



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Mijengo Investments Limited v Oduor (Appeal E041 of 2024)
[2024] KEELRC 2850 (KLR) (19 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2850 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E041 OF 2024
J RIKA, J
NOVEMBER 19, 2024**

BETWEEN

MIJENGO INVESTMENTS LIMITED APPELLANT

AND

CLAUDIO ODUOR RESPONDENT

(An Appeal from the Judgment and Decree of the Hon. Priscilla Wamucii Nyota, at Nakuru Chief Magistrate's Court, dated 4th October 2023, in MCE⁶LRC No. 220 of 2022)

JUDGMENT

1. The Respondent in this Appeal, initiated the Claim before the Trial Court, for unfair and unlawful redundancy.
2. The Trial Court awarded the Respondent damages for unfair termination, at Kshs. 198,140; underpayments at Kshs. 129,663; notice at Kshs. 5,614; unpaid annual leave at Kshs. 23,500; costs; and interest at 12% per annum.
3. The Appellant filed this Appeal, advancing 13 Grounds of Appeal, contained in the Memorandum of Appeal, dated 29th May 2024.
4. The Grounds, some which appear repetitious, are that, the Trial Court erred by: -
 1. Declaring that termination was unfair.
 2. Declaring that termination was procedurally unfair.
 3. By failing to address notice of termination to the Labour Office, dated July 6, 2022.
 4. By failing to address notice of termination to the Respondent dated July 7, 2022, and cheque dated July 7, 2022.



5. By ignoring meetings held between the parties and involving other Employees, leading to termination.
 6. By shifting the burden of proof to the Respondent.
 7. By finding that the Appellant did not establish redundancy selection criteria, while this was not in issue.
 8. By awarding excessive compensation for unfair termination, equivalent of 10 months' salary.
 9. By shifting the burden of proof on unpaid leave, to the Appellant.
 10. By awarding exorbitant underpayments.
 11. By awarding house allowance, which was not provided for in the Regulations of Wages
 12. By awarding excessive terminal dues.
 13. By making adverse findings against the weight of the evidence.
5. Parties agreed on July 25, 2024, to have the Appeal considered and determined, on the strength of their written submissions. The Appellant confirmed filing and service of its submissions at the last mention before the Court, on October 3, 2024. The Respondent was granted another 10 days to file and serve his submissions.
 6. The Respondent's evidence before the Trial Court was that he worked for the Appellant as an Assistant Sawmill Sawyer, from August 2013, to July 7, 2022, when the Appellant, terminated his contract, on account of redundancy.
 7. He alleged that on July 7, 2022, he was instructed by the Appellant to pass the office after work, and collect his letter. It was a letter of termination. According to him, the Appellant did not follow Section 40 of the *Employment Act*, which governs termination on account of redundancy. He was underpaid. He worked on all public holidays, without compensation. He worked on Saturdays for 5 hours, instead of 4 hours given under his contract. He never went on annual leave. He was denied severance pay and notice pay, upon termination.
 8. In his evidence, the Respondent told the Trial Court that he was paid Kshs. 145,000 by the Appellant. He told the Court that he did not have evidence on overtime. The documents were with the Appellant. He told the Trial Court that he received a monthly salary of Kshs. 15,000, which was an underpayment. His contract, he stated, provided him a daily rate of Kshs. 750. He did not have his employment contract.
 9. Accountant Mathew Munene, told the Trial Court that the Appellant was experiencing challenges in the flow of business. The Appellant consulted the Respondent. 3 meetings were held between the parties, leading to termination. The reason for redundancy was explained. Employees were paid terminal dues. They did not work on public holidays. They did not work excess hours. The Respondent was issued his certificate of service and did not lodge any complaint. Munene did not have minutes of the consultative meetings. The letter dated July 7, 2024 was not a redundancy notice. He was not aware if redundancy notice issued. The Appellant's Procurement Officer, Joseph Nyoike, confirmed that there were no minutes of consultative meetings, leading to termination.
 10. From this evidence, the Trial Court correctly found, that there were no consultative meetings, preceding termination. The Appellant did not avail any minutes of the meetings it allegedly held. It was correctly held that the letter dated July 7, 2022, was not a redundancy notice. Munene expressly



conceded on cross-examination, that the letter was not a redundancy notice, and he was not aware if a redundancy notice issued. Selection criteria is one of the issues under Section 40, that would have been dealt with through consultations. It is incorrect that the Trial Court erred, by broaching the subject of selection criteria. It was open to the Court to enquire into all the issues, that are meant to be addressed, through a consultative platform. The issue was whether redundancy was in conformity with the redundancy law, under Section 40 of the Employment Act. The Trial Court did not err, in finding that the letter dated July 7, 2022, issued on the same date as the termination letter. There were adequate reasons to justify the conclusion, that the redundancy process embraced by the Appellant, was in obvious departure from the minimum standards of fair and lawful redundancy, prescribed by Section 40 of the Employment Act.

11. The Trial Court is not shown to have been in error, by granting compensation to the Respondent, at the equivalent of 10 months' salary, for unfair termination, at Kshs. 198,140. The Trial Court had a statutory discretion to grant compensation, to a maximum of 12 months' gross salary. What was granted was neither inordinately high, nor low, to warrant interference by this Court on Appeal. Grounds 1, 2, 3, 7, and 8 of the Memorandum of Appeal, revolving around the procedure, have no merit and are declined.
12. The letter dated July 7, 2022, and the accompanying cheque for the sum of Kshs. 145,000, did not constitute a valid agreement between the parties for termination of employment, as alleged by the Appellant. The letter was signed by the Respondent in acknowledgement of its receipt, and nothing more. It was never indicated to be an agreement, discharging the Respondent from its legal liability, upon termination of the Claimant's contract. Ground 4 fails.
13. Ground 6, that the Trial Court erred by shifting the burden of proof, to the Respondent, is clearly without foundation. The Respondent filed the Claim at the Trial Court, and it was his burden from the inception, to establish his Claim, to the required standard. Why should the Appellant complain that the Trial Court erred in shifting the burden of proof to the Respondent, who initiated the proceedings? Ground 6 is declined.
14. Ground 9 also concerns the burden of proof, specifically on the prayer for unpaid leave. The Appellant alleges that the burden was this time around, shifted to it by the Trial Court, but there is no support for this, from the trial proceedings. The Trial Court found that annual leave had been paid by the Appellant, but paid based on the underpaid monthly rate. Nowhere was the Appellant, asked to prove payment of annual leave. The Court adjusted the monthly salary, with the effect that the Appellant was found to owe the Respondent, annual leave at Kshs, 23,500. Ground 9 is declined.
15. The Trial Court did not misdirect itself, by adopting The General Wages Order 1982, granting housing allowance at a minimum of 15% of the basic salary. The Respondent gave details of pay slips showing underpayment of salary, over a specified period. The grant of an order for underpayment of salaries, was based on a statutory instrument, and there was no error made by the Trial Court. Grounds 10 and 11 are declined.
16. Ground 12, alleging that terminal dues awarded were exorbitant and disproportionate in the circumstances, is not well-founded in law and fact, and is declined.
17. The last Ground, No. 13, that the decision was against the weight of the evidence, is generalized. It is not based on the proceedings on record.
18. The Trial Court is to be commended for its careful evaluation of evidence, and for anchoring its decision on the redundancy authorities from the Superior Courts, Kenya Airways Limited v. Aviation



Ɖ Allied Workers Union of Kenya Ɖ 3 Others [2014] eKLR and *Francis Maina Kamau v. Lee Construction* [2014] eKLR.

19. This Appeal has no merit.

It Is Ordered: -

- a. The Appeal is declined.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 19TH DAY OF NOVEMBER 2024.

JAMES RIKA

JUDGE

