



**Tarmal Wire Products Limited v Mwachofi (Appeal E091 of 2025)
[2025] KEELRC 2967 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2967 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E091 OF 2025
M MBARÚ, J
OCTOBER 30, 2025**

BETWEEN

TARMAL WIRE PRODUCTS LIMITED APPELLANT

AND

NAFTALI MGHALU MWACHOFI RESPONDENT

*(Being an appeal from the judgment of Hon. J.B. Kalo delivered
on 22 May 2025 in Mombasa CMELRC No. E679 of 2022)*

JUDGMENT

1. The appeal arises from the judgment delivered on 22 May 2025 in Mombasa CMELRC No. E679 of 2022.
2. The appeal is on two grounds:
 1. The learned magistrate erred in law and fact in holding that the respondent was entitled to housing allowance in total disregard to the law, the facts and the evidence on record.
 2. The learned magistrate erred in law and misdirected himself in holding that the respondent was entitled to underpayment in total disregard of the law and evidence on record.
3. The appellant is seeking that the judgment of the trial court be set aside.
4. The respondent's claim before the trial court was that, from February 2019, he had been employed by the appellant as a heavy commercial truck driver. He worked until 7 February 2022, when his employment was terminated. He was earning Ksh. 28,000 per month. His case was that he reported to work on 7 January 2022 when the appellant terminated his employment without notice or justification. His case was that he was underpaid and had to go without a house allowance. He claimed the following terminal dues:



- a. Notice pay Ksh.30,627.45
 - b. House allowance for 35 months Ksh.160,794.10
 - c. Underpayments Ksh.91,960.75
 - d. 12 months compensation Ksh.367,529.40
 - e. Costs.
5. In reply, the appellant's case was that the respondent was engaged as a driver to a medium-sized vehicle earning Ksh. 32,470 and not Ksh 28,000 as alleged. The wage included the house allowance. He was engaged under a fixed-term contract until 5 January 2022, when it lapsed. The respondent was paid wages commensurate with the Wage Orders at the time, Ksh. 29,250, but he was paid Ksh. 32,470 instead. The wage paid was over and above the allowed minimum from 2019 to 2022. Employment terminated through effluxion of time. The wage included a house allowance, and the claims lack merit.
 6. The learned magistrate heard the parties and held that the respondent was entitled to a house allowance and underpayment. The following were awarded;
 - a. Ksh.160,794.10 in house allowances,
 - b. Ksh.91,960 in underpayments,
 - c. Costs and interests.
 7. The appellant submitted that the respondent was under a fixed-term contract that lapsed on its terms. Notice and compensation claimed were not justified.
 8. The respondent was paid as a driver of a medium-sized vehicle at a rate above the minimum. The wage paid included the house allowance; hence, no underpayments or house allowances are due.
 9. The respondent submitted that employment was for a heavy commercial truck driver. The wage paid was Ksh. 28,000 without a house allowance, which was an underpayment. Employment was terminated without notice, and the claims made are justified; the appeal should be dismissed with costs.

Determination

10. This being a first appeal, the court is required to assess the record, review the findings, and make a conclusion. However, keep in mind that the trial court had the opportunity to hear and see the witnesses.
11. In its response to the claim, the appellant filed various work records, including the respondent's employment contracts from 2019 to 2022.
12. A sample of the employment contract shows a fixed term of 3 months each. The contract of employment filed is dated 16 September 2019. The position is that of a driver. The contract term ended on 16 December 2019.
13. A new contract was issued on 19 June 2020 and ended on 19 September 2020. The position held was a driver.
14. The fixed-term contracts are valid and lawful forms of employment, as held in *Gyto Success Company Limited v Dalu* [2025] KEELRC 587 (KLR) and *Kesi v Krystalline Salt Limited* [2025] KEELRC 1097 (KLR). the contracts of employment issued to the respondent are lawful.



The last wage paid in 2020 was Ksh. 28,235.65

15. No contract has been filed for the period ending 5 January 2022, as stated in the response filed on 26 January 2023.
16. Without the necessary record of employment, a driver working in January 2023 had a basic wage of Ksh. 18,319.50 while the respondent testified that he was paid KSh. 28,000. This is above the minimum. The issue is well addressed; there is no underpayment, and the house allowance is inclusive.
17. Even where the case is that he was a light van driver, the minimum wage was ksh.23, 039. The payment of Ksh. 28,000 is above the minimum. Claiming a house allowance and asserting an underpayment are incorrect.
18. Based on the record, the appeal has merit.
19. The judgment in Mombasa CMELRC No. E679 of 2022 is set aside on the award of underpayment and house allowance. The appeal is with merit and is allowed. Each party to bear its costs.

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

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

