



**B2K Services Limited v Dennis Kenyanya Muricho (Appeal E093 of 2025)  
[2025] KEELRC 3547 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3547 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E093 OF 2025  
M MBARÚ, J  
DECEMBER 11, 2025**

**BETWEEN**

**B2K SERVICES LIMITED ..... APPELLANT**

**AND**

**DENNIS KENYANYA MURICHO ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. G. Sogomo  
delivered on 2 May 2025 in CMELRC No. E621 of 2023)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 2 May 2025 in Mombasa CMELRC No. E621 of 2025. The appeal is that the learned magistrate erred in awarding the claim for underpayment in disregard of the amount earned by the respondent of Ksh 13, 210 per month. The award of a house allowance was not justified, as it was contrary to the set principles. Despite the respondent's resignation, notice pay was awarded. Despite the respondent's contract expiring by effluxion of time, the trial court awarded compensation. The respondent's conduct at work did not justify the award of compensation; accordingly, the judgment of the trial court should be set aside with costs.
2. The background to the appeal is a claim filed by the respondent. His case was that in November 2019, the appellant employed him as a night security guard, earning Ksh. 9,400 per month, exclusive of the one-time house allowance. He worked until 15 June 2023. After a delay in payment due to financial constraints, he decided to text the applicant's director to request payment. This irritated the director, and upon payment of the due wages, the employment was terminated on 20 June 2023. He, however, only became aware of his summary dismissal upon reporting to work on 21 June 2023 and finding another security guard in his place of assignment. He was thus eligible for 20 days' pay. The appellant declined to pay, alleging that he had absconded from duty and demanding a formal resignation as a condition for payment of his terminal dues. The pressure to tender his resignation was meant to deny him his lawful terminal dues. This resulted in the unlawful and unfair termination of employment,



- contrary to sections 35, 41, 43, 44, and 45 of the [Employment Act](#) (the Act). The basis of his claim for terminal dues was the underpayments, notice pay, house allowance and compensation. He claimed the following:
- a. Notice pay Ksh. 16,959.
  - b. Underpayments from June 2020 to June 2022, Ksh. 133,006.80  
Underpayments from July 2022 to May 2023 Ksh. 80,498.  
Underpayments for 20 days in June 2023, Ksh. 4,830.
  - c. House allowance for 36 months Ksh. 91,578.60.
  - d. 12 months compensation  $16,959 \times 12 =$  Ksh. 203,508.
  - e. Costs of the suit.
4. In response, the appellant denied the claims and stated that the respondent was employed on a monthly wage of Ksh 10,010 by mutual agreement, less statutory deductions. He had disciplinary issues in various assignments as a guard and orchestrated a scheme to desert duty, which he executed through a series of events, starting with provocative texts to the respondent-appellant on 15 June 2023. He was paid all his dues but chose to resign voluntarily; hence, there was no termination of employment or constructive dismissal. There were no directives to terminate employment as alleged. The respondent attended and cleared on 18 June 2023 upon his resignation, and a new employee filled his position. He did not work for 20 days to demand payment; instead, he resigned without notice. After deserting duty and despite several warnings for gross misconduct, this led to a summary dismissal. Upon clearance, the appellant opted to pay terminal dues and end the employment relationship. The claims should be dismissed with costs.
5. The learned magistrate heard the parties and held that the respondent, the employee, suffered from delayed salaries leading to constructive dismissal. The appellant initiated the termination of employment as the employer due to non-payment of the due salary. This made the employment relationship untenable. The respondent was compelled to leave his employment for being placed under intolerable working conditions described as constructive dismissal. This was held to be unlawful and unfair.
6. The learned magistrate assessed the claims and awarded the following:
- a. Notice pay Ksh. 16,959.
  - b. Underpayments ksh. 211,538/40.
  - c. Unpaid house allowance ksh. 81,766.26.
  - d. 3 months' compensation Ksh. 50,877.
  - e. Costs of the suit.
  - f. Certificate of service.
  - g. Interests from the date of judgment.
7. On the appeal, the appellant submitted that there was no constructive dismissal as alleged since employment was terminated by effluxion of time. There was a fixed-term contract from 22 June 2022, which was due to lapse on 21 June 2023. On 15 June 2023, the respondent began sending text messages to the appellant regarding his delayed salary payment. Despite an explanation that the delay was due to



the client's delay in remitting the payment, the respondent escalated the matter by sending disrespectful text messages.

8. The respondent did not work beyond 21 June 2023. In *The Registered Trustees De La Christian Brothers t/a St. Mary's Boys' Secondary School v Julius D. M. Bain* [2017] eKLR, the court held that there was no obligation on the employer to issue notice at the end of a fixed-term contract. In this case, the respondent's contract came to an end, and the appellant had no legal duty to issue notice. The respondent opted to resign. By his conduct, he terminated employment and therefore no notice was necessary.
9. The appellant submitted that the parties had agreed on the due wage at ksh. 10,000 per month. Parties are bound under their contract. The last wage paid was Ksh. 13,200 upon deduction of statutory dues to NSSF and NHIF, and the gross wage was Ksh. 16,000.
10. The compensation claim is not due. Section 107 of the *Evidence Act*, he who alleges must prove, which the respondent failed to do, that he was unfairly treated following his resignation.
11. Regarding house allowances, under the fixed-term contract, parties agreed to a consolidated wage. The respondent was bound under his written contract. He cannot claim underpayment or notice pay. His resignation ended employment without notice.
12. The respondent submitted that the trial court correctly analysed the claim, and the judgment delivered on 2 May 2025 should be affirmed, with the appeal dismissed and costs awarded. There was constructive dismissal following refusal to pay the due wage, and not due to the effluxion of the fixed-term contract. Duress satisfied constructive dismissal as held in *Western Excavating (ECC) Ltd v Sharp* [1978] ICR. The allegations that the fixed-term contract was ending on 21 June 2023 are an afterthought.
13. The award of notice pay, compensation, underpayments, and house allowances is justified. The appeal should be dismissed with costs.

### **Determination**

14. As is the law and practice, being a first appeal from the trial court's decision, the court has the duty to reevaluate the evidence on record to reach its conclusion on the matters in dispute. However, even as this is discharged, bear in mind that this court did not have the benefit of hearing or seeing the witnesses in the cause testify. Therefore, one should only depart from the trial court's decision where it is clear that it is either contrary to the law or is inconsistent with the evidence that was tendered.
15. The appellant has admitted that the respondent was not paid his wages promptly, as evidenced by the text messages on 15 June 2023. It is acknowledged that the client failed to remit payment for services rendered, which is the reason for the delay.
16. The respondent was the appellant's employee. Any third-party arrangements and delays in salary payment should have been brought to the representative's notice in advance. Waiting and failing to pay salary when due is a serious breach of the employment contract under section 44(3) of the Act, which allows the injured party to terminate employment summarily.
17. Such non-payment of due wages for work done fundamentally repudiated his entire contract in terms of section 44(3) of the *Employment Act*, 2007.
18. In the case of *CNR, FITM & another(Respondent) (Cause E204 of 2021)* [2022] KEELRC 82 (KLR), the court held that the employee was no longer bound to the terms and conditions of his employment contract where the employer failed to pay his due salaries as agreed and every month end.



19. The fact that the parties' fixed-term contract was set to expire on 21 June 2023 did not justify the non-payment of due wages. Failing to pay the respondent his due wages placed him under distress, and the text messages exchanged testify to the fact that he was under extreme distress and had no prior notice that he would not be paid for work done. He did not know that the third party had not paid the appellant. He was not privy to such matters.
20. The appeal that the respondent deserted duty and then started harassing the appellant through text messages cannot justify the act of not paying his salary, or the appellant addressing such conduct firmly and decisively. In *Cheptanui v Rift Valley Bottlers Company Limited* [2022] KECA 824 (KLR), the court held that an employee who abandoned his duties committed gross misconduct. The employer should have a notice to show cause and allow the employee to attend a disciplinary hearing. If the employee fails to address the issue, a written notice of termination should be issued.
21. 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.
22. In this case, the refusal to pay the respondent for work done allowed him to claim under constructive dismissal. The appellant frustrated his employment by breaching the employment contract contrary to section 44(3) of the Act. The learned magistrate's findings that employment was terminated unlawfully and unfairly, although for different reasons, are well-founded. This is aptly captured in *Kagure v Dot Com Bakery Limited (Cause E087 of 2021)* [2024] KEELRC 13372 (KLR), the court emphasised that;

... in any contract of employment, payment of an employee's salary as per the contract of employment is pivotal, as all that an employee has for sale in the employment/labour market is his/her labour and/or expertise. Non-payment of an employee's salary goes to the core of the employment contract and destroys and/or seriously damages an employment relationship.
23. The award of notice pay and compensation is justified.
24. The appellant employed the respondent as a night security guard. This is a protected position under the Regulation of Wages (Protective Security Services) Order, 1998.
25. A night security guard working in Mombasa in June 2023 was entitled to a basic wage of KSh 16,959 per month. The house allowance owed is Ksh 2,543.85, making the total gross wage Ksh 19,502.85 for a night guard.
26. The Minister regulates the wage for such a position. An employer cannot pay below the minimum wage. Any written contract based on an underpayment is invalid to this extent.
27. The employment contract dated 22 June 2022 provided for a wage of Ksh. 10, 000 per month. This is contrary to the Wage Orders by the Minister. There was an underpayment of Ksh. 9,502.85 per month. This is due.
28. Under the term contract, the respondent served for 11 full months and 20 days. For the 11 months, the underpayment is assessed at Ksh. 104,531.35, which is inclusive of the due house allowance.
29. For the 20 days worked in June 2023, the underpayment and due house allowance is Ksh. 13,001.90. Total due underpayment and house allowance is Ksh. 117,536.



30. The claims going back beyond the 11 months and 20 days under the fixed-term contract are not justified. See *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & another* [2016] KECA 213 (KLR) and the case of *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) that benefits such as allowances in housing, overtime and work hours accrue daily, weekly or monthly and must be addressed within the meaning of a continuing injury under section 90 of the Act.
31. Notice pay is thus due based on the last due gross wage under section 49(2) of the Act at ksh. 19,509.85.
32. The findings that the respondent was entitled to compensation and assessed at 3 months' gross wage were well-reasoned and are hereby affirmed.  $19,502.85 \times 3 = 58,508.55$ .
33. The award of costs and interests from the date of judgment is well-reasoned and justified.
34. Accordingly, the appeal is analysed above. The awards by the learned magistrate in Mombasa CMELRC No. E621 of 2023 are confirmed in the following terms;
  - a. Employment terminated unfairly.
  - b. Compensation Ksh. 58,508.55.
  - c. Notice pay Ksh. 19,502.85.
  - d. Underpayments and house allowances Ksh. 117,536.
  - e. Costs for the appeal and the trial court awarded to the respondent.

**DELIVERED IN OPEN COURT AT MALINDI, THIS 11<sup>TH</sup> DAY OF DECEMBER 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Davis Wekesa

..... and .....

