



**EpcO Builders Ltd v Lukunga (Appeal E140 of 2024)
[2025] KEELRC 2457 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2457 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E140 OF 2024
NJ ABUODHA, J
SEPTEMBER 17, 2025**

BETWEEN

EPCO BUILDERS LTD APPELLANT

AND

MORRIS LUKUNGA RESPONDENT

(Being an appeal from the Judgment and decree of Hon. Selina N. Muchungi delivered on 5th April, 2024 in CMEL NO. E1713 of 2021)

JUDGMENT

1. Through the Memorandum of Appeal dated 7th May, 2024 the Appellant appeals against the judgement of Hon. Selina N. Muchungi delivered on 5th April, 2024 in CMEL No. E1713 of 2024. The Appeal was based on the grounds among others that:
 - a. The learned trial Magistrate erred in law and in fact and misdirected herself in awarding the respondent house allowance
 - b. The learned trial Magistrate erred in law and in fact and misdirected herself in awarding the respondent house allowance of Kshs. 546,975
2. The learned trial Magistrate erred in law and in fact in failing to take into account the appellant's submissions.
3. The appellant therefore asked the court among others to set aside the judgment of the trial Court and in place thereof find that the respondent's salary was inclusive of house allowance
4. The Appeal was disposed of by written submissions.



Appellant's Submissions

5. The Appellant's Advocate Mr. Madogo submitted among others that the appellant was not entitled to house allowance on the grounds, first that according to Regulation of Wages LN 112 of 2017, a machine operator was to be paid a minimum wage of Kshs. 17, 447.15. The appellant was however paying the respondent a total of Kshs. 19,500 which not only meant the house allowance was catered for but the respondent was receiving a consolidated pay. The consolidation was corroborated by the appellant's witness in his witness statement at page 22 of the Record of Appeal. In this regard, counsel relied on several authorities which included the case of Mwaura v Gelmax Power Solutions [2024]KEELRC 1517 (KLR) and Sani Orine v. Hiprora Business Solutions (EA) Ltd [2017] eKLR.
6. Counsel further submitted that at no point during his employment did the respondent raise the issue of house allowance.
7. Ms. Chumo, Counsel for the respondent on the other hand submitted significantly on the issue of termination of the respondent however there was no cross-appeal to clothe the court with jurisdiction to interrogate the finding of the trial court on this issue. The only issue subject of this appeal and which the court is called upon to decide is whether the trial court was justified in awarding the respondent house allowance. The respondent seem not to have submitted on this issue at all.
8. House allowance is a statutory requirement under section of 31 the *Employment Act*. The Appellant has contended that it paid the respondent a sum of Kshs. 19,500 yet the gazetted minimum wage for a machine operator was 17,447.15. The appellant was therefore paying the claimant Kshs. 2,052.85 extra. Industry practice for minimum wage is usually 15% of the gross pay which in this case would be Kshs. 2,617.07. (15% of 17,447.15). The amount if at all was inclusive of house allowance was therefore less by Kshs. 565.
9. The Court has reviewed and considered the judgment of the trial court on the matter and is of the view that it was justified in awarding the respondent house allowance since the payslip issued to the respondent did not state that the payment was inclusive of housing allowance. The allegation by the appellant that the payment was over and above the gazetted minimum wage for a machine operator hence included house allowance is plausible and if so the housing allowance was underpaid by Kshs. 565 as observed above. The appellant is therefore entitled to this difference for the period claimed and as awarded by the trial court. That is to say the appellant is entitled to Kshs. 105,655/-
10. The judgment of the trial court for Kshs. 546,975/- on account of house allowance is therefore set aside and replaced with a judgment for Kshs. 105,655/-. The appeal therefore succeeds to that extent.
11. The appeal being partially successful, each party shall bear their own costs of the appeal.
12. It is so ordered.

DATED AT NAIROBI THIS 17TH DAY OF SEPTEMBER, 2025

DELIVERED VIRTUALLY THIS 17TH DAY OF SEPTEMBER, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

