

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**APPEAL E001 OF 2025**

**SHEER LOGIC MANAGEMENT CONSULTANTS LIMITED ..... APPELLANT**

**VERSUS**

**ISSA SULEIMAN MWAGOMBERO ..... RESPONDENT**

**[Being an appeal from the judgment of Hon. M. L. Nabibya delivered on 5 December  
2024 in Mombasa CMELRC No. E246 of 2023]**

**JUDGMENT**

The appeal arises from the judgment delivered on 5 December 2024 in Mombasa CMELRC No. E246 of 2023. The appellant is seeking that the findings be that it is liable to pay compensation of Ksh. 720,000, with costs to the respondent, be set aside and judgment be entered that the appellant lawfully terminated employment.

The background of the case is a claim filed by the respondent. His case was that he was employed by the appellant in February 2020 as a heavy commercial driver and worked until 4 January 2021, when his employment was converted to a contract ending on 31 December 2023. He worked until 30 September 2022, when his employment was terminated. He was earning Ksh. 33,000 per month. He claimed that on 30 September 2022, he reported to work when the appellant told him that they did not wish to continue working with him. No reasons were given, nor was notice provided, leading to the unfair termination of employment. He claimed the following dues:

- a) Notice pay Ksh. 33,000.
- b) Salary for the unspent contract of 15 months, KSh. 495,000.
- c) 12 months' compensation Ksh. 396,000.
- d) Certificate of service.
- e) Costs of the suit.

In reply, the appellant admitted that they employed the respondent as a driver for the contracted client, Mitchell Cotts, under a fixed-term contract from 1 February 2021 to 31 December 2023. The nature of business includes outsourcing labour from various companies and institutions. The appellant issued the respondent with a retirement notice, effective from 1 October to December 2022, when the fixed-term contract would come to an end, because the respondent would be attaining 60 years of age. He declined to accept the notice. The respondent had sustained injuries at work on 6 July 2020 and remained on paid sick leave for 3 months, after which the doctor recommended light duties. DOSH assessed his injuries at 20% disability, translating to Ksh. 732,600 incapacity, and that he would not be able to drive heavy commercial trucks. He was paid compensation in June 2023. The appellant issued the respondent with a redeployment letter on 3 February 2022, assigning him light duties as a pick-up driver until his retirement notice in September 2022.

The employment contract stipulated that either party could terminate it upon sufficient notice. The appellant thus issued 3 3-month retirement notice to the respondent. The claims should be dismissed.

The learned magistrate heard the parties and held that the employment was terminated unfairly, as the respondent was not afforded a disciplinary process. The trial court awarded the following:

- a) Salary for the remainder of the term contract Ksh. 396,000.
- b) 12 months' compensation Ksh. 396,600.
- c) Certificate of service.
- d) Costs plus interests.

Aggrieved by the judgment, the appellant's case is that the learned magistrate erred in law and fact in finding that there were no justified grounds terminating employment and awarding the remainder of the contract term plus compensation at Ksh. 792,000. There was no evidence to support the claims made, and the employer had acted within its rights to terminate employment upon notice.

The appellant submitted that it employed the respondent under a contract that ended on 31 December 2023. He, however, sustained an injury at work on 6 July 2020, and the matter was reported to DOSH, which assessed compensation at KSh. 732,600, which was paid in June 2023. It was recommended that he be allocated light duties, which was done.

Through a notice dated 30 September 2022, the application issued the respondent a 3-month' retirement notice. He had reached 60, but he refused to accept the notice. Under the written contract, the parties agreed to termination of employment upon sufficient notice, which the appellant invoked in this case. This was a justified reason to terminate employment. The trial court erred in analysing the matter, finding an unfair termination of employment, and awarding the remainder of the contract plus 12 months' compensation.

The appellant submitted that it had given the respondent sufficient notice, hence lawfully terminating employment. The trial court's awards were not justified and should be set aside.

The respondent submitted that the appeal is without merit and should be dismissed with costs. The learned magistrate correctly analysed his case and made correct findings. He was employed under a term contract ending on 31 December 2023. However, the appellant issued a notice dated 30 September 2022, prematurely terminating his employment without justifiable cause.

The appellant had no justification in seeking to set aside the trial court judgment. The retraction notice of 30 September 2022 amounted to unfair termination of employment as held in **Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR**. The Employment Act does not set a retirement age, and in this case, the parties were bound by a term contract.

#### Determination

This being a first appeal, the court is required to review the record, reassess the findings and make its conclusions.

It is common cause that the parties were under a term contract commencing on 1 February 2021 and ending on 31 December 2023.

It is also admitted that the appellant previously employed the respondent from February 2020. On 6 July 2020, the respondent suffered a work injury. It was reported to DOSH, who assessed compensation at KSh. 732,600, and this was paid in June 2023.

By a notice dated 30 September 2022, the appellant retired the respondent, with the retirement to take effect on 3 months' notice ending in December 2022. The reason was that he had reached 60. The appellant justified the notice on the terms and conditions of the employment contract, which provided for termination upon notice.

Sections 8, 9, and 10 of the Employment Act (the Act) allow parties to an employment relationship to enter into oral, written, and fixed-term contracts of employment. In this case, parties opted for a term contract running from 1 February 2021 to 31 December 2023.

A term contract is a lawful and valid mode of employment. it binds the parties to it under its terms and conditions as held in **Todor Services Limited v Deri [2025] KEELRC 1948 (KLR)** and the case of **Machungo v Stanbic Bank Kenya Limited [2025] KEELRC 2145 (KLR)**.

Upon selecting the term contract, the parties agreed that the employment would run until 31 December 2023. Any change to the term contract should have complied with the mandatory provisions of section 10(5) of the Act:

***(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.***

The appellant, as the employer, had no legal right to unilaterally change the terms of the contract. The consent of the respondent was necessary, as held in **Moses Kamau & 6 others v Signature Holdings (E A) Ltd [2020] KEELRC 823 (KLR)** and **Ali v National Health Insurance Fund & 2 others; Transparency International & 2 others (Interested Parties) (Cause E714 of 2022) [2022] KEELRC**. Section 10(5) of the Act requires an employer to consult with an employee before changing specific terms or particulars of employment.

The rationale is that a term contract binds the parties to its terms.

Even where parties agreed to terminate employment on notice, such terms and conditions must abide by the mandatory terms of section 43 of the Act. The employer can't justify termination of employment solely on the basis of a contract that provides for it. Reasons for termination of employment must exist. Such reasons must be valid and based on justified grounds. In this case, under the terms of the contract, the parties were bound.

Despite the respondent being injured at work in July 2020, the appellant issued him with the term contract on 4 January 2021. It ended on 31 December 2023.

The termination of the employment term contract under the guise of retirement age was unlawful. This resulted in premature termination of employment, which is unfair.

Notice issued for 3 months.

On the remedy of payment for the remainder term contract of 15 months, and compensation for 12 months, under section 49 of the Act, the court is allowed to award single or multiple remedies. However, justification for the various awards must be given as held in **Ongori v G4S Kenya Limited (Employment and Labour Relations Appeal E284 of 2024) [2025] KEELRC; Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR**, and **Kinyeki & 88 others v Kenya Ports Authority & another [2025] KEELRC 2356 (KLR)**. The court must rationalise the reasons and give reasons.

In this case, the respondent had pleaded for the award of the remainder of his contract, together with compensation. He was awarded the 15 months due under his contract. The subsequent award of 12 months' compensation lacks justification.

By awarding the respondent the remainder of the term contract, he was placed under it. He was paid for the time expected to work under his term contract. A further award of compensation was not justified.

Similarly, the award of costs and interests in employment disputes should comply with section 12(4) of the Employment and Labour Relations Court Act. Reasons for the award of costs and interests must be stated. No reasons for the award of costs are given in this case. Each party should pay its costs.

**Accordingly, the appeal is partially successful. Judgment in Mombasa CMELRC No. E246 of 2023 is hereby reviewed in the following terms;**

- a) Employment terminated unfairly;**
- b) The respondent is awarded the reminder term contract at Ksh. 495,000.**
- c) Certificate of service.**
- d) Each party to pay its costs for the appeal and trial court proceedings.**

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 .....