

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

APPEAL NO. E015 OF 2025

JAMBO GRILL LIMITED..... APPELLANT

VERSUS-

LEVIS KINYUA MOGO..... RESPONDENT

(Being an appeal from the judgment and decree of Hon Paul K. Rotich sitting at Millman Court delivered on 28th October, 2024 in ELRC 1538 of 2022)

1. Through the Memorandum of Appeal filed on 3rd December, 2024 the Appellant appeals against the Judgment and decree of Hon Paul K. Rotich delivered on 28th October, 2024 in ELRC 1538 of 2022. The Appeal was based on the grounds among others that:

- a) **THAT** the Honourable Trial Court erred in law and in fact by failing to consider the Appellant's evidence, and statutory provisions establishing that the Claimant's salary was consolidated, inclusive of housing allowance, resulting in an erroneous determination on the issue of housing allowance.
- b) **THAT** the Honourable Trial Court erred in law and in fact by disregarding the express terms of the Employment Application Agreement dated **22nd October 2007**, which clearly indicated that the Claimant's salary of **Kshs. 5,200/=** included the housing allowance as under Clause D (1).
- c) **THAT** the Honourable Trial Court erred in law and in fact by failing to apply

the exemption provided under Section 31(2) (a) of the Employment Act 2007 to the Appellant, thereby erroneously holding that the Claimant was entitled to a separate housing allowance.

2. The Appellant therefore prayed that the judgment and orders of the trial court given on 28th October, 2024 be set aside and the appeal be allowed with costs to the appellant.

3. The Appeal was disposed of by written submissions.

APPELLANT'S SUBMISSIONS

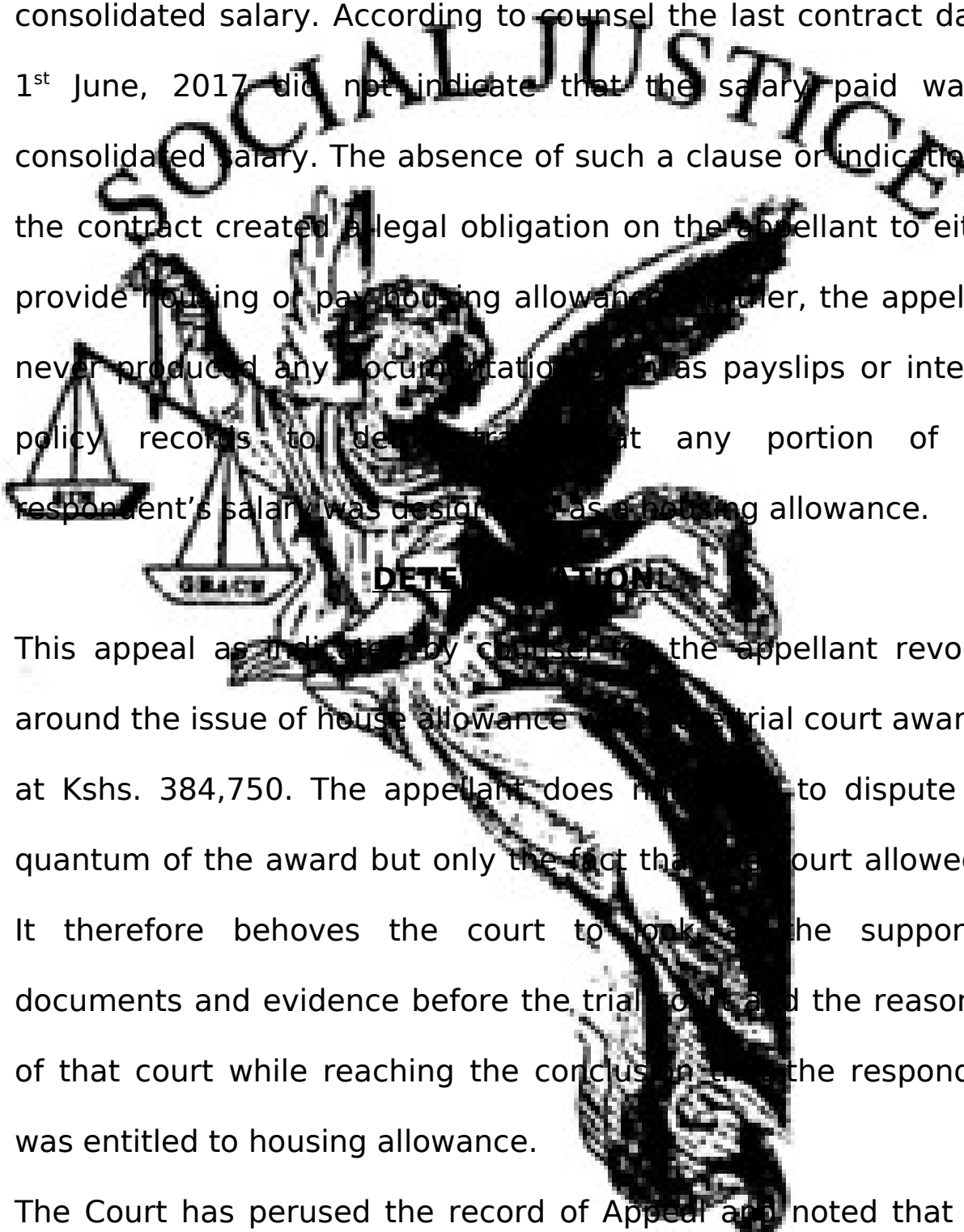
4. Ms. Kamau for the respondent submitted in the main that the trial magistrate erred in awarding the respondent the sum of Kshs. 384,750 on account of house allowance despite express provisions in the contract dated 22nd August, 2007 and 1st June, 2017 which stated that the respondent's salary was inclusive of house allowance. Counsel further contended that the trial magistrate erred in failing to apply section 31(2) (a) of the Employment Act which exempted an employer from providing separate housing allowance where an employee's salary is consolidated to include a housing allowance. It was Ms. Kamau's submission that absence of a breakdown in the latter contract did not mean that housing was excluded. It merely meant the salary

was consolidated. In this respect counsel relied on the case of **Postal Corporation of Kenya Vs Andrew Tanui [2019] eKLR** where the Court of Appeal stated that gross monthly wages are inclusive of allowances resonates with common sense. The trial court therefore erred in disregarding the express terms of the respondent's employment contract which explicitly provided for a gross salary inclusive of house allowance and by doing so, the court rewrote the contract. Counsel also relied on the case of **National Bank of Kenya Vs The People Samkolit (K) Ltd [2002] 2 E.A 503**

RESPONDENT'S SUBMISSIONS

5. The respondent's Counsel Ms. Karim Karim part submitted among others that the respondent worked for the appellant from October, 2007 to January, 2022 and during that period he was never housed or paid house allowance by the appellant yet this was a requirement under section 31 of the Employment Act. In this regard counsel relied on the case of **Ayubwa Yonemura v Liwa Kenya Trust [2014] eKLR** where the court stated that for an employer to exclude provision of housing allowance or payment of rent to the employee, it was imperative that the

contract of service specifically provides that the salary paid is a consolidated salary. According to counsel the last contract dated 1st June, 2017 did not indicate that the salary paid was a consolidated salary. The absence of such a clause or indication in the contract created a legal obligation on the appellant to either provide housing or pay housing allowance. Further, the appellant never produced any documentation such as payslips or internal policy records to demonstrate that any portion of the respondent's salary was designated as a housing allowance.



6. This appeal as indicated by counsel for the appellant revolves around the issue of house allowance which the trial court awarded at Kshs. 384,750. The appellant does not seek to dispute the quantum of the award but only the fact that the court allowed it. It therefore behoves the court to look at the supporting documents and evidence before the trial court and the reasoning of that court while reaching the conclusion that the respondent was entitled to housing allowance.
7. The Court has perused the record of Appeal and noted that two contracts relating to the respondent found at pages 37 and 39 of

the Record of Appeal did not make clear provision that the salary paid was inclusive of housing allowance. This court, just as the trial court did not have sight of the payslip issued to the respondent to enable it see the breakdown of the salary payment to determine if it was inclusive of housing allowance. To that extent, the trial court was justified in finding for the respondent and this court finds no justifiable reason to disturb the finding of the trial court.

8. **The appeal being solely on the issue whether the trial court was justified in making an award for housing allowance and not the quantum thereof and the fact that the court has reached the conclusion that the trial court was justified in making the award, the appeal is therefore found unmerited and is hereby dismissed with costs.**
9. **It is so ordered.**

Dated at Nairobi this 13th day of November, 2025

Delivered virtually this 13th day of November, 2025

Abuodha Nelson Jorum

Presiding Judge-Appeals Division