



**Muky's Importers Limited v Gwende (Employment and Labour Relations Appeal E019 of 2022) [2024] KEELRC 2520 (KLR) (18 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2520 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E019 OF 2022**

**AK NZEI, J  
OCTOBER 18, 2024**

**BETWEEN**

**MUKY'S IMPORTERS LIMITED ..... APPELLANT**

**AND**

**NYANJE SULEIMAN GWENDE ..... RESPONDENT**

**JUDGMENT**

1. The Appeal herein was instituted on March 19, 2022 vide a Memorandum of Appeal dated 1<sup>st</sup> March 2022. The appeal was at that point in time expressed to be against the Judgment of Hon. Lesootia Saitabau (Mr.), Principal Magistrate, delivered on 11<sup>th</sup> February 2022 in Mombasa CMC Employment Cause no 990 of 2019.
2. On 22<sup>nd</sup> February 2024, the Appellant filed an Amended Memorandum of Appeal dated 20<sup>th</sup> February 2024 on which the appeal herein is shown to be:-

“Against the Judgment of the Learned Hon. Lesootia Saitabau (PM) delivered at Mombasa on the 11<sup>th</sup> February 2022 in Employment Cause no 990 of 2019 (Mombasa), and against the Judgment of the Learned Hon. Magistrate, Mr. Lesootia Saitabau (PM) signed on 15<sup>th</sup> February 2023 and delivered on 8<sup>th</sup> March 2023 in the same case.”
3. The Appellant filed a record of appeal on 22<sup>nd</sup> February 2024, and sure enough, the said record contained two different Judgments by the trial Magistrate, on Mombasa Chief Magistrate's Court Employment Cause no 990 of 2019:-
  - a. A Judgment delivered on 11<sup>th</sup> February 2022 awarding the Claimant in the said suit a total of ksh 728,662.46/=, costs of the suit and interest at court rates.
  - b. A Judgment signed on 15<sup>th</sup> February 2023 awarding the claimant in the said suit a total of ksh 353,689.20/=, costs of the suit and interest.



4. The Appellant herein, who was the Respondent in the aforesaid suit, has appealed against the said two Judgments.
5. This court's Rules of Procedure do not envision a situation where this court sits to determine an appeal against two Judgments of a subordinate court arising from one suit. The issue of how and why a trial Magistrate wrote and delivered two different Judgments on the same suit, pursuant to a trial thereon, is not before me, and it is not for this court to enquire into such an issue. It has not escaped my attention that the two Judgments were delivered a year apart. Just what happened here."
6. It is clear from the foregoing that there is no proper appeal before me. The following are the orders that recommend themselves to me, in the interest of Justice:-
  - a. The two Judgments of the Hon. Lesootia Saitabau, Principal Magistrate, dated/delivered on 11<sup>th</sup> February 2022 and 15<sup>th</sup> March 2023 respectively in Mombasa Chief Magistrate's Court Employment Cause no 990 of 2019 are hereby set aside.
  - b. There shall be a retrial in Mombasa Chief Magistrate's Court Employment Cause no 990 of 2019 before a Magistrate other than Hon. Lesootia Saitabau, Principle Magistrate.
  - c. The retrial shall be conducted on priority basis.
  - d. Each party shall bear its own Costs of the Appeal.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF OCTOBER 2024**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Judgement 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

