



**Kahi v Mini Bakeries (Nairobi) Limited (Appeal E334 of 2024)  
[2026] KEELRC 109 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 109 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E334 OF 2024  
JW KELI, J  
JANUARY 23, 2026**

**BETWEEN**

**ALEX KADAGI KAHU ..... APPELLANT**

**AND**

**MINI BAKERIES (NAIROBI) LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Hon. L. Mbacho  
(SRM) delivered on 24th October 2024 in Nairobi CMEL No. E243 of 2022)*

**JUDGMENT**

1. The Appellant herein, dissatisfied with the Judgment and Decree of the Hon. L. Mbacho (SRM) delivered on 24th October 2024 in Nairobi CMEL No. E243 of 2022 between the parties filed a Memorandum of Appeal dated the 22<sup>nd</sup> November 2024 seeking the following orders: -
  - a. The Appeal be allowed and the judgment and decree dated 24<sup>th</sup> October 2024 by the said Senior Resident Magistrate be set aside and be substituted with judgment as prayed in the Plaint.
  - b. The costs of the Appeal herein and in the Court below be awarded to the Appellant.

**Grounds Of The Appeal**

2. The Honourable Magistrate erred in law and fact in failing to find that the Appellant had proved its claim on a balance of probability.
3. The Honourable Magistrate erred in law and fact in holding that the Court did not have jurisdiction hence struck out the suit, after full trial upon the pleadings and evidence before it.
4. The Honourable Magistrate erred in law and fact in holding that, though she had jurisdiction to hear and determine matters relating to employment and labour Relations, she nevertheless preferred that the same should have been filed in a separate suit from that containing the Work Injury Benefits claim.



This was a clear misapprehension of the law, inter alia Article 159 of *the Constitution*, Sections 3,3A,5 of the *Civil Procedure Act* and Order 1, Order 3, Rules 4 & 8 and Order 4 Rule 7 of the Civil Procedure Rules.

5. The Honourable Magistrate erred in law and fact in failing to assess the would-be quantum of damages payable in the judgment as required even where the court dismisses/strikes out a suit.
6. The Honourable Magistrate erred in law and fact in failing to find that the Appellant's claim was properly proved on a balance of probabilities in the absence of pleading and/or evidence by the Respondent to controvert the same.
7. The Judgment/Decree is inconsistent with the evidence on record and the applicable law.

### **Background To The Appeal**

8. The Claimant/Appellant filed a claim against the Respondent vide a statement of claim dated the 20<sup>th</sup> of January 2022 seeking the following orders: -
  - a. Special damages as per paragraph 9 above
  - b. General damages for pain suffering and loss
  - c. Damages for loss of future earning capacity
  - d. Future medical expenses
  - e. Costs and interest(pages 4-6 of Appellant's ROA dated 10<sup>th</sup> July 2025).
9. The Claimant filed his list of witnesses dated 20<sup>th</sup> January 2022; witness statement of even date; and list and bundle of documents of even date with the bundle of documents attached (pages 8-63 of ROA).
10. The Respondent entered appearance on 5<sup>th</sup> April 2022 and filed a memorandum of reply dated 20<sup>th</sup> April 2022. The Respondent also filed a list of witnesses dated 17<sup>th</sup> May 2024; witness statement of one STEPHEN MUTINDA WAMBUA of even date; and list of defence documents of even date with the bundle of documents attached (pages 64-176 of ROA).
11. To counter the memorandum of reply, the Claimant filed a reply dated 28<sup>th</sup> April 2022 (page 74 of ROA).
12. The Claimant/Appellant's case was heard on the 11<sup>th</sup> of June 2024 where the claimant testified in the case, relied on his filed witness statement as his evidence in chief, and produced his documents as exhibits. The Claimant was cross-examined by counsel for the Respondent, Ms. Achola (pages 245-247 of ROA).
13. The Respondent's case was heard on the same day with Stephen Mutinda Wambua testifying on behalf of the Respondent as DW1. He relied on his filed witness statement as his evidence in chief, and produced the Respondent's documents as exhibits, save for document number 9. The witness was cross-examined by counsel for the Claimant, Mr. Isindu (pages 247-250 of ROA).
14. The court gave directions on filing of written submissions after the hearing, and both parties complied.
15. The Trial Magistrate Court delivered its judgment on the 24<sup>th</sup> of October 2024, dismissing the Claimant/Appellant's claim in its entirety for want of jurisdiction, with an order that each party bears their own costs (judgment at pages 252-256 of ROA).



## Determination

16. The appeal was canvassed through written submissions. Both parties filed.

## Issues for determination

17. In his submissions dated 15<sup>th</sup> August 2025, the Appellant submitted generally on the grounds of appeal.
18. The Respondent's followed suit and also submitted generally on the grounds of appeal, in their submissions dated 12th November 2025.
19. The court finds that the only issue for determination before the court is whether the trial court fact and erred law in holding that it lacked jurisdiction to determine the suit.

## Appellant's submissions

20. A proper consideration of the pleadings, evidence and submissions on record would reveal that the Appellant clearly proved his case on a balance of probabilities. In fact, apart from the issue of jurisdiction, the trial Court did not fault the Appellant's Pleadings, evidence and Submissions on record whatsoever. The trial Court however stated that it preferred that the Labour & Employment portion of the suit be filed a fresh separately (See page 5, paragraph 2 of the Judgment at page 256 of the Record). Thus, the suit was struck out not because it offended the law but simply because a claim for work injuries had been included in the suit and the trial Magistrate preferred that it be in a separate suit! Is that justifiable in law, particularly under Sections 1 A & B, 3, 3A & 5 of the Civil Procedure Act? A Court of law has inherent power to do justice without undue regard to procedural technicalities, which the trial Court failed to do in the circumstances of the case. Article 159 of the Constitution Sections 1A, 1B, 3, 3A, & 5 of the Civil Procedure Act as well as Order 1 Rule 9, Order 3 Rules 4, 5 & 8 and Order 4 Rule 7 of the Civil Procedure Rules mandate the Court to do justice without undue regard to technicalities. Such directions of filing separate suit have been appropriate or practical at the Pretrial Conference stage but not after hearing the suit. In any event, from the Appellant's Pleadings, even the title thereon, the claim was filed in Court as an Employment and Labour Cause. The same was commenced vide a Statement of Claim dated 20th January 2022. It was never a Civil matter commenced by way of Plaint and the Court was aware of this fact.
21. The Respondent in paragraphs 24 & 25 of its submissions dated 12th November 2025 expressly acknowledges, in agreement with the trial Court's finding, that the Appellant's suit consisted of two fundamentally distinct claims, namely; (a) One relating to the injuries (which the trial Court stated it did not have jurisdiction). (b) The other relating to underpayment of terminal dues under the Employment Act, (which the trial Court stated it had jurisdiction to hear and determine but declined to do so, hence the Appeal herein). Order 3 Rule 5 of the Civil Procedure Rules allows a Plaintiff to join causes of action in the same suit and accordingly, the Court after trial may grant or dismiss any of them as the justice of the case may require. The Appellant submits that this is the crux of the matter (Appeal). The trial Court could not justifiably in law or otherwise decline to determine a cause of action that the Court and the parties expressly agree or acknowledge that the Court has jurisdiction to hear and determine, and had in fact already heard the same without anyone raising objection to the issue of jurisdiction, either by pleading, evidence or Submissions. The Trial Court's approach, therefore, resulted in clear injustice in the circumstances of the case. For if the trial Court's finding is allowed to stand, where does that leave the Appellant, whose claim would be time barred as at the date of Judgment? This would result in an injustice of monumental and eternal magnitude as the Respondent



would then escape liability due to technicality contrary to the requirements and expectation of Article 159 of *the Constitution*.

### Respondent's submissions

22. The Appellant's alleged injuries occurred in 2019 and 2021, long after WIBA came into operation in 2008, and well after the Supreme Court reaffirmed its constitutionality in 2019. The applicable law was therefore crystal clear, work injury claims must commence before the Director of Occupational Safety and Health Services. The Appellant's decision to file a civil suit before the Chief Magistrate's Court was a clear disregard of the statutory procedure. The learned Magistrate cannot be faulted for refusing to entertain a claim that was improperly before her. The trial court also correctly observed that the Appellant had improperly merged two distinct claims, one under WIBA (for injury) and another under the *Employment Act* (for terminal dues). These two claims are fundamentally different in nature, governed by separate laws, and must be filed before distinct forums. The learned Magistrate rightly declined to "pick and choose" between the two or to make a partial determination, as doing so would have amounted to rendering a piecemeal and irregular judgment. The Appellant had the duty to properly frame his case and file each claim in the appropriate forum.

### Decision

23. It is settled law that Jurisdiction of the court flows from either *the Constitution* of Kenya and the legislation or both as observed by the Supreme court in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR( paragraph 68).
24. Before the court was a statement of claim with the parties' status not in dispute as employee and employer. In the impugned decision the trial court correctly found there were two components of the suit being, work injury and terminal benefits. The trial court correctly held it had no jurisdiction on work injury cases relying on the Supreme Court decision in Law Society of Kenya V Attorney General & Another (2019) eKLR and subsequent Chief justice directions under Gazette Notice No. 5476 to effect that claims filed before court of work injury claims before judgment date of the Supreme Court being 3<sup>rd</sup> December 2019 be heard by the court where they had been filed. Subsequent cases like the instant claim dated 20th January 2022 would then be barred for want of jurisdiction.
25. The trial court correctly found it had jurisdiction on the issue of terminal dues claims under the same statement of claim. The trial court then stated it was its considered opinion that to avoid piece meal judgment counsel ought to put his house in order and file the same in appropriate forum. Before the court was a statement of claim which is the proper way to approach the court in employment claims. Rule 7 of the Court(procedure) Rules provides-“7. Institution of claims (1) A person who wishes to refer a dispute to the Court under any written law shall file a statement of claim setting out.” The court is obliged not to determine cases on a technicality under section 20 of the Employment and *Labour Relations Act* to wit-“20. In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities.” The provision is consistent with Article 159(2)(d) of *the Constitution* which obliges the judicial officer to administer justice without undue regard to procedural technicalities. Justice is not about tidiness of decisions. The trial court erred in reference to the avoidance of piecemeal judgment as a basis to avoid writing a decision on the issue of terminal dues, which it held to have jurisdiction over and having heard the matter on merit. The trial court failed to appreciate the grave consequences of its casual manner of striking out the suit being that the cause related to terminal dues would be time barred under section 89 of the *Employment Act* to wit-“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or



in the case of continuing injury or damage within twelve months next after the cessation thereof’ The draconian act of striking out the suit just because the court was avoiding making piece meal judgment amounts to a violation of the right to fair hearing of the appellant. The appellant was simply kicked out of the seat of justice without remedy, as he could not file a new suit, the claim being time-barred, the employment having terminated vide respondent’s memo of 7th June 2021, and judgment issued on 24th October 2024, thus outside the mandatory 90 days. The court holds the trial court erred in law in failing to make a determination on issue of terminal dues.

## **Conclusion**

26. In the upshot, the court holds the trial court erred in law in striking out the entire claim on the basis of lack of jurisdiction on the component of the claim of work injury, while it had jurisdiction to terminate the question of terminal dues. The court has a constitutional duty to render justice without undue regard to technicalities (Article 159 of *the Constitution* legislates the exercise of judicial power) or extraneous issues like in the instant case. The appeal is allowed. The judgment and Decree of the Hon. L. Mbacho (SRM) delivered on 24<sup>th</sup> October 2024 in Nairobi CMEL No. E243 of 2022 is set aside. The court orders the claim is reinstated and remitted to the trial court for writing of the judgment on the limb it held to have jurisdiction, being terminal dues. The claim for work injury ought to have been filed with the Director under WIBA as the trial court lacks jurisdiction on the same and cannot assess damages for the work injury as sought.
27. The appellant is awarded costs of the appeal.
28. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY, 2026.**

**J.W. KELI,  
JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant – Isindu

Respondent- absent

