



**Greatlaes Trans (K) Limited v Robert Mackoy Limited (Appeal
E081 of 2025) [2025] KEELRC 2663 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2663 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E081 OF 2025
M MBARŪ, J
OCTOBER 2, 2025**

BETWEEN

GREATLAES TRANS (K) LIMITED APPELLANT

AND

ROBERT MACKOY LIMITED RESPONDENT

*(Being an appeal from the judgment of Hon. Gathogo Sogomo
delivered on 25 April 2025 in Mombasa CMELRC No. E150 of 2023)*

JUDGMENT

2. The appeal arises from the judgment delivered on 25 April 2025 in Mombasa CMELRC No. E150 of 2023. The appellant is seeking that the judgment be set aside and the claim dismissed.
3. The grounds of appeal are that the learned magistrate erred in law and fact in awarding the respondent a house allowance once, whereas there was a gross salary payment of Ksh. 25,000 per month. The award of a house allowance from January 2019 to March 2020, whereas employment began in April 2020, was in error.
4. The award for underpayments included house allowances, which were not factored, hence a double payment. No evidence was produced regarding the alleged underpayments. The awards were not subject to statutory deductions, whereas most claims fell outside the limitation period set under Section 90 of the *Employment Act*.
5. The trial court failed to consider that on 12 May 2021, the respondent consented to the deduction of Ksh. 60,000 from his salary in the computation of the award for unlawful salary deductions. The award of 3 months' compensation was not justified, as the respondent had only worked for the appellant for 2 years.



6. The background to the appeal is a claim filed by the respondent before the trial court. His case was that he was employed by the appellant as a heavy commercial driver on 7 January 2019. He was assigned duties within the Eastern African Countries. He was paid a wage of Ksh. 23,850 per month. He worked until 30 September 2022, when his employment was unlawfully terminated. At the time, he had been assigned work to transport goods to Uganda, Tanzania and Rwanda using Truck registration No. KCQ 127T ZF 8557. On 27 September 2022, the respondent visited the appellant's office to request payment for his unlawful salary deductions. However, the human resources manager, Mohamed Faiz, informed him that he couldn't be paid since he was known to misuse alcohol. He was instead dismissed from his employment without due process or payment of his terminal dues. He filed suit and claimed the following dues;
7.
 - a. Notice pay Ksh. 23,850.
8.
 - b. Unpaid salary for September 2022 Ksh. 23,850.
9.
 - c. Unlawful salary deductions from November 2020, Ksh. 178,241.
10.
 - d. House allowance for 45 months Kshs.160,985.50
11.
 - e. Underpayments for 45 months Ksh. 304,985.25
12.
 - f. 12 months' compensation Ksh. 286,200.
13.
 - g. Service pay for 4 years Ksh. 47,700.
14.
 - h. Certificate of service.
15.
 - i. Costs of the suit.
16. In response, the appellant's case was that they employed the respondent as a driver on 6 April 2020, under a three-month probationary contract, and he was confirmed as a heavy commercial truck driver on 2 September 2020. On 26 September 2022, he absented himself from work without permission. His monthly wage was Ksh. 25,000, which was consolidated and negotiated. The respondent was assigned to drive the motor vehicle registration No. KCQ 127T. On 12 May 2021, he negligently handled motor vehicle registration no. KDC 843K, causing two new tyres to blow out, resulting in a loss of Ksh. 60,000 to the respondent. He issued a warning letter, apologized, admitted the negligence, and consented to deductions from his salary as repayment for the loss. On 26 September 2022, the respondent arrived in Mombasa after a trip, and his supervisor asked him why he had been repeatedly requesting fuel top-ups, which was unusual. He disputed the matter, leading to a disagreement, and



he chose to abandon his employment without notice. There was no termination of employment as alleged; instead, the respondent absconded from duty without good cause. The appellant sought to determine his whereabouts, and on 20 October 2022, he was served with a notice to show cause. However, he did not respond, prompting the appellant to issue a notice dated 24 October 2022, requiring him to attend a disciplinary hearing on 31 October 2022, which he failed to do. Through his conduct, the respondent was deemed a deserter. The claim for underpayments is unjustified since the wage was negotiated and consolidated. He consented to a deduction of Ksh. 60,000 for loss and damage incurred through negligence.

17. The learned magistrate heard the parties and, in judgment, held that there was unfair termination of employment and awarded the following:

18.

a. Notice pay Ksh. 23,850.

19.

b. Unpaid salary Ksh. 23,850.

20.

c. Unlawful salary deduction Ksh. 178,241.

21.

d. Unpaid house allowance Ksh. 160,985.50.

22.

e. Underpayments Ksh. 271,611.75

23.

f. 3 months' compensation Ksh. 71,550.

24.

g. Costs and interests.

Only the appellant filed written submissions.

Determination

25. This is a first appeal. The court is mandated to review the record, reassess the findings and make conclusions. However, consider that the trial court had the opportunity to hear the witness.

26. The employment of the respondent by the appellant is not in dispute. However, the respondent claimed that he was employed from 7 January 2019 to 30 September 2022 when his employment was terminated.

27. The employer is the custodian of work records. There is an employment contract dated 6 April 2020 for the position of truck driver. The respondent was then confirmed as a heavy commercial truck driver at a wage of Ksh.25, 000 per month.

Employment thus commenced on 6 April 2020.

28. Whereas the parties to an employment contract are allowed to negotiate terms and conditions thereof, they cannot contract to pay a wage below the minimum legal threshold under the prescribed Wage



- Orders. The respondent was employed as a heavy commercial truck driver; this is a regulated position, and by April 2020, the minimum wage prescribed by the Minister was Ksh. 30,627.45. The prescribed house allowance at 15% of the basic pay is Ksh. 4,592.05, and the gross wage is Ksh. 35,221.05.
29. There was an underpayment of wages at Ksh.10.221.05 from April 2020 to April 2022. For the 12 months, the total due in underpayment, inclusive of the house allowance, is Ksh. 122,652.60.
30. From May 2022, the minimum wage increased to Ksh. 43,302.75. The house allowance due is Ksh. 5,145.45, and the total gross is Ksh. 39,448.15.
31. From May to September 2022, there was an underpayment of Ksh. 14,448.15 x 5 total Ksh. 72,240.85. Total underpayments, inclusive of house allowance, Ksh. 194,893.40.
32. Desertion of employment is defined under section 44(4) (a) of the *Employment Act* (the Act) as a sufficient reason for summary dismissal. However, the employee must be accorded the due process of the law, issued with notice and allowed to attend and make his representations in the presence of another employee of his choice, as held in *Matesho v Newton* [2022] KEELRC 1554 (KLR) and *Gilbert Mariera Makori v Equity Bank Limited* [2016] KEELRC 350 (KLR).
33. The employer has the burden of terminating employment when the employee is found to have committed gross misconduct, such as desertion of duty.
34. In this case, the appellant issued a notice to show cause and scheduled a disciplinary hearing for the respondent. He did not attend. There was no closure. The respondent was left at large. The assertion that the respondent deserted duty is not sufficient. The appellant should have issued the notice terminating employment to bring closure and protect itself, as held in *Mohamed v Balali* (Appeal E106 of 2024) [2025] KEELRC and *Ayuma v Omunga* [2025] KEELRC 673 (KLR) that;
- Desertion or abandonment of duty is an act of gross misconduct. However, the employee does not terminate his employment. Upon abandonment or desertion of duty, the employer must bring the employee to account for such gross misconduct under Sections 44 and 41 of the *Employment Act*. The legal safeguards under Section 41 of the *Employment Act* are not meant for use by the employee but by both parties in an employment relationship.
35. In the case of *Cheptanui v Rift Valley Bottlers Company Limited* [2022] KECA 824 (KLR), the court held that the employee who had abandoned his duties committed gross misconduct. Upon a notice to show cause and failure to attend, the resulting notice terminating employment was lawful.
36. This position is reaffirmed in *Brinks Security Services Limited v Timothy* [2024] KECA 690 (KLR) and *Central Furniture Shop Limited v Mohamed* [2025] KEELRC 199 (KLR), the court held that by leaving the employee at large over alleged abandonment of duty without notice to attend and address or issuance of notice terminating employment, termination of employment was unlawful.
37. The learned magistrate addressed these facts and the law, correctly holding that there was an unfair termination of employment. The assessment of completion at 3 months took into account the period served of two years; hence, the discretion bestowed on the trial court was justified and well applied.
38. However, in tabulating the compensation amount, the last gross wage in September 2022 is the applicable rate under section 49(2) of the Act. This is $Ksh.39,448.15 \times 3 = Ksh.118,344.45$.
Notice pay applicable is the last gross wage due at Ksh.39,448.15.
39. The appeal is that the awards of underpayment and house allowances were made twice. Indeed, as assessed above, the minimum wage is addressed with the additional benefit of a house allowance. To



evaluate each separately would result in either miscalculation or double allocation. That is addressed above.

40. Regarding the claims for unlawful deductions, the appellant's case is that a refund was made. However, where the employee is negligent or undertakes their duties in a manner leading to loss and damage to the employer, sections 17 and 19 of the Act allow for a deduction from the wages due.
41. In this case, the respondent admitted to his mistake and apologized. The sanction was to repay the loss of ksh.60, 000 to the appellant.
42. From the deductions of Ksh. 178,241. This should be paid less Ksh. 60,000, admitted as a loss incurred due to negligence. The payable amount is Ksh.127, 241.
43. On costs and interests awarded, the learned magistrate applied the discretion required under section 12(4) of the *Employment and Labour Relations Court Act*. The court finds no reason to interfere with the findings thereof.
44. For the appeal, taking into consideration the findings above, each party is to bear its costs.
45. Accordingly, judgment of the trial court in Mombasa CMELRC No. 150 of 2023 is reviewed in the following terms;
46.
 - a. Employment terminated unfairly;
47.
 - b. 3 months' Compensation Ksh. 118,344.45.
48.
 - c. Notice pay Ksh. 39,448.15.
49.
 - d. Underpayment inclusive of house allowance Ksh.194, 893.40.
50.
 - e. Unlawful deductions Ksh. 127,241.
51.
 - f. Costs of the suit before the trial court;
52.
 - g. For the appeal, each party to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 2ND DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

