



**Charo v Shreeji Enterprises Limited (Appeal E254 of 2024)  
[2025] KEELRC 2684 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2684 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E254 OF 2024  
M MBARŪ, J  
OCTOBER 2, 2025**

**BETWEEN**

**REDSON KAZUNGU CHARO ..... APPELLANT**

**AND**

**SHREEJI ENTERPRISES LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. L. Gacheru delivered  
on 13 November 2024 in Mombasa CMELRC No. E473 of 2023)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 13 November 2024 in Mombasa CMELRC No. E473 of 2023.
2. The appellant is seeking that the judgment of the lower court be set aside, the core issues be addressed, and an award be made for notice pay, accrued leave, gratuity, overtime, public holidays, rest days, and damages for the unlawful termination of employment.
3. The background of the appeal is a claim filed by the appellant before the trial court. He claimed that in March 2019, he was employed by the respondent as a long-distance driver earning KSh. 46,661 per month. He worked until March 2023, when his employment was terminated without due process or payment of his terminal dues. He claimed the following;
  - a. Notice pay Ksh. 46,661;
  - b. Unpaid leave for 4 years, Ksh. 186,644;
  - c. Gratuity for 4 years Ksh.107,679;
  - d. Damages for unlawful termination for 12 months, Ksh. 559,532;



- e. Public holidays for 4 years Ksh. 97,765;
  - f. Rest days for 4 years, Ksh. 462,176;
  - g. Certificate of service;
  - h. Overtime worked Ksh. 323,512;
  - i. Costs.
4. In reply, the respondent denied the claims, stating that the appellant had violated company guidelines by deserting work and absconding from duty without lawful cause or prior communication to the employer. On 20 November 2022, the appellant was involved in an accident along the Mombasa-Nairobi highway while driving a motor vehicle registration number KCG 530U. he sustained minor injuries and was treated at Makindu hospital and then discharged the same day.
  5. On 25 November 2022, the appellant requested leave for 11 days to seek treatment in Mombasa. He was due to return on 6 December 2022, subject to the production of treatment records. He remained absent for four months until 4 April 2023 and was directed to report to the Nairobi office with the original medical records. He presented himself on 6 April 2023 but without the necessary medical records, claiming they were lost. The human resource manager advised the appellant to return to the hospital and obtain the original documents, but the appellant never returned and instead filed suit. The claims made are without merit and, due to the abscondment of duty, should be dismissed.
  6. The learned magistrate heard the parties and held that the claims lacked proof, and therefore dismissed them, except for the issuance of a certificate of service.
  7. Aggrieved, there are six grounds of appeal that the learned trial magistrate erred in law and fact in failing to award accrued leave despite the respondent failing to file any records as the custodian, failing to find there was unfair termination of employment and hence award notice pay and damages, failing to assess unpaid overtime, rest days and public holidays worked despite the respondent failing to submit work records as the employer.
  8. The appellant argued that, despite working for the respondent, his employment was unfairly terminated without any substantial justification. This infringes upon sections 41, 43, and 45 of the *Employment Act* (the Act). The appellant informed the respondent about his medical treatment, and the matter was reported to the police, resulting in a P3 being issued. There were no sufficient grounds for terminating the employment. The earned terminal dues should have been calculated and paid.
  9. The respondent submitted that the trial court's findings are justified and the appeal should be dismissed. The appellant has not discharged the burden of proof that there was unfair termination of employment under section 47(5) of the Act. Therefore, the respondent has no such burden under section 43 of the Act to discharge. No termination letter has been filed to substantiate any claim of unfair treatment. Additionally, the appellant did not submit any treatment records to verify that he was away from work due to illness. The claims made are unsubstantiated.

### **Determination**

10. This is a first appeal. The court must reassess, review and make a conclusion. However, take into account that the trial court had the opportunity to hear the witnesses.
11. Employment is not contested. The wage paid was ksh.46, 661 per month.



12. Employment commenced in March 2019 and continued until 10 May 2023, as per the discharge certificate.
13. The facts leading to the termination of employment, as stated by the parties, are that on 20 November 2022, the appellant had a road accident while driving the respondent's motor vehicle with registration number KCG 530U. He was treated at Makindu Hospital and later requested additional time to seek treatment at Mombasa. He returned on 4 April 2023 and was instructed to submit the original treatment records. He claimed that these had been lost. He was advised to return to the relevant hospital to obtain the treatment records.
14. The appellant submitted various phone records of his communication with the respondent regarding his medical condition and need for treatment. These records are not dated. However, it can be discerned that the exchanges related to the appellant's need to produce original medical records, which were necessary due to his absence from work caused by sickness after the road accident on 20 November 2022.
15. Sections 30 and 34 of the Act enable employees who are ill or sick to seek medical attention. The right to access medical care and treatment comes with a duty, as the employee must prove the reason for their absence from work, as established in *Rosemary Angaliwa v Tidy Site Services Limited* [2019] KEELRC 1007 (KLR), which states that a medical certificate from a recognised health facility must support absence due to illness. In *Wesley C Koskey v Style Industries Ltd* [2018] KEELRC 15 (KLR), the court held that the right to seek medical attention entails a responsibility to submit the necessary medical records to the employer; failure to do so constitutes gross misconduct. Refer also to *Birir v National Water Harvesting & Storage Authority & another* [2025] KEELRC 2241 (KLR).
16. In this case, the appellant did not produce the medical certificate required under section 34 of the Act. Even in the proceedings before the trial court, such a record is absent.
17. Absence from work without the employer's permission is regarded as gross misconduct, which justifies summary dismissal. The appellant was given time to return to the hospital, where he received treatment, but chose to file a lawsuit instead of obtaining the treatment records.
18. The appellant cannot justify his claim of unlawful or unfair termination of employment by failing to provide a proper account for his absence. No medical certificate has been produced. When invited to submit the treatment records, the respondent, as the employer, fulfilled its duty.
19. Notice pay and compensation are not available. The learned magistrate effectively addressed the facts, applied the law, and made accurate findings in this regard.
20. Regarding the claims made, annual leave is a right under section 28 of the Act. The employer must maintain work records and submit them to the court as required by the appellant. In this case, no work records have been filed. However, under section 28(4) of the Act, leave days can only be accrued over the last 18 months. In this instance, from 20 November 2022 to 4 April 2023, the appellant was absent from work without valid cause. He disrupted his employment. The assertion that he was granted 11 days off is unchallenged.
21. Without the medical certificate required under section 34 of the Act, claiming payment for untaken leave days would amount to unjust enrichment. The necessary medical certificate would have adequately addressed the absence, allowing the appellant to claim his entitled leave days, if any.
22. Regarding the claim for gratuity, this is not a legal entitlement and must be documented in the employment contract, a private agreement between the parties, or a collective agreement. There is no evidence of such a benefit.



23. Regarding the claim for public holidays, these are not regular days but special days designated by the Minister. Each public holiday worked must be individually specified for assessment. A general claim will not be sufficient.
24. Regarding the claim for pay in lieu of rest days, the appellant did not specify his working hours or how he managed to work continuously for four years in the Memorandum of Claim. These claims are exaggerated, as established in the case of Peter Kimilu & another v Kenya Petroleum Oil Workers Union [2013] eKLR, where the court held that.

... There is a tendency for parties coming to the Industrial Court to highly exaggerate monetary claims, encouraged by the absence of prohibitive filing fees. The calculation by such parties is that they have nothing to lose, as the Court may grant some of the exaggerated claims, while declining others. The Court must caution parties that the effect of such claims on the mind of the Court is to raise doubt about the veracity of the entire Claim. Parties should stick to what is legally and factually justifiable. When a party approaches the Court with such a claim as “damages and inconveniences caused to my family of Kshs. 2,000,000” as made by Kimilu, the result is that the Court begins to doubt other claims that may be genuine. The Court is not persuaded by the claims in the Claimants’ Supplementary bundle on damages and inconveniences caused to the Claimants’ respective families; compensation for foregone years; gratuity; house rent allowances; and N.S.S.F deductions. No evidence was given to give substance to these empty claims. No legal provision or contractual clause was given to support the respective claims. The Claimants have long served the Respondent and are familiar with the basic evidentiary standards in establishing employment claims. Mr. Ogendi has been prosecuting matters before this Court on behalf of the Respondent. Parties should always assist the Court by bringing concise and credible claims to the Court.

25. In *Gichuru v Emmanuel Trading Company Limited* (Employment and Labour Relations Appeal E023 of 2023) [2024] KEELRC and the case of *Kenya Union of Commercial, Food and Allied Workers v Magunas Supermarket Limited* (Employment and Labour Relations Cause E029 of 2024) [2025] KEELRC, the court emphasised the importance of an employee being truthful and honest when making employment claims. Any exaggerated claims can lead to dismissal. Where such claims lack proper particulars and supporting evidence, they should be rejected.
26. On the claim for overtime work, the pleadings lack details about the work hours. These cannot be assumed. The calculation of 20 hours worked per 52 weeks must be substantiated, which is currently lacking.
27. The court finds that the learned magistrate well addressed the facts, analysed the evidence and submissions and dismissed the claims.
28. Accordingly, the appeal is without merit and is hereby dismissed with costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

