



**Apondi v Maadili Schools (Appeal E042 of 2023)
[2024] KEELRC 16 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 16 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E042 OF 2023
S RADIDO, J
JANUARY 24, 2024**

BETWEEN

LINET IRENE APONDI APPELLANT

AND

MAADILI SCHOOLS RESPONDENT

*(Being an Appeal from the judgment of the Chief Magistrates Court at Kisumu
(Hon S. Telewa (PM) delivered on 19th July 2023 in CMELRC No. E067 of 2022)*

JUDGMENT

1. Linet Irene Apondi (the Appellant) sued Maadili Schools (the Respondent) before the Subordinate Court on 22 April 2022, alleging unfair termination of employment and breach of contract.
2. In a judgment delivered on 19 July 2023, the Principal Magistrate found that the Respondent had unfairly terminated the Appellant's employment and awarded the equivalent of 3 months' pay in lieu of notice, but declined to award compensation.
3. The failure to award compensation aggrieved the Appellant and she lodged a Memorandum of Appeal with the Court on 1 August 2023, contending:
 - (i) That the Learned Magistrate erred in law and fact in declining to award compensation for unfair termination despite finding and holding that the Respondent's decision to purportedly to dismiss the Appellant was unlawful and unfair.
4. The Appellant filed a Record of Appeal on 13 October 2023, and the Court gave directions on 19 October 2023 with judgment reserved to 31 January 2023.
5. The Appellant filed her submissions on 30 October 2023 and the Respondent on 28 November 2023.



6. On 5 December 2023, the Court informed the parties after notice, that the delivery of the judgment had been brought back to 24 January 2024.

Role of the Court in First Appeal

7. The Court of Appeal restated the role of a first appellate Court in *Judicial Service Commission & Ar v Lucy Muthoni Njora* (2021) eKLR where it stated:

This being a first appeal, our mandate as spelt out is to re-appraise the evidence and to draw our own inferences of fact. We proceed by way of re-hearing, putting ourselves in the shoes of the court that exercised original jurisdiction. We do so on the basis of the record to which we apply a fresh and exhaustive analysis so as to arrive at independent conclusions.

8. This Court will keep the caution outlined by the Court of Appeal in mind.

Wrong exercise of discretion

9. Section 49(1)(c) of the *Employment Act*, 2007 gives a Court the discretion to award compensation of not more than 12 months' gross wages where there is a finding of unfair termination of employment.
10. The factors that a Court should consider in exercising the discretion are outlined in section 49(4) of the Act and briefly these include the wishes of the employee, circumstances surrounding the termination of employment including whether the employee contributed to the termination, employee's length of service, the employee's reasonable expectation as to the duration of the contract and opportunities available to the employee to secure alternative employment.
11. Just like any judicial discretion, the discretion to award or not award compensation must not be exercised arbitrarily, capriciously or whimsically.
12. Where the discretion is exercised injudiciously or on the wrong principles, an appellate Court can intervene (see *Butt v Khan* (1981) KLR 349 and *Kenya Broadcasting Corporation v Geoffrey Wakio* (2019) eKLR).
13. The Principal Magistrate did not indicate which of the factors she considered in declining to award compensation after finding that the Appellant's contract was unfairly terminated.
14. The Court, consequently finds that the Principal Magistrate exercised her discretion injudiciously.
15. The Appellant had served the Respondent for about 8 years. She was only awarded pay in lieu of notice. The Court also notes that the Appellant and a director of the Respondent were in a marital relationship that appears to have broken down.
16. Putting these factors into consideration, this Court is of the view that the equivalent of 6 months' gross salary as compensation would be appropriate (the gross salary was Kshs 50,000/- at the time of separation).

Conclusion and Orders

17. Having re-evaluated and analysed the record, the Court sets aside and vacates the order declining to award compensation and awards the Appellant compensation of Kshs 300,000/-.
18. The Appellant to have costs of the Appeal.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 24TH DAY OF JANUARY 2024.



RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Orego & Odhiambo Advocates

For Respondent Omongo Gatune & Co. Advocates

Court Assistant Chrispo Aura

