



Wambasi v Frodak Kenya Limited & another (Employment and Labour Relations Appeal E002 of 2023) [2024] KEELRC 158 (KLR) (7 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 158 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
EMPLOYMENT AND LABOUR RELATIONS APPEAL E002 OF 2023**

JW KELI, J

FEBRUARY 7, 2024

BETWEEN

ENOCK WAMBASI APPELLANT

AND

FRODAK KENYA LIMITED 1ST RESPONDENT

BUTALI SUGAR MILLS LIMITED 2ND RESPONDENT

JUDGMENT

1. An appeal was lodged in court by the law firm of V.A. Shibanda & Company Advocates representing Enock Wambasi. The Appellant annexed in the Record of Appeal dated 24th April 2023 the Ruling and order of Honorable Josephine Maragia(SRM) delivered on the 27th of June 2022 in Kakamega CMELR No. 55 of 2020 between Ezekiel Wakucha Cheto and the Respondents(page 39). The Memorandum of Appeal dated 30th August 2022 referred to causes 48,78,53,55 and 52 of 2020. The record annexed the statement of claim in No. 90 of 2020 between the parties.
2. The Court in Kakamega ELRC Appeal No. 16 of 2023 between Ezekiel Mbolomu Sambali and the respondents delivered its judgment in the determination of an appeal against the decision by Hon. Maragia on the 27th of June 2022. It is the same decision produced in the instant record of appeal.
3. The Appeal was premised on the following grounds
 - i. The learned Magistrate erred in law and fact by finding that the subordinate court did not have territorial jurisdiction
 - ii. The learned trial Magistrate erred in law and fact by failing to consider the submissions of the claimants based on the relevant territories as envisaged in the Constitution of Kenya.
 - iii. The learned Magistrate erred in law and fact in disregarding sections 11, 14, and 15 of the Civil Procedure Act



- iv. The learned Magistrate erred in law and fact by striking out the entire suit based on the wrong assumption that the subordinate court lacked territorial jurisdiction
 - v. The learned Magistrate erred in law and fact by issuing orders that cost be awarded to the respondents.
3. The court finds that the foregoing were the same grounds of appeal against the ruling of Hon. Maragia dated 27th June 2022 in Kakamega ELRC Appeal No. 16 of 2023 [Ezekiel Mbolomu Sambali v Butali Sugar Mills Limited and another.](#)

Background to the appeal

4. The Appellant filed a Claim dated 6th December 2019 at the lower court in Kakamega CMERC Case NO. 90 of 2020 seeking judgment against the respondents for compensation citing unlawful dismissal(from page 3).
5. The parties in MC ELRC NO. 55 of 2020 were Ezekiel Wakuche Cheto and the Respondents(page 39 of the record) and not the instant Appellant. The Appellant in the instant appeal is Enock Wambasi who is the Claimant in Kakamega CMCELRC No 90 of 2020. The parties in the submissions referred to No. 55 of 2020.
6. The Appellant's written submissions drawn by V.A. Shibanda & Company Advocates were dated 20th November 2023 and received in court on the 1st December 2023.
7. The 1st respondent's written submissions drawn by Okong'o Wandago & Company Advocates were dated 3rd November 2023 and received in court on 6th November 2023.
8. The 2nd respondent's written submissions drawn by Mbeka & Associates were dated 7th November 2023 and received on an even date.
9. It is my finding the instant appeal is incompetent as the impugned ruling in Kakamega CMC ELRC 55 of 2020 refers to different parties than that in the instant memorandum of appeal and claim(see page 1, page 3, and pages 39.). The court did not find a copy in the record of appeal of a ruling where the Appellant is a party. An appeal has to be against a decision between the parties. This was not the case here.

Determination

10. Interestingly, none of the Respondents detected that the Appellant was not a party to claim no. 55 of 2020 but No. 90 of 2020 in the lower court. The appeal was incompetent ab initio. One can only blame copying and pasting by the Appellant from previous pleadings which is a common phenomenon encountered in the era of information technology. Information technology is not to blame for such mistakes as it makes things easier in the modern world but it is a case of garbage in garbage out by the user.
11. In the upshot, the Court holds the appeal as incompetent for failure to annex the impugned ruling and proceeds to strike it out with costs to the Respondents.

DATED, SIGNED & DELIVERED IN OPEN COURT AT KAKAMEGA THIS 7TH FEBRUARY, 2024.

**JEMIMAH KELI,
JUDGE.**



In the presence of: -

Court Assistant: - Lucy Macheso

For Appellant: - Absent

For 1st Respondent: - Ms. Twena

For 2nd Respondent: - Mr. Mbeka

