



**Mega Garmets Industries (K) Ltd v Orori (Appeal 18 of 2022)
[2022] KEELRC 1732 (KLR) (24 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1732 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL 18 OF 2022
B ONGAYA, J
JUNE 24, 2022**

**BETWEEN
MEGA GARMETS INDUSTRIES (K) LTD APPELLANT
AND
EDGAR ODOYO ORORI RESPONDENT**

*(Being an appeal from the whole judgment delivered on 18.02.2022
by Honourable Mr. D.O. Mbeja, Principal Magistrate in ELRC
No. 331 of 2020 in the Chief Magistrate's Court at Mombasa)*

JUDGMENT

1. The claimant filed the memorandum of appeal on March 1, 2022 through Opolo & Opolo Advocates and upon the following grounds of appeal:
 - 1) The learned Honourable Magistrate erred in law and fact in finding that the respondent was unfairly terminated.
 - 2) The learned Honourable Magistrate erred in law and fact in finding that the respondent was terminated despite the weight of evidence showing he was engaged on a fixed term contract.
 - 3) The learned Magistrate erred in law and misdirected himself on the law relating to fixed term contracts.
 - 4) The learned Honourable Magistrate erred in law and fact in holding that the respondent had established his case on a balance of probability oblivious of the documentary and oral evidence on record.
2. The appellant prayed for orders:
 - 1) The judgment of the learned Honourable Court delivered on February 18, 2022 be set aside.



- 2) The appellant be awarded costs of the appeal.
3. The appellant filed the submissions on May 19, 2022. The respondent filed the submissions on June 8, 2022 through C. Masinde & Company Advocates. Parties relied on the submissions as filed and no oral highlights were made. The background to the appeal is as follows.
4. The respondent (as claimant) filed a memorandum of claim on August 10, 2020 in the Chief Magistrate's Court at Mombasa and prayed for judgment against the respondent for:
 - a) A declaration that termination of the respondent's employment was unfair and unlawful.
 - b) The appellant to pay the respondent Kshs.319, 984.50 (being 12 months' compensation Kshs. 187, 308.00; notice payment Kshs.15, 609.00; severance payment Kshs.7, 804.50 x 5 years =Kshs.39, 022.50; salary arrears from August 2020 to November 5, 2020 till expiry of contract Kshs.15, 609.00 x 5 months=Kshs.78, 045.00).
 - c) Costs of the claim plus interest thereon at Court rates.
 - d) Any other relief Court deems fit to grant.
5. The claimant pleaded that the respondent employed him as a general worker from December 2015 without a break until July 4, 2020 when the contract of service was terminated. The termination was by the letter dated July 4, 2020 despite having a valid contract expiring on November 5, 2020 and the termination was on grounds of redundancy. He initially earned Kshs.15, 609.00 per month and he worked diligently. He alleged the termination was wrong, abrupt and in total contravention of relevant labour laws as the reason and procedure breached section 40 of the *Employment Act*, 2007. Further the claimant was not given an opportunity to defend himself in a transparent and democratic forum.
6. The memorandum of response was filed on August 26, 2020 and the appellant prayed that the suit be dismissed with costs. The appellant urged that the respondent was employed under fixed term contract with distinct start and end dates and the last such contract was running from January 6, 2020 to July 4, 2020. At expiry of the contract term the respondent was notified that the contract would not be renewed. The appellant's further case was that the appellant received the documents filed for the respondent in the lower court and noted that the claimant had forged the last of the term contracts by indicating that the last contract had been issued on January 6, 2020 to end on November 5, 2020 and the matter was reported to the police. It was the appellant's case that upon expiry of the contract in July 2020 all its employees' subsequent contracts were as exhibited samples drawn in both English and Swahili but the respondent had no such contract.
7. The 1st ground of appeal is that the trial Court erred in law and fact in finding that the respondent was unfairly terminated. It is submitted that at the hearing the appellant demonstrated that it had not issued a term contract beyond July 4, 2020 a fact collaborated with the claimant's own documents as exhibited in Court. For the respondent it is pleaded that the appellant denied issuing the claimant the contract dated January 6, 2020 and ending on November 5, 2020. It was the appellant's case that the particular contract exhibited for the respondent (claimant) was a forgery. The Court has perused the trial Court's judgment and nowhere does the Court resolve the issue other than stating thus, "This Court is satisfied that the claimant has established a prima facie case against the respondent on a balance of probabilities all circumstances of the case considered. The respondent did not adduce any cogent evidence to challenge the evidence so far adduced by the claimants. The above notwithstanding, I am satisfied that the claimant was not declared redundant and on the same wavelength I find no merit in an award for service pay. I also find no merit in the claim for salary arrears from August 2020 to November 5, 2020. Having all the above into consideration I find a case of wrongful, unfair and



unlawful termination of employment of the claimant by the respondent and the claimant is entitled to the reliefs sought in the Memorandum of Claim guided by the evidence so far on record limited to 12 months' compensation for unfair and unlawful termination coupled with notice pay. Directed by the circumstances obtaining in the instant case, the evidence so far adduced together with the submissions filed, judgment is entered in favour of the claimant against the respondent for an award of Kshs. 202, 917 all the circumstances of this case considered. The above award shall carry costs of the suit plus interest at court rates from the date of filing the suit.”

8. The Court has revisited the evidence on the record of the trial Court. The real dispute is, which of the two fixed term contracts, each exhibited for the respective parties, should prevail as the true or genuine last fixed term contract? The respondent has exhibited a contract dated 06.01.2020 stating that it is for 10 months from January 6, 2020 to November 5, 2020. It bears the stamp by the respondent but it is not signed at all and the copy exhibited does not also show that the claimant signed it as the last lines of that signature page appear chopped off during photocopying.
9. On the other hand, the appellant exhibited the contract dated January 6, 2020 stating that it was from January 6, 2020 to July 4, 2020 being for 6 months (but not expressly stated as such). It bears the appellant's stamp and it is duly signed for the appellant and the respondent. On the face of the two documents and without delving into the veracity of the signatures as belonging to the respondent and the appellant's representative, it obviously begins to appear that the last contract as exhibited for the appellant is more genuine and valid than the one exhibited for the respondent which bears no purported signature of either party.
10. There is also more evidence that was before the Court that would help to resolve the issue. The respondent exhibited the letter dated June 2, 2020 being a reminder to him that his contract of service would lapse on July 5, 2020 and further stating that the management may not renew it depending on the operational demand. The letter was stamped for the appellant without a signature but it appears signed for the respondent (claimant). That letter stated that the appellant had a discretion to renew or not to renew the respondent's fixed term contract ending on July 5, 2020. The respondent also exhibited the letter by the appellant dated July 4, 2020 on expiry of contract. The Court observes that must be the letter by which the respondent pleaded had terminated the contract of service. That letter stated that the contract of service was due to expire on July 4, 2020 and within the appellant's discretion the respondent would not be engaged by the appellant on a new contract so that his last working day would be July 4, 2020. The Court observes that the respondent did not plead or by evidence establish any other circumstances of the termination other than the exhibited letters. There is no evidence that he protested to contents of the letters of July 4, 2020 and the earlier letter of June 2, 2020. The Court therefore finds that as submitted and urged for the appellant the weight of evidence was that the claimant's last fixed term contract was lapsing on or around July 4, 2020 and the contract of service terminated by reason of effluxion of the agreed fixed tenure and nothing else. The trial Court while correctly finding that there was no redundancy, it erred when it proceeded to find that the termination was unfair whereas it had been on account of lapsing of the fixed term contractual tenure. By that finding, the Court finds that all the other grounds of appeal are merited and are determined in favour of the appellant accordingly.
11. Turning to the award of the maximum compensation, the Court returns that there being no redundancy and the contract having been found to have lapsed by effluxion of contractual tenure, wrongful, unfair and unlawful termination of the contract of service as found by the trial Court does not even begin to emerge. As submitted for the appellant, the trial Court erred in finding that there had been unfair and unlawful termination and in view of the evidence that was on record.
12. In conclusion, the appeal is hereby allowed with orders:



- 1) The judgment of the trial Honourable Court delivered on February 18, 2022 is set aside.
- 2) The appellant is awarded costs of the appeal.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 24TH JUNE, 2022.

BYRAM ONGAYA

JUDGE

