



**Ouru v Mibawa Suppliers Limited (Employment and Labour Relations Appeal E054 of 2021) [2023] KEELRC 197 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 197 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E054 OF 2021**

**J RIKA, J**

**JANUARY 31, 2023**

**BETWEEN**

**GEOFFREY NYAMBARIGA OURU ..... APPELLANT**

**AND**

**MIBAWA SUPPLIERS LIMITED ..... RESPONDENT**

*(An Appeal from the Judgment delivered on 15th April 2021  
by Hon. L.B. Koech [Mrs.] in P.M. C.M.E.L No 126 of 2019)*

**JUDGMENT**

*Rika J*

*Court Assistant: Emmanuel Kiprono*

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*Mogaka Nyantika & Company Advocates for the Appellant*

*Magare Musundi & Company Advocates for the Respondent*

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1. The appellant initiated a claim against the respondent at the trial court, where he sought compensation for unfair termination, and an assortment of terminal benefits.
2. The trial court pronounced its judgment on April 15, 2021, finding that termination was fair, based on valid reason, and that the appellant was only entitled to notice of 1 month at Kshs 25,000; salary for the month of February 2018 at Kshs 25,000; unremitted of NSSF deductions at Kshs 8,400; and certificate of service. The appellant was awarded costs and interest.
3. He filed a memorandum of appeal on May 14, 2021, listing 3 grounds of appeal, which are: -



- a. The learned magistrate erred in law and fact, by concluding that the appellant was dismissed for valid reasons while the evidence on record shows no procedure for termination of employment was followed.
  - b. The learned magistrate misdirected herself in ignoring the principles applicable and relevant authorities cited in the written submissions presented and filed by the appellant.
  - c. The learned trial magistrate erred in not sufficiently taking into account all the evidence presented before her in totality, and in particular, the evidence presented on behalf of the appellant.
4. It is proposed by the appellant that: -
- a. The lower court's decision on fair termination be set aside.
  - b. The court be pleased to analyse the evidence, submissions on record, and make fresh findings as it may deem fit.
  - c. The respondent to meet the costs of appeal.
5. Parties agreed to have the appeal considered and determined on the strength of the record of appeal and closing submissions. They confirmed that the record of appeal and the submissions are in order, at the last mention before the court, on December 2, 2022.

#### **The court finds**

6. The trial court did not give adequate explanation on its conclusion that the respondent had established valid reason, to justify termination. The trial court states in the judgment that, 'I find the claimant's response on this, mere denials and the respondent in my view was right.'
7. It was for the respondent to establish the reasons in justifying termination under sections 43 and 47[5] of the *Employment Act*. The respondent alleged that the appellant engaged in work outside his assigned duty, and that he and others defrauded the respondent.
8. In his evidence before the trial court, the respondent's witness alleged that the appellant had detoured to Memusi School, while he and his compatriots, had been sent to work at Uthiru. The respondent's witness did not have evidence of the instructions, issued to the appellant. He was categorical that he had nothing to show, that he sent the appellant to Uthiru. He was not himself at Memusi School. He relied on hearsay evidence, testifying that he was told by an unknown person, that the appellant was at Memusi School. He told the court that the person who saw the appellant at Memusi, should have been called as a witness. The person was never called. The court would agree with the appellant that the respondent did not establish valid reason, to justify termination.
9. The trial court's judgment is silent on procedure. While the trial court discussed section 45 of the *Employment Act*, it does not appear to have done so, with procedure under section 41 of the *Employment Act*. There was no hearing granted to the appellant. The witness for the respondent told the trial court that. 'I terminated his services, but cannot remember the time. We did not have a meeting to consider his allegations. I did it based on previous warnings written and verbal.' The witness was clear that there was no hearing, as prescribed under section 41 of the *Employment Act*.
10. Fair procedure does not allow termination to take place, based merely on previous warnings, verbal and written. There must be specific charges, followed by a hearing, preceding termination.



11. The letter of warning dated January 29, 2018 was stated to be first warning. When did the second and the last warning issue, before summary dismissal? the respondent did not even issue the letter of termination on record to the appellant. The witness for the respondent explained that the appellant was first dismissed, and later, the letter of termination prepared, just for the record. The procedure was completely out of order.
12. The court would find that termination was unfair on account of both lack of valid reason, and lack of fair procedure. It did not meet, the statutory threshold of fair termination, under sections 41, 43, 45 and 47[5] of the *Employment Act*.
13. The appellant worked for the respondent as a technician, from the year 2013 to 2018. His contract of January 1, 2018, states that the appellant would serve for 2 more years, ending December 31, 2019. He had a written warning, close to the date of termination. His contract had been renewed from the year 2013. There were no outstanding complaints about his performance.
14. He merits and is granted compensation for unfair termination equivalent of 7 months' salary, at Kshs 125,000.

**In sum, it is ordered**

- a. The appeal is allowed.
- b. It is declared that termination was unfair for lack of valid reason and fair procedure.
- c. The respondent shall in addition to award made by the trial court, pay to the appellant compensation for unfair termination, equivalent of his 7 months' salary at Kshs 175,000.
- d. Costs of the appeal to the appellant.
- e. Interest allowed at court rate, from the date of judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,  
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31<sup>ST</sup>  
DAY OF JANUARY 2023**

**JAMES RIKA**

**JUDGE**

