



**Njoki v Chege t/a Jumia Fortify Solutions (Appeal E086 of 2023)  
[2024] KEELRC 13337 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13337 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E086 OF 2023  
DKN MARETE, J  
NOVEMBER 27, 2024**

**BETWEEN**

**CYNTHIA GRACE NJOKI ..... APPELLANT**

**AND**

**HELLEN CHEGE T/A JUMIA FORTIFY SOLUTIONS ..... RESPONDENT**

**JUDGMENT**

1. This matter is originated by way of a Memorandum of Appeal dated 31st May 2023. It seeks the following orders of court;
  1. That the Learned Magistrate erred in law and fact in disallowing and/or dismissing the Application dated 1<sup>st</sup> February 2023 without giving reasons of such a decision.
  2. The Learned Magistrate erred in law and fact by failing to consider the affidavit and comprehensive submissions filed by the Appellant's advocates in support of the application dated 1<sup>st</sup> February 2023.
  3. The Learned Magistrate erred in law and fact by failing to consider the extensive authorities of the High Court, Appellate Court and other Superior Courts on the principles required to guide the Court in allowing or disallowing pleadings filed outside the statutory timelines without leave of court.
  4. The Learned Magistrate erred in law and fact by failing to determine whether the firm of Karanja Otunga & Associates Advocates was properly on record after failing to file and serve their notice of appointment upon the advocate for the appellant, before they filed their documents in court on 13/7/2022.
  5. The Learned Magistrate erred in law and fact by failing to demonstrate any sound legal basis for disallowing and/or dismissing the Application dated 1<sup>st</sup> February 2023.



Reasons Wherefore the Appellant prays to the Honourable Court for orders that:-

1. That the Appeal herein be allowed and the Ruling and all consequential orders emanating from the lower Court disallowing and/or dismissing the Application dated 1<sup>st</sup> February 2023 be set aside and thereby substituted with an Order allowing the Application dated 1<sup>st</sup> February 2023.
2. That the Court do direct the formal proof hearing be heard by a different Magistrate.
3. That the costs of this Appeal be awarded to the Appellant.
2. The Appellant in her written submissions dated 13th November 2023 raises various issues in support of the appeal. It is her submission that it is trite law that every ruling just like a judgment of a court of law in which a suit is defended must include the reasons as to why the ruling or judgment is how it is. In the circumstances of this case, the Learned Magistrate failed to give reasons for her ruling and did not base her ruling on any law or precedent.
3. It is the Appellant's further submission that the Learned Magistrate ought to have given a reasoned ruling and does not have discussion or choice not to do so. Here, she seeks to rely on the authority of *Jacinta Nduku Masai v Leonida Mueni Mutua & 4 Others* [2018] eKLR where the Court held as follows:

Courts are courts of law and as such they are supposed to follow the law. The law as to drafting and preparing of judgments is very clear and specific as to its containing the reasons for the conclusions and determination reached by the judicial officer.

It thus presupposes that in every judgment reasons must be given as to why that decision has been reached by the judicial officer. Where it is found that there were no reasons given as to why the decision made by the judicial officer was reached upon, then that decision must be relooked into.

The judgment violated this cardinal rule of the civil procedure rules, 2010 warranting an interference by this Honourable Court.
4. She caps this by relying on the authority of Order 21 Rule 4 which provides thus;

Judgments or rulings in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.
5. The Respondent opens her written submissions by reciting the cause of events belying the application as follows:-
  2. That the advocates for the respondent then filed a notice of appointment dated 13<sup>th</sup> June, 2022 and later filed grounds of objection dated 13<sup>th</sup> July dated. On the 21<sup>st</sup> of November, 2022 the matter came up in court where the court indicated that the Notice of Appointment by the advocates for the respondent was not on record. The court then directed that the respondent's advocates regularize their position.
  3. That in compliance with courts directions the advocates for the respondent regularized their position and filed the notice of Appointment dated 15<sup>th</sup> December, 2022. On 10<sup>th</sup> of January, 2023 the advocates for the respondent then filed a further reply to the claim. On 1<sup>st</sup> February, 2023 the matter came up for mention but the appellant instead of proceeding to prosecute her case decided to file yet another application seeking to bar the respondent from defending herself from the vexations and frivolous against her.



4. It is clear that appellant herein has no intention of having the matter heard on merit basis as she is aware that she has wrongly sued Hellen Chege. Hellen Chege is neither a shareholder or director of Jumia Fortify Solutions and was only an employee just like the appellant. The appellant ought to have sued her employer and as such should not be allowed to prevent Hellen Chege from defending herself against being wrongfully sued.
7. The application subject of this appeal was made for the sole purpose of denying the respondent her constitutional right to Fair Hearing as contained in Article 50 (1) of the Constitution of Kenya 2010. There is no need to restate the importance of a fair trial as guaranteed by the Constitution. The right to a fair trial remains at the heart of any judicial determination and courts ought to endeavor to protect and uphold the same. It is a cardinal rule and it emanates from the principle of natural justice.
6. In the penultimate the Respondent comes up with the following conclusion;
  1. From the foregoing, it is our humble submission that the appellant's appeal ought to be dismissed with costs. The appellant has never been interested in having her matter heard on merit but clutches on mere technicalities. Her appeal is also bereft of merit.
  2. If the appellant had a solid case against Hellen Chege logic demands that she should have proceeded to fix her claim for hearing and the case determined without further delay.
7. The Respondent's submissions seem to dwell largely on the merits of the claim, the subject matter of the ruling now appealed against. It would be totally inopportune to dwell on the merits of the claim at this stage. The right thing is to look at the merits of the application at hand and subject matter of this appeal and place this for determination. This would in effect lead to a determination of the present appeal.
8. I have looked at the respective cases in the parties in this appeal. A scrutiny of the same comes out in favour of the Appellant. This is because, like is submitted by the Appellant the ruling by the Learned Magistrate was wanting and defective. It lacks the necessary ingredients of a judicial determination of court for lack of the reasons for its conclusion. The Learned Magistrate did not explain the grounds and reasons on which she found the application to be lacking merit. She did not also explain the reasons for her finding(s.)
9. The ruling is outrightly contrary to the law as espoused in Order 21 Rule 4 of the Civil Procedure Rules and therefore has no standing in law and practice. It is not sustainable and must fail.
9. I am therefore inclined to allow the appeal with costs to the Appellant.

**DELIVERED, DATED AND SIGNED THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Miss Wangari holding brief for Njeri Ngujiri instructed by Njeri Ngujiri & Company advocates for the Appellant.

Mr. Njogu holding brief for Karanja instructed by Karanja Otunga & Company Advocates for the Respondent.

