



**Lavington Security Guards Ltd v Mokaya (Appeal E111 of 2023)
[2024] KEELRC 13578 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13578 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E111 OF 2023
DKN MARETE, J
NOVEMBER 27, 2024**

BETWEEN

LAVINGTON SECURITY GUARDS LTD APPELLANT

AND

MISS EVERLYNE KWAMBOKA MOKAYA RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Appeal dated 23rd June, 2023. It is grounded as follows;
 1. The Learned Magistrate erred in law and fact in failing to appreciate and properly evaluate the evidence adduced and thereby rendering judgment that is unsound in principle and not a reflection of the evidence on record.
 2. The learned Magistrate erred in law and in principle in failing to analyse evidence tendered and give reasons for the decision arrived at on each of the prayers allowed in the judgment.
 3. The learned Magistrate erred in law and in fact in making an award of Kshs.409,242.92/= for underpayment which is inordinately high and in disregard to the salary the Respondent earned, the law (wage order) guiding the minimum wages and statutory deductions.
 4. The learned Magistrate erred in law and in fact in making an award for Kshs.516,528.50/= for overtime which is excessive and not supported by law and any evidence.
 5. The learned Magistrate erred in law and in fact in making an award of Kshs.413,222.40/= for resting days and Kshs.87,809.76 for public holidays in absence of evidence to justify that exorbitant high award.



6. The learned Magistrate erred in law and in principle in making an award for Ksh.34,150.13/= (55 days accrued leave) and blatantly disregarding the documentary evidence tendered by the Appellants confirming that the Respondent utilized all her leave days while in employment.
7. The Learned Magistrate erred in law and in fact in failing to appreciate the evidence tendered by the Appellant during the trial to the effect that a dismissal notice was issued and served upon the Respondent therefore one-month salary in lieu of Notice was not tenable in the circumstance.
8. The learned Magistrate erred in law and in fact in awarding Kshs.48,593.07/= for severance pay for 5 years contrary to the law and in the mistaken believe that the Respondent was dismissed on grounds of redundancy.
9. The learned Magistrate erred in law and in fact in failing to appreciate the evidence tendered by the Appellant during the trial to the effect that the Respondent was lawfully dismissed on the basis of desertion therefore, Kshs.16,143.70/= salary in lieu on Notice and Ksh.193,724.40 (12-month salary) compensation was not tenable in the circumstances.
10. The learned Magistrate in law and in fact by ignoring the submissions by the appellants' Advocates and heavily relying on the submissions of the Respondent's Advocate showing outright bias.
11. The learned Magistrate erred in law and in fact by failing to apply the applicable law both statutory and precedents, which were placed before he and ignored the Appellant's case particularly the evidentiary and legal material presented.
12. That recording of evidence and drafting of the judgment by the Learned Magistrate reveals general malaise, lethargy, ineptitude and outright bias.

Reasons wherefore;

- i. That this Appeal be allowed and the judgement/decree of the trial court dated and delivered on 9th June 2023 be overturned, reviewed and/or set aside.
 - ii. Costs of the Appeal be awarded to the Appellant.
2. The Appellant in her written submission dated 22nd February, 2024 raises issue with the judgment by the learned magistrate for failure to evaluate totality of evidence on record. She submit that the judgment only address the procedural aspect of the termination on the Respondent and awarded as prayed in the claim.
 3. The Appellant further submits that her evidence was not considered in totality. The Appellant during the proceedings adduced a certificate of registered post showing that the show cause letter was posted to the Respondent's last known address but this was not recognized or scrutinized by the learned magistrate thereby coming out with a biased judgment. The magistrate failed to recognized and take judicial notice of the fact that registered posts are presumed to have been received three days upon dispatch as long as right address of the recipient had been captured.
 4. The Appellant again fault the decision of the learned magistrate for failure to analyse the evidence tendered and give reasons for the decision at each of the items allowed in the judgment. She merely entered judgment as per claim, barely on finding that she was not afforded an opportunity to be heard. The learned magistrate did not address her mind to the prayers sought specifically and in terms of the evidence tendered at the hearing thus occasioning a miscarriage of justice.



5. In view of the misconduct and misapplication of the law and evidence by the learned magistrate, the entire award by the court was inordinate, excessive, arbitrary and not in any way supported by law and evidence placed before court.
6. The Appellant in the penultimate submits that the learned magistrate erred in law by displaying outright bias and totally failed to grasp the relevant jurisprudence and material evidence that placed before her. This led to a biased judgment that is tainted in general malaise, lethargy, ineptitude, incompetence and outright bias.
7. The Respondent in her written submission dated 28th February, 2024 submits a case of unlawful termination of employment in opposition to the appeal. This was by reciting the fact of the case which she observes displayed the Appellant shoddy approach to issues employment.
8. The Respondent further submits that the appeal was on time and properly instituted and thus the Appellant would not suffer any substantial loss if the decree is executed.
9. Again, she submits that this appeal has no chances of success because the evidence on record was comprehensively evaluated by the trial court in reaching its verdict.
10. The Respondent does not touch on the basis of the appeal. She merely scratches the surface and leaves everything else hanging.
11. I have looked at the respective cases of the parties to this appeal. The Appellant case takes sway. This is because from the onset, the proceedings and judgment of court do not display any seriousness on the part of the learned magistrate. These display a casual approach by the learned magistrate in the record of proceedings and judgment of courts.
12. Like is submitted by the Appellant the judgment of court did not make a determination in tandem with evidence adduced before it. The evidence adduced by the Respondent was bare. It was at times conflicting and unsound. The evidence of the Appellant was more attune to the issues in dispute. The judgment of court was not reflective of the Respondent's case and evidence.
13. Again, I agree with the Appellant that the learned magistrate issued a compound award and did not get out of her way to justify or reason out the award or even judgment. This is not sustainable in prudent judicial decision making.
14. I am inclined to allow the appeal, set aside the award made and order that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 27TH DAY OF NOVEMBER 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Kiptoom instructed by Kiptoom and Company Advocates for Appellant.

Mr. Mwangi instructed by Krongo Maatwa and Company Advocates for the Respondent.

