

**REPUBLIC OF KENYA**

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

**APPEAL NO. E126 OF 2025**

**CAREX KELI CHARO WAYAA ..... APPELLANT**

**VERSUS**

**TRIZA WANGU GACHERU .....  
RESPONDENT**

**[Being an appeal from the judgment of Hon. Lewis Gatheru delivered on 11 June 2025  
in Mombasa CMELRC No. E052 of 2024]**

**JUDGMENT**

The appeal arises from the judgment delivered on 11 June 2025 in Mombasa CMELRC No. E052 of 2024. The appellant seeks that the judgment be set aside on the grounds that the learned magistrate erred in law and fact by failing to find that the appellant was unable to establish an employer-employee relationship, despite submitting sufficient evidence and an M-Pesa statement to prove a consistent salary payment by the respondent. These records were not scrutinised. The learned magistrate hence erred in alluding that the appellant was staying in the respondent's house on humanitarian grounds and on the grounds of being assisted in a land case. Yet, there was no citation of the said land case.

The applicant's case was that she was employed by the appellant as a housekeeper on 14 February 2021 within Nyali, Mombasa, at a wage of Ksh. 7,000. This wage was below the minimum wage. She worked until 28 November 2023, when the respondent terminated her employment without notice or justification and falsely accused her of absconding from duty, which was not correct. On 28 November 2023, the appellant reported for work at 8 am, and the respondent told her that her employment had been terminated. She was directed to collect her property and leave. At the time, the wage paid was KSh. 10,000 per month instead of KSh. 15,201.65 per month. No payment was made for the house allowance or statutory dues. This resulted in unfair termination of employment and claimed the following:

- a) Notice pay Ksh. 7,000.
- b) Underpayment for 33 months Ksh. 15,201.65 – 7,000 Ksh. 270,654.45
- c) Unpaid leave for 2 years Ksh. 30,723.
- d) 12 months' compensation Ksh. 84,000.
- e) Unpaid salary for 28 days Ksh. 20,482.
- f) Unpaid overtime for 1 hour for 33 months Ksh. 134,541.
- g) House allowance for 33 months Ksh. 34,650.
- h) Unpaid NHIF for 33 months Ksh. 16,500.
- i) Service pay for 2 years Ksh. 3,500.
- j) Costs of the suit.

In reply, the respondent denied the claims, stating that there was no employment relationship between the parties and that she agreed to house the appellant only on humanitarian grounds, as the appellant had been evicted from her home. The appellant was only sent away from the house after it was discovered that she had stolen, an incident reported to the police. There is no proof of payment of a salary of Ksh. 7,000 as alleged.

The learned magistrate heard the parties and held that there was no employment relationship between the parties and that the appellant had not proved her case. The suit was dismissed with costs.

On the appeal, the appellant submitted that she was employed by the respondent as a housekeeper from 14 February 2021 at a wage of Ksh. 7,000 per month. She worked until 17 November 2023, when her employment was unfairly terminated. She was underpaid, there was no annual leave and remittance of statutory dues. Upon a finding of unfair termination of employment, the court should assess her claims and award her costs.

The respondent submitted that there was no proof of an employment relationship, and the trial court correctly analysed the claim and dismissed it with costs. The appeal has no merit and should also be dismissed with costs. The appellant failed to prove her case under section 47(5) of the Employment Act (the Act), and hence, the respondent had no burden to discharge under section 43 of the Act.

#### Determination

This is a first appeal. The court is required to review the record, reassess the trial court's findings, and render its conclusions. However, take into account that the learned magistrate had the opportunity to hear the parties give evidence in court.

The appellant asserts that there was employment as a housekeeper from 14 February 2021 until 27 November 2023. The employment was oral, and the only evidence was the M-Pesa salary payments.

The respondent denied the employment relationship and that the appeal was only heard on humanitarian grounds, and was told to leave due to theft. The matter was reported to the police. The police report was not indicated.

On the challenged employment relationship, the appellant testified in court that the respondent employed her on 14 February 2021 at a wage of KSh. 6,000, which was increased to Ksh. 7,000. On 28 November 2023, she was told to wake up and leave the respondent's house.

The M-Pesa statement produced by the appellant indicates the following:

On 1 March 2021, the respondent remitted KSh. 3,500 to the appellant.

On 10 March 2021, she was paid KSh. 4,500 by Amina Musa.

On 3 April 2021, the respondent paid KSh. 6,200.

On 9 April 2021, she was paid Ksh . 8,000 from Co-operative Bank.

On 11 April 2021, she was paid Ksh. 2,000 by Zena Juma.  
On 22 April 2021, the respondent paid Ksh. 1,400.  
On 30 April 2021, the respondent paid KSh. 6,100.  
On 12 May 201, she was paid Ksh. 2,500 by Zena Musa.  
On 28 May 2021, the respondent paid KSh. 6,200.  
On 10 May 2021, Zema Musa paid KSh. 2,000.  
On 4 July 2021, the respondent paid ksh. 6,200.  
On 7 July 2021, Stanley Chebwony paid Ksh. 8,000.  
On 31 July 2021, the respondent paid Ksh 6, 800.  
On 31 August 2021, the respondent paid ksh.6. 300.  
On 30 October 2021, the respondent paid Ksh. 6,500.  
On 14 November 2021, the appellant received ksh. 10,000 from Co-operative Bank.  
On 1 December 2021, the respondent paid ksh. 7,100.  
On 24 December 2021, the respondent paid Ksh. 1,500.  
On 31 December 2021, the respondent paid Ksh. 6,500.

No payment in January and February 2022.

There are payments in February, March, and April 2022, each for a different amount. Henceforth, various amounts have been paid to the appellant by the respondent.

The respondent maintained that she housed the appellant on humanitarian grounds. This arose after the general elections. She called various witnesses to testify to these facts, and the electoral tensions and crisis led to the appellant's accommodation.

From the M-Pesa statements filed by the appellant, it is apparent that in any given month, the appellant received a different sum from the respondent. There are other payments of various amounts by third parties.

What comes out clearly to the court under paragraph 2,2 of the Memorandum of claim is that the appellant asserts that her wage was Ksh. 7,000 per month.

Under paragraph 2.11 of the Memorandum of claim, the appellant claims she was paid Ksh. 10,000 per month.

In evidence, the appellant stated that her salary started at ksh. 6,000 ad graduated to KSh. 7,000.

These variances leave the appellant as a dishonest person.

The varisu payments from the respondent are inconsistent. There are also other payments by third parties which she did not address. These payments are consistent throughout the alleged employment period with the respondent. This means the appellant was not solely at the respondent's disposal as an alleged housekeeper. Otherwise, the constant payments by third parties should have been separated or explained to position herself as serving one alleged employer.

Upon the response challenging the employment relationship, the appellant was, under section 47(5) of the Act, required to discharge the burden of proof in respect of the alleged unfair termination of employment. this burden was not discharged. The resident called several witnesses whose evidence that there was no employment between the parties was not challenged in any material way.

The learned magistrate well analysed the facts, applied the law and made correct findings. There was no employment relationship. The housing of the appellant by the respondent on humanitarian grounds is more probable, hence denying the court jurisdiction to address such a matter.

**Accordingly, the appeal is dismissed. It has no merit. Costs 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 .....