



Kamtix Cleaners Limited v Odhiambo (Employment and Labour Relations Appeal E219 of 2024) [2025] KEELRC 2475 (KLR) (18 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2475 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
EMPLOYMENT AND LABOUR RELATIONS APPEAL E219 OF 2024**

**K OCHARO, J
SEPTEMBER 18, 2025**

BETWEEN

KAMTIX CLEANERS LIMITED APPELLANT

AND

LILIAN ATIENO ODHIAMBO RESPONDENT

JUDGMENT

Background

1. Contending that she was at all material times an employee of the Appellant, who was unfairly dismissed from her employment at its initiative, the Respondent sued the Appellant in the aforementioned court, seeking both declaratory and compensatory remedies. The Appellant resisted the Respondent's claim, denying her cause of action against it and her entitlement to the reliefs sought.
2. After considering the parties' respective cases, the trial Court, in its judgment delivered on 12/09/2024, found in favour of the Respondent, holding that the termination of her employment was unfair and granted her all the reliefs sought in her statement of claim.

The Respondent's case before the trial court

3. It was the Respondent's case that she first came into the employment of the Appellant on or about 1st September 2017 as a cleaner. She worked continuously until 6th January 2021. Her monthly salary was Kshs. 11,000.
4. On reporting to work on 6th January 2021, the Respondent was denied her work uniform and directed to collect a letter from the Respondent's office at Ganjoni. Subsequently, she was issued a termination letter dated 10th October 2020. Between the date of the termination letter and when it was issued to him, she worked uninterruptedly.



5. She further contended that at all material times, she was paid below the prescribed minimum wage of KShs. 13,572 under the Regulation of Wages [General Amendments] Order 2018.
Additionally, she was never paid a house allowance, and was not allowed to enjoy his annual leave.
6. She contended that the termination of her employment was without any lawful reason given, without notice, and without her being accorded a hearing.
7. The Respondent asserted that by reason of the premises, she was entitled to the following dues:
 - a. Payment in lieu of notice (1 month's salary)Kshs. 13,572.90/=
 - b. Payment in lieu of leave 2018, 2019 & 2020 (63 days x 452.43 per day)Kshs. 28,503.09/=
 - c. Outstanding house allowance May 2018 - December 2020 (15% x 13,572.90/=) x 32 months.....Kshs. 65,149.92/=
 - d. Underpayments (May 2018 - December 2020) 2,572.90 x 32 months.....Kshs. 82,332.80/=
 - e. Compensation for damages for unfair termination (13,572.90/= x 12 months)Kshs. 162,874.80/= Total Kshs. 352,433.51/
 - f. Certificate of Service.
 - g. Costs.

Appellant's case before the trial court

8. The Appellant, through its pleadings and the evidence of its witness, asserted that its core business was offering professional cleaning services to clients who contracted it for the service. Regarding the subject dispute, it was outsourced by the Kenya Commercial Bank, Mvita Branch. The Respondent was assigned to serve there. The contract commenced on 1st September 2017.
9. The Respondent was employed under a written contract of employment, which contract she executed freely, thus binding herself to the terms and conditions of the contract.
10. It was asserted that, according to the employment contract, the Respondent was to serve a probationary period of six months from the date of employment. This period could be extended at the sole discretion of the Appellant if her performance was unsatisfactory during the initial probation.
11. A one-week's notice, by either party, would terminate a contract of employment of an employee on probation.
12. The Appellant asserted that the last documented extension of the probationary period was in September 2019. The extension was agreed upon between the Appellant and the Respondent.
13. The termination of the Claimant's employment was fair, in accordance with her contract of employment and the law.
14. The Appellant further asserted that the Respondent did not provide services continuously as claimed, stating her services were never engaged during the entire period alleged. Her services were sporadic and irregular. The engagement depended on the existence of a third-party contract, and the employment contract expressly provided for termination, which was lawfully exercised.
15. She earned a monthly salary of Kshs. 12,000 in line with the Regulation of Wages (General) (Amendment), hence was not underpaid.



The Judgment by the Lower Court

16. After reviewing the parties' respective evidence and submissions by their counsel, the learned trial Magistrate entered judgment in favour of the Respondent against the Appellant. The learned trial Magistrate found that the Respondent was summarily dismissed from employment. Further, the Respondent was dismissed unfairly as no reason was given for her termination. The reliefs sought were merited.

The Appeal

17. Dissatisfied with the Judgment of the lower Court, the Appellant filed the instant appeal, setting forth the following grounds;
 1. The learned trial Magistrate erred in law and in fact by not appreciating that the Respondents' contract with the Appellant was conditioned on the award of annual cleaning tenders from the would-be principals (The Kenya Commercial Bank Ltd), thus drawing wrong findings and inferences.
 2. The learned Magistrate erred in law and fact by failing to appreciate that a lawful explanation was issued for the termination of cleaning services by the Appellant.
 3. The learned trial magistrate erred in law by granting all the reliefs sought in the claimants' statement by claim without reason, logic, basis and/or ground to the Appellants' detriment.

Appellant submissions

18. The Appellant submitted that the Letter of Appointment dated 1st September 2017 placed the Respondent on probation, which could be extended. A subsequent contract dated 1st September 2019 expressly placed her on a one-year probationary period, terminable without notice. The Respondent freely signed and accepted these terms, and there was no evidence of coercion, fraud, or undue influence. The trial court erred by disregarding the explicit contractual provisions and reinterpreting them contrary to the principle affirmed in *Vice-Chairman & Managing Director v R. Varaprasad & Others* [2003] LLR 707 (SC) to the effect that courts should not rewrite contracts.
19. Further reliance was placed on *Commercial Bank Limited v Kenya Grange Industries Limited* [2017] eKLR, where the court held that courts should give effect to the plain terms of written contracts and not rewrite them.
20. The Appellant further submitted that the Respondent's termination was lawful, as she was on probation under the 2019 contract. Section 42 of the *Employment Act* excludes probationary contracts from the procedural safeguards in Section 41. Reliance was placed on the case of *Danish Jalang'o and John Muthomi Mathiu v Mastermind Tobacco (K) Ltd* [2018] eKLR, where it was held that probationary employees cannot expect the protections afforded to confirmed staff under sections 43 and 45.
21. The Appellant argued that the Respondent's employment was tied to its term contract with KCB Bank for cleaning services. When that engagement ended, the Respondent's employment lapsed by effluxion of time. Citing the case of *Amatsi Water Services Company Limited v Francis Shire Chachi* [2018] eKLR and *Bernard Wanjohi Muriuki v Kirinyaga Water & Sanitation Company Limited & Another* [2012] eKLR, the Appellant emphasised that fixed-term contracts expire automatically unless expressly renewed, and courts cannot impose renewal or add obligations not agreed by the parties.



22. On reliefs sought, the Appellant stated that the Respondent was not entitled to one month's paying lieu of notice as termination occurred lawfully during probation. She is therefore also not entitled to compensation for unfair termination.
23. Under clause 14 of the contract, leave had to be applied for and used within the year; unused leave could not be carried forward. Claims for compensation for earned but untaken leave days were therefore unfounded.
24. On house allowance underpayment, the Appellant stated that the Respondent was paid a consolidated gross salary of Kshs. 12,000, which included allowances.

Respondent's submissions

25. On the first ground, the Respondent argued that, undeniably, her employment commenced by a letter of appointment dated 1st September 2017. The contract of employment was an open-ended contract, terminable by notice. The letter of appointment did not contain any provision that her employment was dependent on the existence of the tenders from KCB, as alleged by the Appellant. At the trial, the Appellant didn't place forth evidence that indeed her contract was dependent on contract[s] between her employer and 3rd parties or KCB.
26. On the second ground, the Respondent submitted that the contract of employment dated 1st September 2017 was not a probationary contract but an indefinite one. Section 2 of the [Employment Act](#) defines a probationary contract as a contract of employment that is not more than twelve months in duration, or part thereof, is in writing and expressly states that it is for a probationary period. Section 42[2] of the [Employment Act](#) provides that a probationary period shall not be more than six months, but it may be extended for a further period of not more than six months with the agreement of the employee.
27. Under section 42[3], no employer is allowed to employ an employee under a probationary contract for more than the aggregate period provided under subsection [2].
28. The initial probation period expired on 28th February 2018 and, even if extended, would have ended by 31st August 2018. Thereafter, the Respondent was confirmed in employment by operation of law under Section 42 of the [Employment Act](#). In *Wanjohi v Kenya Railways Corporation* [2024] KEELRC 417, the Court held that employees are deemed confirmed if probation is not expressly extended, by consent at the expiry of six months.
29. To further buttress her submissions, reliance was placed on the case of *Titus Githinji Nderitu v Consolidated Bank of Kenya Limited* [2022] eKLR, the Court held that probation cannot exceed twelve months. Consequently, the Respondent was not under probation at the time her employment was terminated in January 2021.
30. The trial Court correctly applied the law when it found that at the time of separation, the Respondent was not under a probationary contract and, as such, was entitled to the protections accorded to term employees.
31. It was further submitted that in a case like the instant one, where the subject matter is in dispute regarding the termination of an employee's employment, the duty lies on the employer to prove both procedural and substantive fairness. To fortify this submission, the Respondent cited the case of *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR.



32. In *Pheoby Aloo Inyanga v Stockwell One Homes Management Limited & Another* [2022] eKLR, the Court stated that failure to follow the procedure set out in Section 41 procedures rendered dismissal unfair.
33. The Respondent submits that the Appellant's pleadings and the evidence of its witnesses present conflicting versions as regards how and why her employment was terminated. In its response to the statement of claim, the Appellant averred that her employment came to an end when its outsourcing contract with KCB was terminated. The non-renewal letter presents another version, poor performance. The evidence by the Respondent's witness spoke to the termination of a probationary period. Another version presented was that the contract elapsed by effluxion of time. With these contradictory versions, it cannot be reasonably held that the Appellant had a valid reason for the termination of the Respondent's employment. It did not discharge the burden under sections 41, 43, and 45.
34. On the reliefs awarded, the Respondent argued that they were correctly awarded. Her contractor employment was terminable by notice under Section 35[1][c] of the *Employment Act*. None was issued to her. Having proved that the termination was unfair, the relief was justifiably granted.
35. Regarding underpayments, it was submitted that a contract cannot override statutory provisions—the Respondent's salary of Kshs. 11,000 was below the statutory minimum of Kshs. 13,572.90, thus contravening Section 48 of the *Labour Institutions Act*. The claim for underpayments was therefore justified. From 1st May 2020 to 31st December 2020, she was underpaid by KShs. 82,332.80.
36. Under clause 14.1 of the employment contract, the Respondent was entitled to 21 days' paid leave for every 12 months of service. Clause 14.4 mandates the forfeiture of accrued leave days, yet clause 14.3 states that leave days should be taken at the employer's convenience. The Appellant failed to produce any records of leave days taken by the Respondent. The Appellant's witness's statement dated 11th April 2022 doesn't dispute that there were accrued leave days; the only argument is that the leave days were forfeited under clause 14.4.
37. The Respondent argued further that forfeiture of leave days has no legal basis. To support this point, reliance was placed on *Joaquim Mbithi Mulinge v Transoceanic Projects & Development [K] Limited* [2017] eKLR.
38. On house allowance, the Respondent stated that the Appellant failed to prove that the gross salary included the statutory 15% allowance. Consolidated salary does not automatically include a house allowance. Evidence must be provided to show that the gross salary included the allowance. To buttress this submission, reliance was placed on the case of *Vipingo Ridge Limited v Swalehe Ngonge Mpitta* [2022] eKLR.
39. On compensation for unfair dismissal, the Respondent relied on Section 49 of the *Employment Act* and stated that she was entitled to twelve months' salary as compensation. She was further entitled to a certificate of service under Section 51.
40. The learned trial Magistrate didn't err in granting the reliefs that the Respondent sought. They were merited.

Analysis and determination

41. This Court functions as a first appellate court. Consequently, it is obliged to re-evaluate the evidence, assess it independently, and form its own conclusions, bearing in mind that it neither observed nor heard the witnesses. Therefore, appropriate allowances should be made in this regard.



See also *Selle & Another v. Associated Motor Boat Co Ltd & Others* [1968] EA 123.

42. I have thoroughly examined the three grounds of appeal, along with the parties' pleadings, the oral and documentary evidence presented before the trial court, and the written submissions by Counsel. In my view, this appeal hinges on three key issues: (a) Was the Respondent under a probationary contract at the time of separation? (b) Whether the Respondent's employment was unfairly terminated, and (c) whether the Respondent was entitled to the reliefs granted by the learned magistrate.
43. It is not disputed that the Appellant first engaged the Respondent through the contract dated 1st September 2017. According to this contract, the Respondent was employed by the Appellant as a cleaner with a gross monthly salary of KShs 11,000. The commencement clause states, "Your employment will commence on 1st September 2017 and unless earlier terminated under the provisions of Clause 3 below, shall continue."
- Clause 3 of the said contract states,
- 'You will serve a probationary period of six months starting from the commencement date, which you are required to complete satisfactorily before your employment with Kamtix is confirmed. This probationary period may be extended by Kamtix in its absolute discretion for a further period of 6 months if, in its opinion, your performance has been unsatisfactory. The probationary period will be extended automatically unless Kamtix confirms your employment in writing before or on completion of the first period.'
44. Further, it is not in contention that the parties executed a document titled "probationary employment Contract" dated 20th September 2019. According to the document, the Respondent was being engaged as a steward at a basic salary of KShs. 12000. She was to be stationed at KCB-Mvita Branch.
45. I have carefully examined the initial employment contract and state without hesitation that it was not a fixed-term contract with a specific expiry date. It was an indefinite contract, subject to the Respondent successfully completing the probation period. In the contemplation of Section 42 of the *Employment Act*, 2007, and for good reason, an employee cannot be under probation indefinitely. The law sets the maximum number of months for which an employee can serve a probationary period.
46. The law does not permit any extension for an employee's probation period beyond the statutory limit established by legislation. Considering the legislative intent in 2007 to establish a comprehensive legal framework within the realm of labour relations—aimed at enhancing employee rights and protections and curbing the extensive, unregulated authority traditionally exercised by employers in employer-employee relationships, which frequently resulted in unfair treatment towards employees—I firmly hold that this provision cannot be waived or modified through stipulations within an employment contract.
47. The effect of this is that where a probationary contract is not expressly extended after the initial probationary period, which in any event shouldn't be more than six months, or if extended to the 12th month, but the employee isn't expressly notified that the contract has been terminated for unsatisfactory performance during that period or that he has been confirmed into employment, by operation of the law, the employee is deemed confirmed upon lapse of the initial period, or extended period.
48. Based on the above premises, this Court concludes that the Respondent was deemed to have been employed by operation of law after six months from 1st September 2017. Any extension had to be explicit and by consent of the Respondent. There was none.



49. As such, at the time the Respondent was executing the document dated 1st September 2019, she was already confirmed into employment and had worked under an indefinite contract of employment for one and a half years after the confirmation by operation of the law.
50. I have scanned through the record. There is no point at which the Appellant asserted and proved that the contract dated 1st September 2017 was terminated for any reason or another. The document dated 1st September 2019 did not expressly or implicitly state that it was to override the earlier contract.
51. Upon careful review of the document, it appears that it does not constitute an independent contract separate from the initial agreement. Instead, it simply confers upon the Respondent a new set of responsibilities and an increased salary in recognition of these duties.
52. From this Court's viewpoint, the detailed stipulations regarding the Respondent's probation were unnecessary and clearly unlawful. The Appellant cannot be allowed to press the Court to ignore deliberate contractual terms that amount to unfair labour practices, under the suggested constraint of not appearing to rewrite a contract for the parties.
53. In the upshot, it is my finding that at the time of separation, the Respondent was not serving under a probationary contract, but was already confirmed into employment and serving under an indefinite contract of employment.
54. Appellant contended that at the time of the termination of the Respondent's employment, she was still serving under a probationary contract, and suggested that she was not therefore entitled to the protection and rights contemplated under Sections 41, 43, 45, and 47[5] of the *Employment Act*. This assertion is not reasonable and legally founded in view of the foregoing premises. b. Whether the termination of the Respondent's employment was fair.
55. Undeniably, by a letter dated 1st October 2020, the Appellant determined the Respondent's employment. The letter, which was titled "Employment Contract Non-renewal", read in part; "Your employment contract ended on 31st August 2020. Further on, after reviewing your performance during the engagement period, we would like to inform you that your contract has not been renewed. You are expected to hand over your working tools and uniform to the supervisor....."
56. Section 43 of the *Employment Act* 2007 imposes a duty on the employer in a dispute regarding the termination of an employee's employment to prove the reason for the termination, and under section 45, that the reason was valid and fair. From this letter, it is unclear whether the termination was due to the contract lapsing by effluxion of time or because of poor performance. Logically, it cannot be due to both.
57. I have carefully considered the evidence that was placed before the trial Court, and its pleadings; they are sketchy and contradictory as regards the reason for the termination of the Respondent's employment. Legal burdens are never discharged through sketchy and contradictory evidence. The evidence presented to the trial Court did not establish the reason for termination to the requisite standard.
58. The reasons outlined in the letter cannot be regarded as valid and fair for two primary reasons. Firstly, the Respondent's employment contract was not fixed-term with an explicit expiry date of 31st August 2020. Secondly, the Appellant failed to demonstrate the existence of a mechanism for assessing employee performance; notably, there was no evidence of performance evaluations against explicitly defined targets, nor any indication that, upon noting unsatisfactory performance, measures were put



in place to assist the Respondent in improving her performance. See also *Jane Samba Mukala v Ol Tukai Lodge Limited* [2013] KEELRC 794[KLR].

59. The termination was without substantive justification.
- (c) Was the Respondent entitled to the reliefs granted by the learned magistrate?
60. Having found as I have hereinabove, I take the view that the Respondent's employment was terminable by 28 days' notice. Undeniably, no termination was issued to the Respondent. He is entitled to notice pay under Section 36 of the *Employment Act*. As will be outlined hereinafter, the Respondent was entitled to a minimum wage as per the Wages (General) (Amendment) Order, 2017, at Kshs. 12,926.55. The learned trial Magistrate didn't err when she awarded notice pay.
61. The Respondent asserted that during her employment, the Appellant did not permit her to take her annual leave. Under section 28 of the *Employment Act*, annual leave is a statutory entitlement. Accordingly, the employer has a duty to allow and facilitate the exercise of that right. The employer should not, in any way, be seen as restricting this right through conduct or contractual terms. Stipulations, such as those that impose a loss of entitlement to leave days earned but not utilised within a particular period, are offensive to the law and cannot be enforced by a court of law.
62. The Appellant didn't assert or prove before the trial Magistrate that the Respondent took her earned leave days or that she was paid in lieu. In the absence of this, and in light of the foregoing premise [para. 61], I have no reason to hold that the trial Court erred in awarding the relief.
63. The Respondent argued that, contrary to the law, the Appellant did not pay her house allowance throughout her employment. The Appellant maintained that her monthly salary included a house allowance. A house allowance is a statutory right of an employee and an obligation of the employer. Section 31 of the *Employment Act* requires an employer to provide reasonable accommodation or a reasonable allowance to enable employees to secure accommodation. When there is a dispute over whether the employer has met this statutory obligation, it is the employer's responsibility to prove with sufficient evidence that the employee's salary included the allowance or that reasonable accommodation was provided. See also *Grain Pro Kenya Inc. Ltd v Andrew Waithaka Kiragu* [2019] KECA 563[KLR]. Although the Appellant merely claimed that her salary was inclusive of house allowance, she failed to present evidence to the trial court to substantiate this. The remedy was correctly granted.
64. A cause of action for salary underpayments can be based on the provisions of Section 48 of the *Labour Institutions Act*. The tone of the Act regarding salary payments to employees covered by Wage Orders and the minimum wages stated therein is that, at all relevant times, the salary should not fall below the prescribed minimum wage. Section 48 of the Act provides a mechanism for an employee who has been underpaid to recover the difference between what they were actually paid during the material period and what they should have been paid if the employer had adhered to the prescribed minimum wages.
65. I observe that the Appellant did not assert before the trial Court that the Wage Order, which underpins the Respondent's claim, was not applicable to her, nor did she contend that her salary was at or above the minimum wage established at the relevant time. Under the provisions of the Act, an employer cannot simply claim, "but I paid them according to the contractual stipulation." Once a minimum wage is established, it becomes a term integrated into the employment contract, rendering any lesser terms or conditions of employment to which a Wage Order applies invalid and unenforceable.
66. Section 49[1][c] of the *Employment Act*, 2007, grants the court the authority to award compensatory relief to an employee who has successfully challenged their employer's decision to terminate their



employment unfairly. However, it is essential to note that this authority is discretionary and exercised on a case-by-case basis.

67. Given that the power is discretionary, the Court is required to state the reasons for its exercise in each instance explicitly. It is observed that the trial Court did not provide such reasons to justify its decision. This constitutes a legal error.
68. However, this does not mean the Respondent was not eligible for the relief. I have carefully examined the process by which the Respondent's employment was terminated, the Appellant's failure to comply with the law's stipulations, specifically those concerning substantive and procedural fairness, and unfair labour practices, as well as the length of her service. I find that she was entitled to the compensatory award. Nevertheless, given that she worked for only three years, I set aside the trial Magistrate's award of twelve months' gross pay and replaced it with six months' gross salary.
69. Under Section 51 of the Act, a certificate of service is a statutory right to an employee who has exited the employment of an employer. It matters not how they left. The Appellant had an obligation to issue the Respondent with a certificate of service within 30 days of this Judgment.
70. In the upshot, the Appellant's appeal substantially fails. The trial Court's Judgment is only disturbed to the extent above-stated [para. 68].
71. Costs of this Appeal shall be for the Respondent.

READ SIGNED AND DELIVERED THIS 18TH DAY OF SEPTEMBER 2025.

SIGNED:

HON. MR. JUSTICE OCHARO KEBIRA

