



Kerio Valley Development Authority v Cheserem (Employment and Labour Relations Appeal E016 of 2022) [2024] KEELRC 2263 (KLR) (20 September 2024) (Judgment)

Neutral citation: [2024] KEELRC 2263 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E016 OF 2022
MA ONYANGO, J
SEPTEMBER 20, 2024**

BETWEEN

KERIO VALLEY DEVELOPMENT AUTHORITY APPELLANT

AND

BARNABAS KIMELI CHESEREM RESPONDENT

(Being an appeal from the whole Judgment of the Honourable Chief Magistrate L. Kassan delivered on 23rd March 2022 in Eldoret CMEL No. 44 of 2019)

JUDGMENT

1. The Appellant herein was the Respondent in the trial court wherein it had been sued by the Claimant, (now the Respondent) seeking to be paid severance package as in accordance to what the Respondent claimed the Appellant had initially offered as voluntary early retirement package on February 2018.
2. Parties filed their respective pleadings as is evident from the record of Appeal filed on 12th May 2023.
3. Judgment was delivered by Hon. L. Kassan on the matter on 23rd March 2022.
4. The Appellant being dissatisfied with the said Judgement lodged the instant appeal vide the Memorandum of Appeal dated 30th March 2022 and filed on the same date. The only ground of appeal is that the learned magistrate erred in law and in fact in entering judgment without hearing the parties. The Appellant therefore sought the following reliefs:
 - a. The Appeal be allowed;
 - b. The Judgment of the subordinate court be set aside;
 - c. That there be a re-trial of the cause;
 - d. That each party bears its costs of the Appeal.



5. The appeal was disposed of by way of written submissions pursuant to the directions of this court made on 8th June 2023. The Appellant’s submissions were filed on 8th July 2023 while the Respondent filed his submissions on 25th July 2023.

Analysis and determination

6. It is the duty of this court, as the first appellate court, to examine matters of both law and fact and subject the whole of the evidence to a fresh and exhaustive scrutiny, drawing its own conclusions from that analysis and bearing in mind that the court did not have an opportunity to hear the witnesses. This duty was stated in the case of *Selle & another v Associated Motor Boat Co. Ltd.& others* [1968] E.A. 123 and in *Peters v Sunday Post Limited* [1958] E.A. page 424.
7. I have considered the pleadings and the submissions filed by the respective counsels for the parties. As stated earlier in this judgment, the only issue raised by the Appellant is that no hearing was conducted before the trial court but the trial magistrate went ahead and delivered a judgment in favour of the Respondent.
8. A cursory look at the record of appeal filed by the Appellant on 12th May 2023 and particularly the certified copy of proceedings from page 85 to page 94 reveals that there are no proceedings relating to the hearing of the matter at the trial court.
9. The right to fair hearing is a principle of Natural Justice that cannot be limited as stipulated by Article 25 of *the Constitution* of Kenya 2010. *The Constitution* at Article 50(1), provides for fair hearing with regard to any dispute in accordance with the law. It stipulates:

“ 50.

- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body.”

10. The parties herein having not been heard and there having been no consent recorded by the parties to proceed without a hearing, I find that the instant appeal is meritorious as the Judgment delivered by the trial court was issued in gross violation of the rules of natural justice and is therefore null and void ab initio.
11. Consequently, I enter judgment in the following terms:
- a. The Judgment of the trial court dated 23rd March 2022 is set aside.
 - b. The matter shall be referred back to the lower court for hearing and determination by a court differently constituted.
 - c. There shall be no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF SEPTEMBER, 2024

MAUREEN ONYANGO

JUDGE

