



**Exotic Penina Fields Group Limited (F.T.A Carnation Plants Limited) v Nyangau  
(Appeal E001 of 2023) [2024] KEELRC 1301 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1301 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
APPEAL E001 OF 2023**

**B ONGAYA, J**

**MAY 29, 2024**

**BETWEEN**

**EXOTIC PENINA FIELDS GROUP LIMITED (F.T.A CARNATION PLANTS  
LIMITED) ..... APPELLANT**

**AND**

**RICHARD ARAKA NYANGAU ..... RESPONDENT**

*(Being a partial appeal against the Judgment and Decree of Honourable  
V.A Kachuodho, (Ms) Senior Resident Magistrate in Kajiado in  
MCELRC No. E018 of 2021 delivered on 20th December 2022)*

**JUDGMENT**

1. The respondent herein filed a statement of claim in the lower court dated February 24, 2021 through Ngigi Njuguna & Co. Advocates. The respondent claimed against the appellant for orders:
  - a. A declaration that the claimant was unfairly and unlawfully terminated and or declared redundant.
  - b. Kshs. 9,496 .77/= as one month's gross salary in lieu of notice.
  - c. Kshs. 44, 302.43/= as service pay.
  - d. Kshs. 210, 058.10/= as unpaid overtime.
  - e. Kshs. 61, 341.76/= as unpaid public holidays.
  - f. Kshs. 425, 562.22/= being salary underpayment.
  - g. Kshs. 113, 961. 24/= being compensation for wrongful dismissal at the rate of 12 months' gross salary in terms of section 49 (1) (c) of the [Employment Act](#) laws of Kenya.



- h. Cost of this suit and interest.
2. The appellant filed its memorandum of response dated October 29, 2021 through Michuki & Michuki Advocates.
3. The appellant denied the allegations as laid out in the memorandum of claim and pleaded as follows:
  - a. That the respondent was employed by the appellant on or about the June 1, 2010 up until March 19, 2020 when it was mutually agreed between them that he may proceed on unpaid leave due to the effects of the Corona pandemic. Alternatively, on 13.07.2020, the respondent opted to tender his resignation on account of poor health and hence the respondent's employment was not terminated.
  - b. That the respondent was a duly registered member of a pension scheme i.e NSSF to which payments were remitted by the appellant hence he is not entitled to service pay.
  - c. That there are no amounts outstanding or due to the respondent.
4. The trial magistrate entered judgement on November 3, 2022 as follows:
  - a. That judgement be and is hereby entered for the claimant (respondent herein) against the respondent (appellant herein) for a total sum of Kshs. 271, 399.76/= . (Kshs. 210,058/= unpaid overtime and Kshs. 61,341.76/= unpaid public holidays).
  - b. That the appellant to issue the respondent with certificate of service.
5. The appellant brought this appeal vide a memorandum of appeal dated 12.01.2023 through Michuki & Michuki Advocates being dissatisfied with the Judgement and decree of the lower Court upon the following grounds:
  - a. That the learned trial Magistrate erred in law and in fact by proceeding to make awards in favour of the respondent despite the fact she had expressly found that the respondent had failed to discharge his burden of proof under section 47(5) of the Employment Act.
  - b. That the learned trial Magistrate erred in law and in fact by proceeding to make awards in favour of the respondent despite the fact that she had found that the claimant had not been unlawfully and/or unfairly terminated from employment.
  - c. That the learned trial Magistrate erred in law and in fact in failing to dismiss the respondent's suit with costs.
  - d. That the learned trial Magistrate erred in law and in fact in making monetary awards in favour of the respondent without providing any basis or explanation on how and why she arrived at the said sums.
6. The appellant was praying for the following orders;
  - a. That the judgement of the Honourable trial Magistrate making awards to the respondent be set aside and be submitted with an order of dismissal of the suit with costs.
  - b. The costs of appeal be awarded to the appellant.
7. The respondent did not submit nor file any documents. The appellant filed their written submissions.
8. The court has reconsidered the material on record and returns as follows:



- a. The main issue for determination is whether the trial Court erred by awarding as was done being Kshs. 210,058/= for unpaid overtime and Kshs. 61,341.76/= for unpaid public holidays.
- b. The appellant pleaded that there was no outstanding overtime payment and public holidays. In cross-examination, the respondent stated that they did not work overtime when he was deployed to hardship area but in initial service all overtime worked was paid. The claimant offered no testimony on the claimed public holidays. In his statement he stated throughout employment he served on public holidays but was not paid. The trial Court made awards without any explanation. The material on record show that the claimant testified that he had no outstanding overtime claims as he had been paid or he did not work on overtime. For public holidays, these were not particularised and the base for computing the claim was not explained. As urged for the appellant, the awards were made without due evidence. The appeal must succeed. The Court has considered the COVID situation surrounding the termination and each party to bear own costs.

In conclusion, the appeal is allowed with orders:

- a. The awards in the trial court's judgment here in set aside and the suit dismissed with no costs.
- b. Each party to bear own costs of appeal.
- c. The deputy registrar to return case file to Machakos Sub-registry forthwith.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29TH MAY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

