



**Mbuni Dry Cleaners Limited v Chelangat & 19 others (Cause 1071 of 2017) [2024] KEELRC 1512 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1512 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1071 OF 2017**

**J RIKA, J**

**JUNE 14, 2024**

**[FORMERLY MILIMANI C.M.C.C NO. 1353 OF  
2003 AND NAIROBI H.C.C.C NO. 107 OF 2004]**

**BETWEEN**

**MBUNI DRY CLEANERS LIMITED ..... CLAIMANT**

**AND**

- MARGARET CHELANGAT ..... 1<sup>ST</sup> RESPONDENT**
- WILLIAM MUDAKI ..... 2<sup>ND</sup> RESPONDENT**
- PATRICK ONGORI ..... 3<sup>RD</sup> RESPONDENT**
- DAVID NJEKA ..... 4<sup>TH</sup> RESPONDENT**
- WILSON OWINO ..... 5<sup>TH</sup> RESPONDENT**
- RUTH WAITHIRA NJOGU ..... 6<sup>TH</sup> RESPONDENT**
- ROBERT KAMAU ..... 7<sup>TH</sup> RESPONDENT**
- V PASOLOI ..... 8<sup>TH</sup> RESPONDENT**
- JOHN NGUGI ..... 9<sup>TH</sup> RESPONDENT**
- ESTER MUTHONI KARANJA ..... 10<sup>TH</sup> RESPONDENT**
- JOSEPH KAIRU ..... 11<sup>TH</sup> RESPONDENT**
- JOSEPH NJOROGE KIHIRIA ..... 12<sup>TH</sup> RESPONDENT**
- TEMENAI MENGO ..... 13<sup>TH</sup> RESPONDENT**
- BENSON MENGO ..... 14<sup>TH</sup> RESPONDENT**
- CHEMERE RICHARD ..... 15<sup>TH</sup> RESPONDENT**



<b>P YAMBO .....</b>	<b>16<sup>TH</sup> RESPONDENT</b>
<b>MESHAK MUSODA .....</b>	<b>17<sup>TH</sup> RESPONDENT</b>
<b>CHARLES ANIKA .....</b>	<b>18<sup>TH</sup> RESPONDENT</b>
<b>PAUL GATHIKA .....</b>	<b>19<sup>TH</sup> RESPONDENT</b>
<b>MR MAINGI .....</b>	<b>20<sup>TH</sup> RESPONDENT</b>

## JUDGMENT

### Representation

Court Assistant: Emmanuel Kiprono

S.J. Nyang' & Company Advocates for the Claimant

Moses Odawa & Company Advocates for the Respondents

1. This is an ancient Claim, first presented before the Chief Magistrate's Court at Milimani Nairobi, on 14<sup>th</sup> February 2003. 21 years have passed, since its inception.
2. It was transferred to the High Court Nairobi, through an order made by the High Court on 6<sup>th</sup> May 2003.
3. The Respondents/Counterclaimants filed their Statement of Defence on 30<sup>th</sup> March 2004. They counterclaimed a total sum of Kshs. 5,642,581 from the Claimant, in service dues, 3 months' salary in lieu of notice and allowances.
4. The Claim was subsequently dismissed by the High Court on 30<sup>th</sup> November 2012 for want of prosecution. The Respondents/Counterclaimants, were allowed by the Court to prosecute their Counterclaim.
5. The High Court transferred the Claim to the Employment and Labour Relations Court, in the year 2017, 13 years after the High Court had assumed jurisdiction, from the Chief Magistrate's Court. It is not clear why the High Court would hear the application for dismissal for want of prosecution, dismiss the Claim, and then decide it did not have jurisdiction on the Counterclaim. The decision taken at the High Court seems to have contributed significantly, to delay in prosecution and finalisation of the entire Claim.
6. Evidence on the Counterclaim was taken on 22<sup>nd</sup> February 2022, 8<sup>th</sup> December 2022, and on 23<sup>rd</sup> February 2023. Hearing of the Respondent's /Counterclaimants' evidence, closed on 6<sup>th</sup> July 2023. On 15<sup>th</sup> November 2023, the Claimant's Advocate informed the Court that the Claimant did not have any witnesses to adduce evidence, its Directors having all died. This did not come as unexpected, given the age of this litigation. Hearing therefore closed on 15<sup>th</sup> November 2023. Parties confirmed filing and exchange of their Closing Submissions, at the last appearance before the Court, on 15<sup>th</sup> December 2023.
7. The Claim is that the Respondents/ Counterclaimants, were employed by the Claimant in its laundry outlets, at Nairobi. They were suspended by the Claimant, after they absconded duty, and in concert with other Employees, persistently declined to resume duty, when required to do so by the Claimant.



8. They subsequently forced their way back into the Claimant's premises and evicted Employees and Management Staff who were working in the premises. They demolished the offices of the Claimant's Chairman, held him hostage, before frogmarching him to the offices of Kenya Broadcasting Corporation. They barred the Claimant, from operating its business.
9. The Claimant filed the Claim seeking an order that the Respondents/ Counterclaimants, are restrained permanently from denying the Claimant access to its premises, and from denying the Claimant its right to carry on its business peacefully.
10. The record indicates that an order of temporary injunction was granted at the Chief Magistrate's Court as prayed, before the Claim was transferred to the High Court, and subsequently dismissed.
11. The Respondents/Counterclaimants denied that they accosted the Claimant, its Staff and Management, in the manner pleaded by the Claimant. They denied barring the Claimant from peaceful conduct of its laundry business. They averred that their suspension by the Claimant, on or about 21<sup>st</sup> January 2003 was illegal.
12. The Counterclaimants' evidence on record is repetitious. They told the Court that their contracts were terminated on 20<sup>th</sup> January 2003. They were not paid terminal benefits in accordance with the prevailing CBA. They were only paid salary for the last month worked. The CBA entitled them to 3 months' salary in lieu of notice. They were entitled to annual leave of 28 days every year. They were entitled to leave travelling allowance.
13. On cross-examination, they told the Court that there were a total of 63 Employees, affected by the Claimant's termination decision. They did not know if some of the Employees have since passed away. They did not know if the Claimant's Directors have since passed away. Their pay slips did not show that they received all their terminal dues. Some were hard-pressed to explain why their names were deleted, on amendment of the Counterclaim. They held that the Claimant was still in operation, but under a new name. They denied that they deserted, and/or interrupted the Claimant's business operations.

**The Court Finds: -**

14. The Respondents/Counterclaimants, either because of their advanced age or the advanced age of their respective claims, did not place before the Court clear, consistent and reliable evidence, upon which the Court can grant their Counterclaim.
15. It was not even made clear to the Court who are the Respondents/ Counterclaimants. Some appear to have been deleted as Counterclaimants, in the amended Counterclaim. Others have, according to the evidence of the Counterclaimants, died. There was no attempt at verifying who has died and to substitute dead Counterclaimants. Others such as Mark Osewe, were not named at all in the Counterclaim.
16. There is similarly no evidence that the Claimant is a business still in operation, and capable of meeting any decretal obligations. The Respondents/ Counterclaimants were at a loss to establish that the Claimant is in operation, or that there is a successor to the Claimant, capable of meeting any employment obligations. They alluded to a change of business name, without disclosing to the Court the existing business name. They told the Court in very unclear language, that the Claimant is still operating its business at a location in the Central Business District, Nairobi. There was no evidence of such a business and its location. They have amended their Pleadings severally, without introducing the new business name to the proceedings. The Directors appear to be long dead, and their business likewise, is, as dead as a dodo. The Court does not issue Judgments and Decrees which cannot be acted upon. It does not act in vain.



17. That said, the earliest record in this dispute would suggest that the Respondents/Counterclaimants, were dismissed for aggressive and unacceptable behaviour against the Claimant. This is shown in the orders of temporary injunction issued against them by the Chief Magistrate's Court, restraining them from interfering with the Claimant's smooth operation of its business. There was prima facie evidence, that they were engaged in aggressive, and even violent behaviour against the Claimant's Chairman, frogmarching him to Kenya Broadcasting Corporation [KBC] premises. The orders of temporary injunction were issued based on prima facie proof of gross misconduct. Frogmarching of the Claimant's Chairman, was a serious act of gross misconduct which under the applicable Employment Act and CBA, would have disentitled them to gratuity and other terminal benefits sought.
18. On 12<sup>th</sup> July 2003, the Respondents were paid what was described as claims for salary by the Claimant. They all affirmed that they did not have further salary claims from the Claimant. The acknowledgement slips, make reference to Claim Number 2715 of 2002, which the Respondents did not disclose, concerned which dispute. Whatever these payments represented, they appear to have been in excess of the Respondents' monthly salaries, and there were no claims for additional payments at the time the acknowledgements were executed on 12<sup>th</sup> July 2003. Termination took place on 20<sup>th</sup> January 2003. If there were any outstanding claims, they would logically have been communicated to the Claimant at the time the Respondents received the payments on 12<sup>th</sup> July 2003.
19. The Counterclaim has not been established. The Counterclaimants were not clear in their evidence, and appear to have engaged in acts of gross misconduct from the inception of the dispute. They frogmarched their Chairman, held their colleagues hostage, forcibly entered the business premises and shut it down. They abandoned their duty. The Chief Magistrate's Court granted protective orders in favour of the Claimant, enforceable through the relevant Officer Commanding Station [OCS]. All these industrial aberrations were based on the Respondents/ Counterclaimants' workplace grievances. They did not express their grievances in accordance with the law. They can hardly expect terminal benefits from a business they forcibly shut down, made ungovernable, and helped to destroy. It has been shown that the business is no longer in operation, the Directors are long dead, there is no known business successor, and any decree issued by the Court in favour of the Respondents / Counterclaimants, would be in vain.

**It is ordered: -**

- a. The Claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

