



REPUBLIC OF KENYA



KENYA LAW
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**Charo v Hemed (Appeal E009 of 2025)
[2025] KEELRC 2975 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2975 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E009 OF 2025
M MBARÚ, J
OCTOBER 30, 2025**

BETWEEN

MASAI BEJA CHARO APPELLANT

AND

SHADIA HEMED RESPONDENT

*(Being an appeal from the judgment of Hon. Maureen Lambisa Nabibya
delivered on 21 January 2025 in Mombasa CMELRC No. E266 of 2022)*

JUDGMENT

1. The appeal arises from the judgment delivered on 21 January 2025 in Mombasa CMELRC No. E266 of 2022. The appellant seeks that the judgment be set aside on the grounds that the trial court erred in law and fact in finding that the appellant failed to prove an employer-employee relationship, despite the respondent admitting that employment as a chef existed. The trial court failed to consider that, in response, the respondent admitted that the appellant had left work on his own volition and that she had knocked the appellant down while reversing her motor vehicle. By the trial court's proceedings on the premise that no employment relationship existed, the conclusions reached were in error.
2. The applicant's claim before the trial court was that he was employed by the respondent as a chef on 2 November 2019 in Mombasa. He was paid KSh. 25,000 per month. He worked until 6 February 2022, when his employment was terminated without due process. He had been knocked down by the respondent while reversing a motor vehicle to leave the house. He was asked the respondent to cater for his medical expenses, but it resulted in abuse of him. He was then verbally directed to leave the premises immediately and, hence, claimed that his employment was unfairly terminated. He claimed the following terminal dues:
 - a. Notice pay Ksh. 25,000.
 - b. House allowances for 27 months KSh. 101,250.



- c. Unpaid leave for 2 years Ksh. 29,593.20
 - d. Unpaid overtime for one hour for 27 months, KSh. 107,000.
 - e. 12 months' compensation Ksh. 300,000.
 - f. Service pay for 2 years, KSh. 25,000
 - g. Unpaid NHIF for 27 months Ksh. 13,500.
 - h. Certificate of service.
 - i. Costs of the suit.
3. In reply, the respondent denied the claim and that there was employment of the appellant as a chef earning Ksh. 25,000 per month. There was no unlawful termination of employment as alleged. The respondent knocked down the appellant while the respondent was reversing the car, but this did not result in termination of employment. Employment was terminated through summary dismissal owing to the appellant's voluntarily wishing to leave the respondent's employment. He indicated that he had a job through a friend of a cousin. Under section 44(4) of the *Employment Act*, the claims made are not justified, taking into account that the appellant terminated his employment.
 4. The learned magistrate heard the parties and held that the appellant claimed, but failed to prove, an employment relationship or that he was paid a wage of KSh. 25,000 by the respondent. On this basis, his claims were dismissed.
 5. On appeal, the appellant submitted that, despite the respondent's admission of the employment relationship, the trial court held that no such relationship existed; hence, the appellant's claims were not justified. This was in error since the appellant was employed as a chef earning ksh.25, 000 which the respondent, as the employer, confirmed. The admission in response should have served as a basis for addressing the claims made. The requirement for proof of the employment relationship was not necessary.
 6. The respondent admitted that the appellant was employed at the residence and that, following an incident in which he was knocked down by a car, he opted to terminate his employment. There was no evidence of the appellant terminating his employment. No record of such matter was produced. The respondent did not attend or file any written submissions.
 7. This being a first appeal, the court is required to reassess the record, review the findings and make a conclusion. The court must consider that the trial court had the opportunity to observe and hear the witnesses.
 8. Once an employee files a claim seeking to enforce his employment rights, the employer has the duty under sections 10(6) and (7) of the *Employment Act* to file the work records. This position is emphasized in the case of Judith Atieno Owuor v Sameer Agriculture and Livestock Limited [2020] KEELRC 609 (KLR). Without discharging such duty, the court is bound to believe the employee.
 9. In this case, upon the appellant's claim, the respondent filed a response and later amended it. The gist of the response was to admit to the employment relationship as a chef at a monthly wage of Ksh 25. 000. This then did not require a call of evidence to prove the employment relationship.
 10. The trial court ought to have proceeded on the given facts and the respondent's admission that there was employment. The admission of the employment relationship shall suffice.



11. On the claims that the appellant was verbally terminated in his employment, the respondent's response was that he is the one who ended his employment after being knocked down by a car in the work premises. Under paragraph 7(a), (b) and (c) of the Amended Response, the respondent asserted that the appellant was summarily dismissed after expressing his wish to leave his employment.
12. There is no evidence of such a wish. Even if the appellant wished to leave his employment, which is not proved in this case, the employer has a legal duty to terminate employment procedurally. Upon such termination, make payment of terminal dues as held in *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] KEELRC 323 (KLR). The notice terminating employment must be issued under section 18(5) of the *Employment Act*, which gives the employer the right to terminate the employment relationship. That also allows the employee to secure his Certificate of Service under Section 51 of the Act. See *Judith Atieno Owuor v Sameer Agriculture and Livestock Limited* [2020] KEELRC 609 (KLR).

Leaving the employee at large only invites claims as herein.

13. In this case, without proof of closure of the employment relationship, to leave the claimant under the mistaken belief that he had summarily terminated his employment was a serious lapse in law. This resulted in an unfair termination of employment, contrary to sections 35, 41, 44, and sections 45 and 49 of the *Employment Act*. Under those sections, the appellant is entitled to notice pay, compensation, and a proper assessment of his employment termination dues.
14. In this case, notice pay is due at Ksh. 25,000 under section 35 of the *Employment Act*.
15. On compensation, upon the lapse in addressing sections 41 and 44 of the *Employment Act*, compensation is due. The appellant had worked for the respondent from November 2019 to February 2022. For the two full years of service, a ward of two months' compensation is hereby found appropriate at Ksh. 50,000.
16. On the claim for payment of house allowance for 27 months of service, the appellant was employed as a chef and paid KSh. 25,000. He did not testify as to whether the respondent accommodated him. A chef working in Mombasa in February 2022, without a written contract of employment, was covered under the Wage Orders, 2018.
17. A chef's basic wage under the Wage Orders was ksh. 14,658.85, and the due house allowance at 15% was Ksh. 2,198.85. Gross wage Ksh.16, 857.65.
18. The appellant was well paid above the minimum wage at KSh. 25,000 per month. To claim house allowance in the given circumstances is not justified.
19. On the claim for leave days for two years, indeed, under section 28 of the *Employment Act*, this is a right. There are no work records confirming that the appellant was granted his annual leave. The claim for Ksh 29. 593.20 is fair and reasonable.
20. Regarding the overtime pay claim, there are no particulars regarding the reporting hours or how the extra one hour was accrued daily for 27 months.
On the claim for NHIF unremitted dues, these are statutory dues.
21. The claim for service pay is justified under section 35(5) and (6) of the *Employment Act* where the employer fails to pay statutory dues. The claim for payment of KSh. 25,000 for the two full years worked is reasonable.
22. On costs, the appeal is with merit and is allowed with costs for the lower court and this appeal.



23. Accordingly, judgment in Mombasa CMELRC No. E266 of 2022 is set aside. Judgment is entered for the appellant against the respondent in the following terms;
- a. Employment terminated unfairly.
 - b. Compensation awarded at KSh. 50,000.
 - c. Notice pay KSh. 25,000.
 - d. Leave pay ksh.29,593.20
 - e. Service pay Ksh.25, 000.
 - f. Costs for the trial court and this appeal are awarded to the appellant.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30TH DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

