondent entered appearance and filed a response to the Claimant's claim, dated 1/4/2021. The 1<sup>st</sup> Respondent pleaded that the Claimant (now the Appellant) was not its employee but an independent contractor assigned to the 1<sup>st</sup> Respondent to supervise training of the 1<sup>st</sup> Respondent's staff; and was only engaged by the 1<sup>st</sup> Respondent in the year 2018 on various occasions. That the Appellant was not a salaried employee, and that the 1<sup>st</sup> Respondent was not the complainant in Shanzu case No. 336 of 2019 (*Republic -vs John Kibet Chemorion*).



5. On his part, the 2<sup>nd</sup> Respondent filed response to the Appellant's claim in the trial Court on 7/1/2021, and denied the Appellant's claim against him, and in particular denied having been privy to the contractual arrangements between the Appellant and the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent called for the Appellant's (Claimant's) suit to be dismissed with costs.
6. In May 2021, the 1<sup>st</sup> Respondent filed a witness statement of one Cyprian Isaac Kilonzi Kimuyu, dated 25/5/2021, and an evenly dated list of documents listing 5 documents. The listed documents were a certificate of the 1<sup>st</sup> Respondent's change of name dated 20/4/2016 (changing name from Finito Security Services Limited to Stacy Group Limited), the 1<sup>st</sup> Respondent's payroll for the years 2015, 2016 and 2018; and a motor cycle logbook.
7. The Appellant is shown to have filed a further list of documents on 24/9/2021 listing one document. The listed document was a charge sheet (in criminal case No. 336 of 2019) dated 26/2/2019.
8. Trial before the trial Court is shown to have opened 15/3/2022 when the Appellant testified, and was cross-examined and re-examined. The Appellant is shown to have adopted his filed witness statement (as his testimony) and to have produced in evidence his filed documents. The Appellant told the trial Court that no witness showed up in the Criminal case wherein he had been charged.
9. The Appellant had stated as follows in his filed witness statement:-

“...I was employed by the 1<sup>st</sup> respondent as an Operations Manager in March 2015. I was not issued with a Letter of Appointment. I was deployed to work in Mombasa and at the time of my termination of employment I was earning a basic salary of ksh. 30,000, which was initially being paid to me in cash and later through the bank.

That from the month of December 2018, the Respondent stopped paying my salary without any notice and/or explanation. I continued working for the 1<sup>st</sup> Respondent until 21<sup>st</sup> February 2019 when I demanded for my salary arrears.

That instead of paying my salary arrears, the 1<sup>st</sup> Respondent lodged a report at Nyali police station accusing me of breaking and stealing.

That upon arrest on February 26, 2019, I was terminated from my employment by the 1<sup>st</sup> respondent since I did not thereafter receive any salary, allowances and/or benefits from the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent did not follow due process, did not issue me with a termination notice, and also had no valid reason to terminate me from employment.

That further, throughout my employment, the 1<sup>st</sup> Respondent was neither paying me housing allowance as required by the law nor providing me with alternative accommodation. I was also never allowed to take annual leave for the 4 years that I worked, nor pay me in lieu of annual leave....”

10. The foregoing evidence, and indeed the Appellant's entire evidence on record, is not shown to have been shaken by the Respondents in cross-examination.
11. The trial Court is shown to have fixed the defence case for hearing on 24/5/2022, on which date none of the Respondents presented any witness to testify. The Respondents' respective cases were closed



without any evidence being adduced, and the suit was fixed for mention for submission on 18/8/2022. Eventually, the trial Court delivered its judgment on 27/10/2022 and rendered itself as follows:

“.... I will therefore determine whether the Claimant’s services were terminated unfairly and if he shall get the relief sought. Since the 1<sup>st</sup> Respondent failed to tender any evidence, I find that the claim for unfair termination remains unchallenged. I therefore allow the same in terms of prayers a,c,d,e, and f above.

For the Claim of malicious prosecution, I have considered submissions filed by the 2<sup>nd</sup> Respondent. I am satisfied that the Claimant knew there was a reported case of theft.....I am not satisfied that he has demonstrated that the reported at (*sic*) making him be arrested and unfairly prosecuted.....

he has not demonstrated that the prosecution was actuated by malice...I dismiss the claim for punitive and exemplary damages for malicious prosecution.”

12. The trial Court granted the Appellant the following reliefs:-
- a. a declaration that termination of the Claimant’s employment by the 1<sup>st</sup> Respondent was unfair, unlawful, malicious and unjustified.
  - b. Termination dues amounting to ksh. 879,461.50 tabulated as follows:-
    - i. Salary for December 2018 and January 2019 .....ksh. 69,000
    - ii. 26 days salary for February 2019.....ksh. 34,500
    - iii. One month salary in lieu of notice.....ksh. 34,500
    - iv. House allowance (March 2015 to February 2019).....ksh. 216,000
    - v. Annual leave .....ksh. 111,461.50
    - vi. Compensation for unlawful termination (12 months gross salary.....ksh. 414,000
  - c. Costs.
  - d. Certificate of Service.
13. dissatisfied with part of the trial Court’s said judgment, the Appellant preferred the present appeal and set forth the following grounds of appeal:-
- a. The learned trial magistrate erred in law and fact in finding that there was reasonable and probable cause for the prosecution of the Appellant.
  - b. The learned trial magistrate erred in law and fact in disregarding the fact that the Respondents did not adduce any evidence to rebut the evidence tendered by the Appellant.
  - c. That the learned trial magistrate erred in law and fact in failing to find that the Respondents did not produce any witness to testify in the criminal trial which was prima facie of the weakness of their case.



- d. That the learned trial magistrate erred in law and fact in failing to find that no evidence was adduced that the prosecution (never) conducted any investigations on the circumstances surrounding the information received from the 1<sup>st</sup> Respondent before arresting the Appellant, and particularly the fact that the Appellant was never at the scene of the crime and had a grudge with the 1<sup>st</sup> Respondent.
  - e. That the learned trial magistrate erred in law and fact in not finding that the Appellant’s arrest, charging and prosecution was malicious in view fact of the clear evidence adduced before the Court.
  - f. That the learned trial magistrate erred in law and fact in failing to consider the evidence, and submissions of the Appellant, and thus arriving at an erroneous finding.
  - g. That the learned trial magistrate erred in law and fact by not assessing general and exemplary damages sought by the Appellant against the Respondents.
14. The Appellant sought the following orders on appeal:-
- a. That the appeal be allowed as prayed.
  - b. That part of the judgment and decree in Mombasa ELRC No. E67 of 2020 dismissing the Appellant’s claim for general and exemplary damages be set aside, and be substituted with an award of general damages for unlawful arrest, false imprisonment and malicious prosecution against the Respondents, jointly and severally.
  - c. That costs of the appeal be granted to the Appellant.
15. I have perused the documentary evidence adduced by the Appellant in the trial Court regarding Shanzu Principal Magistrate’s Court Criminal Case No. 336 of 2019 (*Republic -vs- John Kibet Chemorion*). I have, in particular, perused the Court’s proceedings and the charge sheet on the basis of which the said criminal proceedings were conducted. I have not noted any indication or anything to suggest and/ or imply that the said criminal proceedings or the Appellant’s arrest and detention by the police were instigated by the 1<sup>st</sup> Respondent, who was the Appellant’s employer.
16. It ought to be appreciated that this Court is a specialized Court, whose jurisdiction is clearly circumscribed in Article 162(2) (a) of the [Constitution](#) of Kenya 2010 and Section 12 of the [Employment and Labour Relations Court Act](#). The preamble to the [Employment and Labour Relations Court Act](#) states that it is an Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.
17. In my view, the phrase “for connected purposes” extends jurisdiction to this Court to determine secondary issues directly arising from an employment or labour relations dispute before it. Such secondary issues may include a claim for malicious prosecution where such claim stems from a primary claim based on wrongful, unlawful and/or unfair termination of employment. Both the primary and the secondary claims must be raised in the same cause, and must have arisen from the same cause of action. It must be demonstrated that the malicious prosecution was primarily instigated by the employer, acting as such.



18. The Court of Appeal stated as follows in *Paramount Bank Limited -vs- Vagvi Syed Qamara & Another* [2017] eKLR:-

“the origin of the dispute between the 1<sup>st</sup> Respondent and the Appellant was presented as a dispute arising from an employee- employer relationship, where the Appellant accused the 1<sup>st</sup> Respondent of theft followed by a criminal charge of stealing by servant. This was further followed by suspension and finally summary dismissal. There cannot, therefore, be any doubt that in addition to the claim for unfair termination, the claim relating to general damages for malicious prosecution and defamation which flowed directly from the dismissal, was equally within the jurisdiction of the Court. In the exercise of its powers under Section 12 of the *Employment and Labour Relations Court Act*, the Court could entertain the dispute in all its aspects and award damages appropriately....”

19. In the present case, the Appellant did not demonstrate, before the trial Court that the report and/or complaint that led to his arrest and prosecution was lodged by his employer (the 1<sup>st</sup> Respondent), and that the employer was the complainant in the criminal trial in issue. Indeed, the charge sheet produced in evidence by the Appellant names the complainant as one Michael Nyandera Orimba c/o Pramise Enterprises. The trial Court was not told that the said complainant was in any way associated with the 1<sup>st</sup> Respondent (the Appellant’s employer).

20. Further, the victims of the alleged offence of breaking into a building and committing a felony were named in the said charge sheet as Michael Nyandero Orimba, Samuel Nderitu Gitonga, Eunice Mwendu, Husefa Mustafa Ganijee, Justus Odanga Odhaimbo and Cyprian Kilonzi. The trial Court was not told who those persons were.

21. In view of the foregoing, the Appellant’s appeal against dismissal of his claim for general and exemplary damages for unlawful arrest, false imprisonment and malicious prosecution cannot be entertained by this Court as it was not shown to have flown directly from the dismissal in issue. The Court has no jurisdiction to determine the appeal.

22. Consequently, and having considered written submissions filed by the Appellant and the 2<sup>nd</sup> Respondent, the appeal herein is hereby dismissed. Each party will bear its won costs of the appeal.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 25<sup>TH</sup> JANUARY 2024**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Appellant

.....Respondent

