



**Kenfreight (EA) Limited v Nguti (Civil Application 18 of 2016)
[2018] KESC 61 (KLR) (24 September 2018) (Ruling)**

Kenfreight (EA) Limited v Benson K Nguti [2018] eKLR

Neutral citation: [2018] KESC 61 (KLR)

**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
CIVIL APPLICATION 18 OF 2016
DK MARAGA, CJ & P, JB OJWANG, SC WANJALA, N NDUNGU & I LENAOLA, SCJJ
SEPTEMBER 24, 2018**

BETWEEN

KENFREIGHT (EA) LIMITED APPLICANT

AND

BENSON K NGUTI RESPONDENT

The prospect of an inconsistency between two judgments of the Court of Appeal warrants an appeal to the Supreme Court as a matter of general public importance.

Reported by Kakai Toili

***Appeals** – appeals from the Court of Appeal to the Supreme Court—certification of appeals—criteria to certify appeals—general public importance—where there was a prospect of inconsistency between two judgments of the Court of Appeal—whether the prospect of inconsistency between two judgments of the Court of Appeal warranted an appeal to the Supreme Court as a matter of general public importance.*

Brief facts

The Respondent filed a suit in the Trial Court claiming unfair termination of employment. The Respondent’s claim was upheld by the 1st Appellate Court. The 1st Appellate Court held that the said termination of employment was unfair even though the Applicant complied with section 35 of the Employment Act, 2007 by paying one month’s salary in lieu of notice and that the Respondent was entitled to 12 months’ salary. The Applicant sought leave and certification to lodge an appeal against the 1st Appellate’s Court decision to the Court but the Application was declined on the ground that no matter of general public importance warranting further appeal had been shown. Aggrieved by the decision, the Applicant filed the instant Application.

Issues

- i. Whether the prospect of inconsistency between two judgments of the Court of Appeal warranted an appeal to the Supreme Court as a matter of general public importance.



Held

1. The particulars of inconsistency between the Appellate Court's decisions in *CMC Aviation Ltd. v. Mohammed Noor*, Nairobi Civil Appeal No. 199 of 2013 and in the Applicants case at the 1st Appellate Court would only be fully evinced upon a hearing of the intended appeal. The prospect of inconsistent determinations in relation to the law of employment would affect the process of application of the law and would have a bearing on the interests of members of the public. The instant matter to fall within the terms of article 163(5) of the Constitution. The prospect of inconsistency in two different judgments justified a hearing.

Application allowed

Orders

- i. *Applicant to file an appeal in the Court within 14 days of the date of the Judgment.*
- ii. *No order as to costs.*

Citations

Statutes

1. Constitution of Kenya, 2010
2. Employment Act

Advocates

None mentioned

RULING

1. Upon reading the motion for review of the Court of Appeal's decision of 14 April 2016 dismissing the applicant's prayer for leave to bring an appeal before the Supreme Court, together with the accompanying affidavit of Mr. B.O. Ogajas;
2. Upon taking note that the respondent had, on 12 June 2013 filed Cause No. 146 of 2013 in the Employment and Labour Relations Court claiming unfair employment-termination, and seeking a declaration of nullity of the same, asking for reinstatement, and also claiming salary payment for the period of termination;
3. Upon taking note that the respondent's claim was upheld, and again sustained by the Appellate Court in Civil Appeal No. 31 of 2015 on 11 March 2016;
4. Upon noting that the Court of Appeal held the said termination of employment to have been unfair, even though the applicant did comply with s.35 of the Employment Act, 2007 by paying one month's salary in lieu of notice, and that the respondent was instead entitled to 12 months' salary, by virtue of Sections 43, 45 and 49 of the said Act; and
5. Upon taking note that the applicant sought leave and certification to lodge an appeal in the Supreme Court, but the application was declined on the ground that no matter of general public importance warranting further appeal had been shown;
6. The Court has considered the question at the core of the application, namely, that the Appellate Court's decision was not guided by the reasoning and determination in that Court's earlier decision in *CMC Aviation Ltd. v. Mohammed Noor*, Nairobi Civil Appeal No. 199 of 2013.
7. IT is clear to this Court that the particulars of inconsistency between the Appellate Court's decisions in the two cases would only be fully evinced Upon a hearing of the intended appeal.



8. Considering that the prospect of inconsistent determinations in relation to the law of employment would affect the process of application of the law, and would have a bearing on the interests of members of the public, we find this matter to fall within the terms of Article 163(5) of the Constitution.

	Orders	Reasons
1	The application of 14 July 2016 is allowed.	The prospect of inconsistency in two different judgments justifies a hearing.
2	The applicant shall file an appeal in this Court within 14 days of the date hereof.	It is proper to allow some time for lodgment of appeal.
3	There shall be no order as to costs.	

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2018.

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D.K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

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J.B. OJWANG

JUSTICE OF THE SUPREME COURT

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S.C. WANJALA

JUSTICE OF THE SUPREME COURT

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N.S. NJOKI

JUSTICE OF THE SUPREME COURT

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I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR, SUPREME COURT

