



**Mars Security Guards Limited v Musa (Appeal E134 of 2023)  
[2024] KEELRC 13546 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13546 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E134 OF 2023  
DKN MARETE, J  
NOVEMBER 27, 2024**

**BETWEEN**  
**MARS SECURITY GUARDS LIMITED ..... APPELLANT**  
**AND**  
**JOSEPH NZAI MUSA ..... RESPONDENT**

**JUDGMENT**

This matter was originated by was of a Memorandum of Appeal dated 17th July, 2023. It seeks the following orders of court.

1. The learned Magistrate erred in law and in fact when she found that the Plaintiff is entitled to two months' salary compensation amounting to Kshs.33,166 and costs of the suit.
  2. The Learned Magistrate erred in law and in fact by failing to evaluate correctly the evidence adduced by the Appellant and consequently arriving at a conclusion that has no legal or factual basis.
  3. The Learned Magistrate erred in law and in fact in finding that the termination of the Respondent was unlawful and unfair when the Respondent was not present at the hearing to prosecute his case.
  4. The Learned Magistrate erred in law and in fact by failing to consider the written submissions of the appellant in arriving at her judgment.
- 2 The Appellant in her written submissions dated 12th March, 2024 submits that the Learned Magistrate erred in law and in fact by finding that the termination of the employment of the Respondent was unfair and unlawful when indeed the Respondent was not present at the hearing and neither presented his case.



- 3 The Respondent's case remained unprosecuted and only the Appellant witness testified and closed her case. The Appellant's testimony made on 17th June, 2020 was that she received a complaint from its clients that the Claimant had been entering into different vehicles at the upper parking of the premises where he guarded and stealing valuable from inside the vehicles. It was the Appellant's further testimony that before she could take any necessary action on the Respondent's gross misconduct and criminal activities, the Respondent tendered his resignation vide a letter dated 20th June, 2020. He also requested that he be paid his terminal dues which was done on 4th July, 2020.
- 4 The Respondent therefore failed to prove a case of unlawful and unfair termination of employment as required of Section 47(5) of the Employment Act, 2007 which burdens him with the duty of such proof of unlawful termination of employment. On this, the Appellant seeks to rely on the authority of **Protus Wanjala Mutike v Anglo African Properties t/a Jambo Mutara Lodge Laikipia [2021] eKLR** where the court observed as follows;
- “It is trite law in evidence that he who asserts must prove this case. No evidence was adduced by the Plaintiff. In such cases the burden of proof lies with whoever would want the court to find in his favor in support of what he claims.”
- 5 This appeal was not defended or at all. It was not prosecuted by the Respondent. He did not file any submissions or in any way prosecute his case.
- 6 I have looked at the various cases of the parties as enshrined in the record of appeal. This is as follows; Answer to the Memorandum of Claim at page 19 – 21, record of appeal, Respondent's witness statement – page 22 – 23. Respondent's list of document – page 24 – 63. Letter of resignation – page 46 Certificate of payment of terminal dues – page 47
- 7 All these tell a tale of an unpleasant employee whose employment was not terminated by his employer. He left employment on his own volition through a resignation letter dated 20th June, 2020. A finding of unlawful termination of employment by the Learned Magistrate was therefore without any factual or legal basis. There was no evidence whatsoever to demonstrate unlawful termination of employment by the Respondent, or at all.
- 8 The appeal must therefore collapsed for want of any supporting evidence. This also goes for all awards made by the Learned Magistrate on the subject. They have no standing in law.
- 9 I am therefore inclined to allow the appeal with orders 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. Sala instructed by Mucheru Law LLP for the Appellant.

No appearance for the Respondent.

