



**Revital Health Care v SRM Court Mombasa & another (Appeal E072 of 2022) [2024] KEELRC 529 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 529 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E072 OF 2022**

**AK NZEI, J  
MARCH 7, 2024**

**BETWEEN**

**REVITAL HEALTH CARE ..... APPELLANT**

**AND**

**SRM COURT MOMBASA ..... 1<sup>ST</sup> RESPONDENT**

**GARAMA KARISA ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment of Hon. G. Kiage – SRM delivered on 21st September 2022 in Mombasa SRMCC-ELRC No. 109/2018)*

**JUDGMENT**

1. This is an appeal from the judgment of Hon. G. Kiage (SPM) in Mombasa CM ELR Case No. 109 of 2018 whereby the 2<sup>nd</sup> Respondent herein, Garama Karisa Kitsao, had sued the Appellant herein. I find it rather strange that the trial Court, The Senior Resident Magistrate’s Court Mombasa, is named as the 1<sup>st</sup> Respondent in the memorandum of appeal filed herein on 24/10/2022. It is worth noting that the said Court (the 1<sup>st</sup> Respondent) was not a party in the lower Court suit (the primary suit). Be that as it may.
2. The 2<sup>nd</sup> Respondent had sued the Appellant herein in the trial Court vide a memorandum of claim dated 6/8/2018 and filed in Court on 7/8/2018, seeking the following reliefs:-
  - a. A declaration that the 2<sup>nd</sup> Respondent’s dismissal was unfair and unjust.
  - b. One month salary in lieu of notice.....ksh. 30,600
  - c. Leave pay for the period between 13/6/2014 to February 2018 (3 years) 30,680x3.....ksh. 92,070
  - d. Service pay for 3 years (1/2 x30,680x3 years).....ksh. 46,020



- e. Compensation for unfair termination (30,680x12 months).....kshs. 368,160
  - f. Issuance of a certificate of service.
  - g. Costs of the suit and interest at Court rates.
3. The 2<sup>nd</sup> Respondent, who was the claimant in the primary suit, had pleaded that he had been employed by the Appellant as a Machine Operator on 13/6/2014, earning a daily wage of ksh. 1,180 (kshs.30,680 per month); and that he worked from 7a.m. to 7pm; for seven days a week. The 2<sup>nd</sup> Respondent had further pleaded:-
    - a. that in October 2017, the Appellant began relocating its operations from Jomvu to Kikambala in Kilifi County and that the 2<sup>nd</sup> Respondent and other employees of the Appellant were promised by the Appellant that they would be called to work at the Appellant's Kanamai premises. That the 2<sup>nd</sup> Respondent was never contacted by the Appellant.
    - b. that the decision to terminate the 2<sup>nd</sup> Respondent's employment was unfair, unprocedural and unlawful as Sections 41,43 and 45 of the *Employment Act* were not adhered to, and the 2<sup>nd</sup> Respondent was not notified of the impending termination of his employment.
    - c. that the 2<sup>nd</sup> Respondent was not accorded a hearing before dismissal; and that NSSF deductions made from his salary were not remitted.
  4. Documents filed by the 2<sup>nd</sup> Respondent in the lower Court alongside his memorandum of claim included his written witness statement dated 6/8/2018 and an evenly dated list of documents listing 4 documents. The 4 listed documents were copies of the 2<sup>nd</sup> Respondent's identity card, an employment contract, NSSF statement dated 16/7/2017 and a demand letter dated 16/7/2018.
  5. The Appellant is shown to have entered appearance on 4/9/2018 and to have subsequently filed Response to the memorandum of claim, denying the 2<sup>nd</sup> Respondent's claim and pleading:
    - a. that the 2<sup>nd</sup> Respondent was employed by the Appellant as a casual in the Molding Department, and that his engagement was subject to availability of work in the Appellant's premises.
    - b. that the 2<sup>nd</sup> Respondent's daily wages/compensation was computed daily, and was regulated by the Minimum Wage Regulations gazetted by the Government from time to time.
    - c. that the 2<sup>nd</sup> Respondent never worked continuously, but had prolonged breaks between his days of service.
    - d. that the notice of the impending relocation was issued to all permanent employees as well as casual labourers including the 2<sup>nd</sup> Respondent, and that the notice invited all casual labourers to the Appellant company's new premises but some, including the 2<sup>nd</sup> Respondent herein, did not move.
    - e. that the Appellant did not terminate the 2<sup>nd</sup> Respondent, and that it is the 2<sup>nd</sup> Respondent who deserted duty without notice.
  6. Documents filed by the Appellant alongside its response to the claim were a written witness statement of one Brigit Fatuma dated 14/9/2018 and an evenly dated list of documents, listing 4 documents. The listed documents included a Notice of the Appellant's relocation/internal memo, the 2<sup>nd</sup> Respondent's work attendance register, summary of the 2<sup>nd</sup> Respondent's workdays and an Excerpt from the



Appellant's pay schedule. The Appellant also filed a further list of documents dated 7/6/2019, listing one documents, named as standard operating procedure.

7. The trial Court conducted a full trial and delivered its judgment on 21/9/2022, awarding the 2<sup>nd</sup> Respondent a total of kshs. 251,340 and costs of the suit. The trial Court also ordered that the 2<sup>nd</sup> Respondent be issued with a certificate of service by the Appellant.
8. Aggrieved by the said judgment, the Appellant instituted the appeal herein vide a memorandum of appeal dated 19/10/2022 and filed in this Court on 24/10/2022.
9. I have noted from the Court's record herein that the appeal herein was filed out of time and without leave, and is therefore incompetent. The judgment appealed against was delivered on 21/9/2022 while the memorandum of appeal was filed on 24/10/2022. Rule 8(1) & (2) of the [Employment and Labour Relations Court \(Procedure\) Rules](#) 2016 provides as follows:-

“ 8.

- (1) Where any written law provides for an appeal to the Court, an Appellant shall file a memorandum of appeal with the Court within the time specified for that appeal under the written law.
- (2) Where no period of appeal is specified in the written law under paragraph (1), an appeal shall be filed within thirty days from the date the decision was delivered.”

10. The decision appealed from in the present case having been delivered on 21/9/2022, the appeal herein ought to have been filed within thirty days from that date. Thirty days lapsed on 21/10/2022, the said date having been the 30<sup>th</sup> day. The appeal herein, filed on 24/10/2022, was filed out of time and without leave. The same is incompetent and cannot be entertained by this Court.
11. Consequently, the memorandum of appeal dated 19/10/2022 and filed on 24/10/2022 is hereby struck off, and the appeal is hereby dismissed with costs to the 2<sup>nd</sup> Respondent.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 7<sup>TH</sup> MARCH 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

