

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MALINDI

CAUSE NO. E008 OF 2025

RANDU MWARANDU KOMBE..... CLAIMANT

VERSUS

RAIN DROPS LIMITED..... RESPONDENT

JUDGMENT

The matter proceeded ex parte. The respondent was issued a summons, but there was no appearance or a response.

The claim is that the respondent employed the claimant as an enforcement officer in 2016. His monthly wage was KSh. 24,700. He worked until November 2024, when his employment was terminated without notice, disciplinary hearing or legal justification.

The claim is that for 8 years, there was no pay for overtime, annual leave or severance pay. The termination of employment was unfair, and he claims the following terminal dues:

- a) Notice pay KSh. 24,700.
- b) 12 months' compensation Ksh. 296,400.
- c) Unpaid leave for 8 years Ksh. 138,320.
- d) Overtime Ksh. 1,778,400.
- e) Severance pay Ksh. 98,800.
- f) Certificate of service.
- g) Certificate for remittance of statutory deductions.
- h) Costs of the suit.

The claimant testified to support his case that upon employment by the respondent, he worked diligently until 30 November 2024, when he went to SMB Bank in Malindi to make a transaction in anticipation of his November salary, but to his dismay, he found a zero balance. He contacted the human resources department and was informed that his name had been removed from the payroll. This was without notice or justification. He was not paid terminal dues.

Without a response, the court is left without any work records from the respondent, the employer. The claims made are not challenged. However, these claims will be assessed on the merits.

Under sections 35, 41, 43 and 45 of the Employment Act (the Act), before termination of employment, the employer should issue notice, give reasons and hear the employee in the presence of another employee of his choice, as held in **Pius Machafu Isindu v Lavington Security Guards Limited [2017] KECA 225 (KLR)**. The court held that:

There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5)), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the Evidence Act and the Civil Procedure Act/Rules. Finally the remedies for breach set out under section 49 are also fairly onerous and generous to the employee. ...

Even in a serious case of gross misconduct, the employer should accord the employee due process under section 41(2) of the Act. Issue notice to the employee and allow him to attend and make his representations before summary dismissal as held in **Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited [2014] KEELRC 813 (KLR)**.

In this case, without any response, notice, reasons or any justification for the termination of the claimant's employment, the court finds this was unlawful and unfair, contrary to section 45 of the Act. Under section 49 of the Act, the claimant is entitled to compensation.

Notice pay is due under section 35 of the act at one month's gross wage, amounting to Ksh. 24,700.

The claim worked for the respondent for 8 years. Without the response, there is no record under section 45 of the Act. An award of 8 months' gross wage in compensation is hereby found appropriate. $\text{Ksh. } 24,700 \times 8 = \text{Ksh. } 197,600$.

On the claim for leave, this is a right under section 28 of the Act. There are no work records upon which the court can confirm that the respondent allowed the claimant to take his annual leave. However, under section 28(4) of the Act, the employee is allowed to accumulate annual leave days for only 18 months. A claim for 8 years is time-barred. The due leave pay is for 33 days based on the basic wage, but there is no record or payment statement of what comprises the work benefits. The rate of ksh. 24,700 shall apply. The due wage is Ksh. 27,170.

On the claim for overtime pay, this is a right under section 48 of the Labour Institutions Act. However, the employee must indicate the working hours and how the claimed overtime arose. In the Memorandum of Claim, the claimant did not particularise his work hours. Despite the lack of response, the claim is not proved to the required standard.

Regarding the claim for severance pay for 8 years, the claimant argues that his employment was terminated without notice. Severance only arises under the provisions of redundancy addressed under section 40 of the Act. This is not such a case. Severance pay is not due.

Regarding a Certificate of Service, this is due at the end of employment pursuant to section 51 of the Act.

On costs, if the lapse of due process is successful, the claimant is entitled to costs.

Accordingly, judgment is entered for the claimant against the respondent on the following terms:

- a) Compensation Ksh. 197,600.**
- b) Notice pay Ksh. 24,700.**
- c) Leave pay Ksh. 27,170.**
- d) A certificate of service.**
- e) Costs of the suit.**

Delivered in open court at Malindi, this 11th day of December 2025.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Davis Wekesa

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