



REPUBLIC OF KENYA



**Century Furniture Limited v Kazungu (Appeal E185 of 2025)
[2026] KEELRC 229 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 229 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E185 OF 2025
M MBARÚ, J
JANUARY 29, 2026**

BETWEEN

CENTURY FURNITURE LIMITED APPELLANT

AND

JUMA DANIEL KAZUNGU RESPONDENT

*(Being an appeal from the judgment of Hon. J. B. Kalo delivered
on 3 September 2025 in Mombasa MCELRC No. E723 of 2023)*

JUDGMENT

1. The appeal arises from the judgment delivered on 3 September 2025 in Mombasa MCELRC No. E723 of 2023. The appellant seeks that the judgment be set aside; he claims it should be reassessed in light of the evidence following the respondent's dismissal of the claims.
2. The appeal is that the learned magistrate erred in law and fact in holding that the respondent was a casual employee within the meaning of section 37 of the *Employment Act* (the Act). There was an error in finding that there was unfair and unlawful termination of employment; hence, the awards of notice pay, house allowance, and compensation should be set aside.
3. The background to the appeal is a claim filed by the respondent, alleging that he was employed by the appellant as a machine operator on 2 March 2011 at a wage of Ksh. 21,000 per month. He claimed that on 1 September 2023, he was summoned by the director to a meeting and informed that his employment was terminated to pave the way for fresh recruitment. There was no notice or reasonable cause leading to the unlawful and unfair termination of employment. He claimed the following terminal dues:
 - a. One month's notice pay Ksh. 21,000.
 - b. Unpaid leave for 14 years, Ksh. 205,800.



- c. House allowance for 162 months Ksh. 510,300.
 - d. 12 months' compensation Ksh. 252,000.
 - e. Service pay for 14 years Ksh. 147,000.
 - f. Costs of the suit.
4. In reply, the appellant denied the claims and stated that the respondent was taken on a casual basis from January 2018, working intermittently when there was work in different departments, mainly as a turn man rather than a machine operator. He was not qualified to work as a machine operator, as alleged. Operations would stop at 4 pm. The respondent would be paid a daily wage of Ksh. 695 in cash, which was inclusive of house allowance on the days he would report to work. He never worked for a whole month; he worked only intermittently, so he is not eligible for leave. In September 2023, the respondent worked for only 4 days, with the last day being 8 September 2023. He then left on his own accord, and the claims made are not justified.

The appellant filed work records.

5. The learned magistrate heard the parties and held that there was continuous employment of the respondent by the appellant, hence under section 37 of the Act, he was entitled to notice pay, leave pay, house allowance, and compensation.
6. On appeal, the appellant submitted that the respondent was a casual employee, was taken intermittently, and that the finding that he was protected under section 37 of the Act was in error. The work records produced included the Muster Roll, which demonstrates that the respondent was never employed continuously or for a whole month. In *Rashid Mazrui Ramadhan & others v Dosh & Company (Hardware) Limited*, the court held that section 37 of the Act does not apply to an employee who works intermittently. Casual employment is allowed under the Act as defined under section 2.
7. In this case, the respondent was a casual employee paid a daily wage, including the house allowance. He left his employment on his own volition, as he was a casual employee. In *Protus Wanjala Mutie v Ango African Properties t/a Jamb Mutara Lodge Laikipia [2021] eKLR*, the court held that there was no evidence of unfair termination of employment; hence, no notice or compensation was due.
8. In this case, the trial court erred in the findings, and the judgment should be set aside.
9. The respondent submitted that the trial court analysed the evidence and made proper findings that there was employment protected under section 37 of the Act. The appellant called its witness, who admitted that the respondent worked for the appellant and that, through a notice dated 1 September 2023, the employment was terminated. There was no prior notice or reasons given for the decision.
10. The respondent submitted that the appellant's witness also admitted to the statutory deductions. Such can only accrue in an employment relationship. A casual employee is paid at the end of each day for noncontiguous work. The work records filed by the appellant confirm that the respondent was available for work.

Determination

11. This is the first appeal. The court is required to reassess the record, review the findings, and make a conclusion. However, consider that the trial court had the opportunity to hear and see the witnesses.
12. The issues raised by the appellant concern the application of section 37 of the Act and the findings of an unlawful and unfair termination of employment.



13. Indeed, a casual employee is defined under section 2 of the Act. This is an employee who is sourced daily. Wages are paid at the end of each day. The employment only lasts for the day.
14. On the other hand, section 37 of the Act protects an employee who is engaged on a casual basis yet continues to offer such duties regularly and undertakes work that, by its nature, is not likely to end.
 - (1) Notwithstanding any provisions of this Act, where a casual employee—
 - (a) works for a period or several continuous working days which amount in the aggregate to the equivalent of not less than one month; or
 - (b) Performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more
15. Section 37(1) of the Act must thus be seen in its two parts. Where a casual employee works continuously for up to one month or performs work that cannot reasonably be expected to be completed within a period or number of working days, and continues for over 3 months.

The appellant filed various work records, including the following:

 - a. NSSF statement for the respondent.
 - b. NHIF records for the respondent.
 - c. Muster roll.
 - d. Pay sheets.
 - e. Muster roll schedules.
16. In September 2023, there are four sheets for the month, indicating that the respondent was employed. These records are not filed in any orderly manner to help the court discern the entirety of the appellant's workforce, the number of employees on any given date, inclusive or exclusive of the respondent.
17. What is clear to the court, and which the learned magistrate was able to discern, is that, under the protections of section 37 of the Act, an employee who is continuously available to the employer beyond daily casual labour is protected with rights and benefits under the Act.
18. The appellant has relied on the case of *Rashid Mazrui Ramadhan & others v Dosh & Company (Hardware) Limited*, in which the court held that there is a distinction between casual employment and protected employment under section 37 of the Act. One remains casual for a day, and the other is continuous and unlikely to end in a given day, week, or month.
19. In this case, the respondent benefits from statutory deductions and remittances by the appellant, who was engaged over a period that did not end in a day or within the month. He was hence protected under section 37 of the Act as held in *Kenyatta University v Thomas & 25 others* [2025] KECA 1014 (KLR) and *Kenyatta University v Maina* [2022] KECA 1201 (KLR). The Court of Appeal emphasised that subjecting an employee to casual employment as and when the employer needed her services and disregarding her time was an unfair practice. Such treatment is unfair because being laid off during the off-peak season does not guarantee permanency, and the employee cannot look for employment elsewhere during that season.
20. In this case, the learned magistrate applied the law well based on the given facts. The findings cannot be faulted.



21. Before the termination of employment protected under section 37 of the Act, notice was required. Reasons should have been given.
Notice pay and compensation awarded are justified.
22. On the award of house allowances for 3 years, this is a continuous injury which should have been based on the provisions of section 90 of the Act. In this case, the appellant was paying a daily wage, which is not denied. Such a wage includes the house allowance.
The award of house allowance in this case is not justified.
23. On the claim for leave pay, under the mistaken belief that the respondent was a casual employee, he was not accorded the right under section 28 of the Act. Every employee is entitled to 21 days of leave per year. However, under section 28(4) of the Act, such annual leave is not accumulated beyond 18 months. This entitled the respondent to 33 days of annual leave pay upon termination of his employment.
24. On the wage of Ksh. 21,000 per month, the leave pay due is Ksh. 23,100.
25. Regarding service pay, the records of remittances to the NSSF and NHIF confirm the protected employment. With such, service pay is not due.
26. On costs, the appeal being partially successful, each party should bear its costs for the appeal, and the respondent is awarded costs for the trial court proceedings.
27. Accordingly, judgment of the trial court in Mombasa CMELRC o.723 of 2023 is reviewed in the following terms:
 - a. Employment terminated unlawfully and unfairly.
 - b. Compensation Ksh. 210,000.
 - c. Notice pay Ksh. 21,000.
 - d. Leave pay Ksh. 23,100.
 - e. For the appeal, each party to bear its costs. For the trial court, costs are awarded to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 29TH DAY OF JANUARY 2026.

M. MBARŪ
JUDGE

