



REPUBLIC OF KENYA



**KENYA LAW**  
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**Guni v African Marine & General Engineering & Co Ltd (Appeal  
E064 of 2025) [2025] KEELRC 2678 (KLR) (2 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2678 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E064 OF 2025  
M MBARÚ, J  
OCTOBER 2, 2025**

**BETWEEN**

**OMAR HASSAN GUNI ..... APPELLANT**

**AND**

**AFRICAN MARINE & GENERAL ENGINEERING & CO LTD .. RESPONDENT**

*(Being an appeal from the judgment of Hon. G. Sogomo delivered  
on 21 March 2025 in Mombasa MCELRC E086 of 2022)*

**JUDGMENT**

1. There are no written submissions in this appeal.
2. Both parties attended on 30 June 2025 and agreed to address the appeal through written submissions, with a return date set for 31 July 2025. There were no written submissions.
3. The appeal arises from the judgment delivered on 21 March 2025 in Mombasa MCELRC No. E086 of 2022. The appellant is seeking that the judgment be set aside in its entirety.
4. The appellant's case before the trial court was that he was employed as a ship repairer by the respondent in 2007 under a contract ending in 2016. In 2021, he was re-employed as a ship repairer at a monthly wage of KSh. 21,000 until 10 August 2021. He claimed that his employment was terminated wrongfully and without payment of terminal dues. He claimed the following;
  - a. Notice pay Ksh.21,000;
  - b. Salary for August 2021 Ksh.21,000;
  - c. Leave for one year ksh.21,000;
  - d. 12 months' compensation Ksh. 315,000.



- e. Certificate of service;
  - f. Costs.
5. In reply, the respondent's case was that the appellant was employed as a blaster and not a ship repairer as alleged. He was under a one-year contract. However, his employment was replete with absenteeism, and he was served with a notice to show cause. He made a reply explaining that he had attended his father's funeral. He was directed to supply supporting documents, but he remained absent from 10 August 2021, only to return on 17 August 2021 with the letter from the village chairman. He did not adequately explain his absence, leading to his summary dismissal. He was paid for the days worked.
  6. The learned magistrate heard the parties and held that he was only entitled to the unpaid days amounting to Ksh. 6,300, and the other claims were dismissed with costs.
  7. Aggrieved, the appellant filed the appeal on the grounds that the learned magistrate erred in law and fact, finding that his absence from work was not challenged and did not constitute a justified ground for summary dismissal. There was no evidence to support such findings. The provisions of section 45(5) (a) of the *Employment Act* were not gone into, nor was the corroborative evidence of the witnesses. There was unfair and unlawful termination of employment, and the claims made should be allowed.

As outlined above, no submissions were filed.

### **Determination**

8. Based on the records, as this is a first appeal, the court is allowed to reassess, review, and make its conclusions. However, I am also aware that I did not have the opportunity to assess the demeanour of the witnesses as the trial magistrate did. Thus, I should be reluctant to upset the trial court's decision that turns on assessment of the credibility of witnesses unless there are compelling grounds to do so, as held in *Top Tank Company Limited v Amos Ondiek Wandaye* [2018] eKLR.
9. Absence from duty is defined under section 44 (4) (a) of the *Employment Act* (the Act) as gross misconduct. The employer is allowed to issue a notice to the employee explaining the circumstances leading to such absence. Where the employer finds the explanation unsatisfactory, the sanction of summary dismissal is allowed, as held in *A.A Bayusuf & Sons & another v Geoffrey Wandera Muruka* [2024] KECA 1906 (KLR) and the case of *Brade Gate Holdings Limited v Mwangi* [2024] KECA 1011 (KLR), which establish that once an employee is absent from work without permission, summary dismissal is permissible.
10. In *Mumali v Blink Studio Limited* [2025] KEELRC 2112 (KLR), the court emphasized that once an employee chooses to absent himself from duty, if the employer requests an explanation and it is unsatisfactory, the sanction imposed is justified.
11. In this case, the appellant did not explain why he was absent, allegedly due to attending the father-in-law's burial. No permission was sought before such attendance, if this was indeed the case.
12. The sanction of summary dismissal was justified in the given circumstances.  
Notice pay and compensation are not available.  
For days, I worked. This was assessed and allocated.
13. Regarding the claim for annual leave, the learned magistrate held that the appellant submitted approved leave forms, and as such, the claim was disallowed. As the court that established the facts, this cannot be faulted.



14. A certificate of service was due, subject to the appellant following the procedures outlined in Section 51 of the Act.
15. On the claim for costs, the appeal was assessed as above, due to the absence of written submissions or orders on costs.
16. Accordingly, the appeal is without merit and is hereby dismissed. Judgment in Mombasa MCELRC No. E087 of 2022 is hereby affirmed. No orders on costs.

**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 .....

