



**Ready Consultancy Co. Ltd v Mwaringa & another (Appeal  
E041 of 2022) [2024] KEELRC 167 (KLR) (8 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 167 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E041 OF 2022  
AK NZEI, J  
FEBRUARY 8, 2024**

**BETWEEN**

**READY CONSULTANCY CO. LTD ..... APPELLANT**

**AND**

**SAMSON KATANA MWARINGA ..... 1<sup>ST</sup> RESPONDENT**

**MOMBASA MAIZE MILLERS LTD ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgment of Hon. Lesootia Saitabau – Principal  
Magistrate, delivered on 6th May 2022 in CMC – ELR Case No. 783 of 2019- Mombasa)*

**JUDGMENT**

1. The appeal herein is shown to have been instituted vide a memorandum of appeal dated 7/6/2022 and filed in this Court on even date. The appeal is expressed to be against the judgment of Hon. Lesootia Saitabau (Principal Magistrate) delivered at Mombasa on 6/5/2022 in Mombasa CMC ELR Case No. 783 of 2019.
2. The Appellant herein, Ready Consultancy Company Ltd, is shown to have been the Third Party in the aforementioned lower Court suit (Mombasa CMC ELR Case No. 783 of 2019) whereby the 1<sup>st</sup> Respondent in this appeal (Samson Katana Mwaringa) had sued the 2<sup>nd</sup> Respondent herein (Mombasa Maize Millers Limited) claiming:-
  - a. 12 months' salary in compensation for unfair termination.....  
ksh.204,800
  - b. Payment in lieu of notice .....ksh. 17,040
  - c. Accrued annual leave for (5 years worked) .....ksh. 85,200
  - d. House allowance (5 years worked) @ 15%



(ksh. 2,556x12 months X5 years).....ksh. 153,360

- e. Severance pay (8,520X 5 years).....ksh. 42,600
  - f. A declaration that termination of the 1<sup>st</sup> Respondent's employment was unfair and unlawful.
  - g. Costs of the suit and interest at Court rates.
3. The 1<sup>st</sup> Respondent herein, being the Claimant in the said lower Court suit, had pleaded:-
- a. that he had been engaged by the 2<sup>nd</sup> Respondent herein as a loader from March 2015, and retained continuous employment until 9/7/2019 when his services were terminated by the 2<sup>nd</sup> Respondent.
  - b. that the 1<sup>st</sup> Respondent's initial and terminal earnings were ksh. 17,040 per month, and that termination of his employment was abrupt and unlawful, and contravened the provisions of Sections 41,43 and 44 of the *Employment Act* 2007. That the 2<sup>nd</sup> Respondent did not act in accordance with justice and equity in terminating the 1<sup>st</sup> Respondent's employment.
4. From what can be gathered from the incomplete record of appeal filed in this Court, the 2<sup>nd</sup> Respondent, who was the sole Respondent/Defendant in the primary suit, filed response to the 1<sup>st</sup> Respondent's claim/suit and subsequently took out Third Party proceedings against the Appellant. Judgment is shown to have been delivered against the Third Party (the Appellant herein) on 6/5/2022. The present appeal is shown to be against the said judgment. It is worthy noting that proceedings taken before the trial Court, which would ordinarily contain the evidence presented before the trial Court by the parties herein, were not included in the record of appeal filed in this Court by the Appellant; and that this Court has neither seen nor perused the same. The record of appeal is thus incomplete, and the appeal is incompetent.
5. There is no evidence before this Court for its review, re-evaluation and consideration, this being a first appeal. As stated in *Mursal v Manese*[2022] eKLR:-
- “A first Appellate Court is mandated to re-evaluate the evidence presented before the trial Court as well as the judgment and to arrive at its own independent judgment on whether or not to allow the appeal. A first Appellate Court is empowered to subject the whole of the evidence to fresh and exhaustive scrutiny and to make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand. This duty was stated in *Selle & Another v Associated Motor Boat Co. Ltd & Another* [1968] E.a. 123 And In *Peters v Sunday Post Ltd*[1958] E.A. page 424.”
6. Echoing on the aforestated conventional duty of a first Appellate Court, Rule 8(4) of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-
- “A memorandum of appeal shall be accompanied by a copy of the proceedings, all documentary evidence relied on and a copy of the judgment from the proceedings of the matter being appealed against.
- Provided that where copies of proceedings are not filed with the memorandum of appeal, the Appellant shall file such copies as soon as possible, and within a reasonable time.”
7. In the absence of the trial Court's proceedings, there is absolutely nothing on record for this Court, being a first appellate Court, to review, to re-evaluate, and to consider in determining the merits or otherwise of the appeal herein. The appeal is hollow and incompetent, and must therefore, fail.



8. In any first appeal, proceedings of the trial Court are so pivotal such that the merits or otherwise of the appeal cannot be determined without them.
9. For record purposes, it is worthy noting that whereas the memorandum of appeal is shown to have been filed on 7/6/2022, the incomplete record of appeal was filed on 25/4/2023, over ten months later, and without the trial Court's proceedings. The Appellant had all the time to present a complete record of appeal, but did not.
10. Having stated that, and having considered written submissions filed on behalf of the Appellant and the 1<sup>st</sup> Respondent, I hereby dismiss appeal.
11. Each party will bear its own costs of the appeal.
12. The Court file herein shall forthwith be closed.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 8<sup>TH</sup> FEBRUARY 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

