



**Parapet Limited v Chengasia (Appeal E122 of 2025)
[2025] KEELRC 3549 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3549 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E122 OF 2025
M MBARŪ, J
DECEMBER 11, 2025**

BETWEEN

PARAPET LIMITED APPELLANT

AND

ERICK WANDABWA CHENGASIA RESPONDENT

*(Being an appeal from the judgment of Hon. G. Sogomo delivered
on 27 June 2025 in Mombasa CMELRC No. E542 of 2023)*

JUDGMENT

1. The appeal arises from the judgment delivered on 27 June 2025 in Mombasa CMELRC No. E542 of 2023. The appellant is seeking that the judgment be set aside and the claim by the respondent be dismissed. The basis of the appeal is that the learned magistrate erred in law and fact in finding that there was wrongful and unfair termination of the respondent's employment. The trial court failed to find that he had absconded from duty; hence, it terminated his employment, as the appellant issued no termination notice. The efforts taken by the appellant to trace the respondent upon abscondment were not considered. The order to pay salary and leave days did not account for amounts that were not owed.
2. The claim by the respondent was that on 1 July 2014, he was employed by the appellant as a cleaner stationed at UN Port Reitz, Mombasa, at a wage of Ksh. 15,000 per month. On 11 February 2022, the respondent reported to work but was informed by Manager Nyambu not to report until called back. No reasons were given. The payment of wages suddenly stopped. This resulted in unfair termination of employment by summary dismissal. The claim was for payment of the following:
 - a. Notice pay KSh. 19,019.
 - b. Leave for 3 years ksh. 36,346.15
 - c. 12 months compensation for unfair termination of employment Ksh. 180,000.



- d. Certificate of service.
3. In reply, the appellant's case was that, by letter dated 1 November 2015, they employed the respondent as a steward/unskilled worker for a one-year contract ending on 31 October 2016, at a wage of Ksh. 15,000 per month. The contract stationed the respondent at UNSOS, Mombasa, after the appellant had secured a one-year contract with UNSOS. The respondent and 18 other employees were deployed at UNSOS. The contract was subsequently extended up to December 2020. In light of the scheduled expiry, the appellant, in June 2019, held a meeting with the 18 employees and the UNSOS representative, and resolved that those who would not be absorbed back into the new contract were to report back to the office for redeployment to other stations.
 4. Out of the 18 employees at UNSOS, some reported back while others did not. The respondent reported back for redeployment only to abscond from duty from 15 June 2020. The human resources officer made efforts to contact him without success. He did not report to work on 15 June 2020 as alleged. The manager does not call employees to report to work, as all communications go through the human resources manager. There was no summary dismissal as alleged since the respondent absconded from duty. There are no outstanding terminal dues for annual leave, and having failed to attend work, he terminated his employment, and the matter should be dismissed.
 5. The learned magistrate heard the parties and held that the response that there was desertion of duty was without evidence; hence, employment was terminated without the due process. This resulted in unfair termination of employment, hence awarded the following:
 - a. Notice pay Ksh. 15,000.
 - b. Annual leave Ksh. 31,500.15
 - c. 8 months compensation Ksh.120, 000.
 - d. Certificate of service.
 - e. Costs of the suit.
 6. On the appeal, the appellant submitted that under section 47(5) of the *Employment Act* (the Act), the respondent did not prove a case of unfair termination of employment to require the appellant to discharge its duty under section 43 of the Act. Without proof of unfair termination of employment, the appellant had no legal burden to discharge, as held in *Pius Mwachfu Isindu v Lavington Security Guards Limited* [2017] eKLR and *Josephine M. Ndungu & others v Plan International Inc.* [2019] eKLR.
 7. The respondent submitted his NSSF record up to 30 September 2018, whereas he alleges that his employment was terminated in 2022. On the available evidence, there was no unfair termination of employment as alleged. The appellant called witnesses who tried to trace the respondent after the respondent absconded from duty, to no avail. There are log-in sheets that he did not fill. The daily attendance records were not signed. Under section 44(4) of the Act, desertion of duty is good cause for summary dismissal. Being absent from work without the employer's authorization is gross misconduct and subject to summary dismissal as held in *BIFU v Barclays Bank of Kenya Ltd* [2014] eKLR.
 8. The appellant submitted that the awards by the trial court are not justified and the appeal should be allowed with costs.

There are no written submissions by the respondent.



Determining

9. This being a first appeal, the court is required to review the record, reassess the findings, and make its conclusion. However, consider that the trial court had the chance to see and hear the witnesses.
10. The court is denied crucial material in the written submissions on the appeal.
11. On the records filed, in his case, the respondent asserted that he reported to work on 11 February 2022, but the manager sent him away. The payment of his wages stopped, and no reasons were given. He took it that his employment had been unfairly terminated.
12. The appellant asserts that the respondent has absconded from duty since 15 June 2020.
13. The records filed by the appellant included the contract of service, payment slips, daily work sheets and logs.
14. In the case of *Okode v Tejani* [2025] eKLR, the court held that where the employer alleges that an employee absconded duty, the employer bears the burden of proof that he had made efforts to trace the employee but failed.
15. In this case, the respondent asserts that there were efforts to trace the respondent. They produced the worksheets and logs. These records only prove work attendance and not efforts to trace the respondent. The calls, the letters, or any other efforts to issue notice to show cause why he had abandoned his employment are not produced.
16. No notice was issued as required under section 41 of the Act, resulting in an unfair termination of employment.
17. The court has emphasised that the employer has a duty to end the employment relationship. Where an employee abandons employment through abscondment, desertion or absenteeism, the employer must invoke the provisions of section 18(5) (b) of the Act. Written notice terminating the employment relationship must be issued and served upon the labour officer to confirm that the employee no longer works for the stated employer.
18. In the case of *Odero v Guardian Coaches Limited* [2023] KEELRC 2382 (KLR); *Wambua v Open Hire* [2022] KEELRC 12708 (KLR); and the case of *Milano Electronics Limited v Dickson Nyasi Muhaso* [2021] KEELRC 229 (KLR), the court held that desertion, being a unilateral act of abandonment of the contract, cannot operate to bring a contract of service to a close until the employer acts on it.
19. This position is emphasised in *James Okeyo v Maskant Flower Limited* [2015] eKLR, that the employee who deserts employment does not dismiss himself, so to speak. The decision to formally end the employment relationship should come from the innocent party.
20. In *Ayub Kombe Ziro v Umoja Rubber Products Limited* [2022] KEELRC 141 (KLR), the court held that for absence of an employee from duty to constitute abandonment of the contract, the employer must demonstrate that he has addressed the matter either by instigating disciplinary action against the employee or making other deliberate effort to get the employee to resume duty to no avail.
21. In this case, the respondent was left at large after 15 February 2020, when he is alleged to have absconded from duty. His claim that he was verbally dismissed is correct, given that the respondent, the employer, did not take any disciplinary action against him and, fundamentally, failed to exercise its right under the Act to formally terminate the employment relationship.



22. Without adhering to the procedures under sections 35 and 41 or 44 of the Act, the appellant unfairly terminated the employment of the respondent.
23. The trial court adequately addressed the matter and awarded notice pay and compensation.
24. However, in assessing the compensation due, the court must weigh the employee's work record, time served, and conduct leading to termination of employment. The parties were under a written contract that was extended from time to time, ending in December 2019. A meeting was held between the parties, noting that the UNSOS contract was ending and that the appellant needed to redeploy some employees. Work resumed in January 2020, and the respondent agreed to the redeployment.
25. Inherently, the appellant made an effort to retain the respondent after the UNSOS contract ended. That should place the appellant in good standing. The award of compensation should take these issues into account. The learned magistrate awarded 8 months' gross pay based on the total number of years worked. However, the employment was regulated under a yearly contract that would be extended at the end. Cumulatively, an award of 3 months' gross salary at Ksh. 15,000 x 3 = Ksh.45, 000 is hereby deemed appropriate.
26. Regarding the claim for 3 years of annual leave, the appellant did not file any leave forms for the respondent. The right to secure annual leave is under section 28 of the Act. Under section 28(4) of the Act, annual leave should not accumulate for more than 18 months. In this case, the respondent is entitled to 33 days of annual leave assessed at Ksh. 16,500.
27. On costs in employment claims, the award of costs should be justified under section 12(4) of the *Employment and Labour Relations Court Act*. Costs do not automatically follow the cause and must be supported by a basis. Based on the findings in the appeal, each party should bear its own costs in the trial court and on appeal.

Accordingly, the appeal partially successful in the following terms:

- a. Employment terminated unfairly;
- b. Compensation Ksh. 45,000.
- c. Notice pay Ksh. 15,000.
- d. Leave pay Ksh. 16,500.
- e. Certificate of service.
- f. Each party to bear its costs.

DELIVERED IN OPEN COURT AT MALINDI, THIS 11TH DAY OF DECEMBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

..... and

