



**Oluoch v Mehta Electricals Limited (Appeal E065 of 2021)  
[2024] KEELRC 2645 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2645 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E065 OF 2021  
J RIKA, J  
OCTOBER 31, 2024**

**BETWEEN**

**PATRICK OUMA OLUOCH ..... APPELLANT**

**AND**

**MEHTA ELECTRICALS LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgment of the Hon. Senior Resident Magistrate, Hon. M.W. Murage, in Nairobi C.M.C.E.L No. 1759 of 2019, delivered on 21st May 2021)*

**JUDGMENT**

1. The Appellant herein, filed a Claim against the Respondent at the Trial Court. He averred that he was employed by the Respondent on 28<sup>th</sup> August 2009 as a General Labourer.
2. He averred that he was unfairly and unlawfully dismissed by the Respondent, and sought compensation for unfair termination and terminal benefits, from the Respondent.
3. The Claim was dismissed with costs to the Respondent, on 21<sup>st</sup> May 2021.
4. He appeals against the Judgment of the Trial Court, relying on 7 Grounds of Appeal, contained in a Memorandum of Appeal dated 18<sup>th</sup> June 2021.
5. The Grounds may be summarized as follows: -
  - I. The Trial Court erred by failing to find that the Appellant reported back to work from annual leave, on 30<sup>th</sup> May 2017, but was advised by the Respondent to leave, in effect being constructively dismissed.
  - II. There was no evidence before the Trial Court that the Appellant absconded.
  - III. The Trial Court erred by failing to find that termination was unfair.



- IV. The Trial Court erred by imposing on the Appellant the duty to produce employment records.
  - V. The Trial Court erred in taking failure by the Appellant, to meet demands made the Respondent, as evidence that the Appellant did not report back to work.
  - VI. The Trial Court misapprehended legal principles on the concept of absconding.
  - VII. The Trial Court erred in awarding of costs to the Respondent.
6. The Appellant prays the Court to allow the Appeal; the orders dismissing the Claim are set aside; and the prayers before the Trial Court allowed.
  7. The Appeal was last mentioned before the Court on 19<sup>th</sup> June 2024, when the Parties confirmed filing and exchange of their Submissions.
  8. The Appellant's evidence-in-chief, as captured in the proceedings of the Trial Court, was that he took annual leave of 25 days, on 27<sup>th</sup> May 2017. While on leave he was asked in writing by the Respondent, to report at Capital Hill Police Station, to assist the Police with investigations of a robbery that had taken place at the Respondent's business.
  9. The Appellant testified that he did not go to the Police Station as instructed. He went home. Cross-examined, he told the Court that he was not issued with a letter of termination by the Respondent. He stated that he went back to work, but was told to leave, because he had failed to report to the Police. He assured the Trial Court, that he had witnesses who heard him being told to leave by the Respondent, but that he would not be calling them.
  10. The Trial Court found that the Respondent indeed wrote letters to the Appellant, dated 25<sup>th</sup> August 2017 and 30<sup>th</sup> May 2017, asking him to report at Capital Hill Police Station. He did not report. There was no evidence that the Appellant reported back to work, after he failed to report to the Police.
  11. There was no error made by the Trial Court, in its assessment of the evidence placed before it. There was no evidence that the Appellant's contract was terminated by the Respondent constructively, or at all. He alleged he had witnesses, who heard the Respondent asking him to keep away, when he reported back. He did not state why none of the witnesses, was availed to the Trial Court. The Court has not seen any employment records that the Appellant was required to exhibit before the Trial Court, and which legally, ought to have been exhibited by the Respondent. His submission that the matters before the Police were not matters of his contract of employment, is baseless. He was specifically instructed by his Employer to avail himself at the Police Station. He defied the instructions, and neither reported at the Police, or at the workplace. It is always an implied term in a contract of employment, that an Employee shall comply with any lawful instructions issued by his Employer, or persons placed in authority by his Employer. Obedience is similarly an express requirement of the law, under Section 44[4] of the *Employment Act*. Failure to obey instructions results in an act of gross misconduct called insubordination, which the Claimant may well have been dismissed for, summarily. He appears to have been a man on the run, and can only blame himself, for loss of employment. The Court does not find any reason, to interfere with the Judgment of the Trial Court, based on Grounds 1-6 of the Memorandum of Appeal.
  12. The order for costs in favour of the Respondent, while discretionary, does not appear to have been suitable. The Claimant was a General Labourer earning a monthly salary of Kshs 14,786 as at the time of leaving employment. When he gave evidence on 12<sup>th</sup> January 2021, he told the Court that he was a Juakali [informal worker], who had retreated to his rural home in Busia County, after he lost his job. He would be unduly burdened by an order for payment of costs to his former Employer. It is



highly unlikely that he would readily be able to satisfy the order for costs. Although costs follow the event under our civil law, the E&LRC regime is a specialized jurisdiction, designed to encourage the promotion and protection of workers' rights. Orders on costs against blue collar workers, discourage filing of Claims and would in the long term, stifle the advancement of workers' rights. It is important that the employment and labour relations jurisdiction, leaves the door of access to industrial justice, always open to workers. The maxim that costs follow the event, needs to be contextualized.

13. Ground 7 is allowed. There shall be no order on the costs in this Appeal, and in the Trial Court.
14. It is ordered: -
  - a. The Appeal is declined on other Grounds, save Ground No 7.
  - b. There shall be no order on costs in this Appeal, and the Trial Court.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,  
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, THIS 31<sup>ST</sup> DAY OF OCTOBER 2024.**

**JAMES RIKA**

**JUDGE**

