



**Nzaro v Board of Management Coast General Teaching and Referral Hospital
(Appeal E162 of 2024) [2026] KEELRC 230 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 230 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E162 OF 2024
M MBARÚ, J
JANUARY 29, 2026**

BETWEEN

EMMANUEL KIRAO NZARO APPELLANT

AND

**BOARD OF MANAGEMENT COAST GENERAL TEACHING AND REFERRAL
HOSPITAL RESPONDENT**

JUDGMENT

1. The appeal arises from the judgment delivered on 16 July 2024 in Mombasa CMELRC No. E105 of 2023. The appeal is that the learned magistrate erred in dismissing the claim and finding that there was no unfair termination, but the question is the payment of contractual dues. It was an error to find that the appellant was a casual labourer, whereas it was not in dispute that he had worked continuously and consistently from time to time until 11 July 2022, when he resigned from work. This was even though he had worked for more than 10 years and, by operation of the law, had changed status to a permanent employee.
2. Other grounds of appeal were that the trial court failed to consider that he was entitled to public holidays, a house allowance, and accrued leave, which accrue only to a permanent employee under the law. The dismissal of the claim had no legal basis. The judgment should be set aside and the claims allowed with costs.
3. The appellant filed his claim on the basis that, on 1 June 2011, he was employed by the respondent as a cook under a 12-week contract. His case was after 12 weeks; he was retained and continued to work until his resignation. The employment was continuous until resignation. His employment included duties in the main hospital and its subsidiary at Vikwatani Outreach, where he was transferred on 1 January 2020 and worked until his resignation on 11 February 2022. His terminal dues were not paid as the respondent considered him a casual labourer. His claims were for:



- a. Public holidays from 2011 to 2022 Ksh. 155,076.
 - b. House allowance Ksh. 340,200.
 - c. Accrued leave Ksh. 647,929.
 - d. Costs of the suit.
4. In reply, the respondent only entered an appearance and failed to file a response to the claims.
 5. In the trial court's judgment, the learned magistrate held that the appellant was in a contractor-client relationship with the respondent, which is distinct from an employer-employee relationship. This relationship is not protected under the labour laws. An independent contractor is not an employee and hence does not enjoy the protections under the law. Section 37 of the *Employment Act* did not apply to him. He resigned from his employment and thus cannot justify his claims.
 6. The appellant submitted that he worked continuously for the respondent as a cook from 2011 to 2022, when he resigned. Under section 37 of the *Employment Act* (the Act), his employment became protected. At the end of employment, he was not paid his terminal dues, including public holidays, unpaid house allowances, and accrued annual leave. The trial court held that the claims were not challenged, but proceeded to find that he was an employee of a contractor and dismissed them. This was in error since he was a full-time employee protected under the law.

The respondent did not attend or file any written submissions.

Determination

7. This is a first appeal. The court is allowed to review the record, reassess the findings and reach a conclusion. However, consider that the trial court had the chance to take evidence and see the witnesses.
8. Before the trial court, the respondent did little. No work records were filed. The only record before the court is that filed by the appellant. These include:
 - a. Letter of appointment dated 25 September 2014 for a period of 12 weeks.
 - b. Arrival letter at Vikwatani as a casual employee dated 2 January 2020.
 - c. An undated letter of recommendation by the respondent.
 - d. Resignation notice dated 10 January 2022.
9. A casual employee is engaged daily and paid a daily wage. The employment is not permanent; it starts and ends daily.
10. However, in cases where the employee continues to render and be allocated causal duties that are not likely to end within the day, works on periods beyond and is paid cumulatively after the day, such an employee is protected under section 37 of the Act. The employee is entitled to rights and benefits under the Act.
11. In *Kenyatta University v Maina* (Civil Appeal 261 of 2020) [2022] KECA 1201 (KLR), the Court of Appeal held that it was an unfair labour practice to deny a non-permanent employee the rights of a permanent employee. In contrast, the subject employee had worked for many years on casual terms.
12. Indeed, the appellant's relationship with the respondent was stated under the letter of appointment dated 25 September 2014 as casual labour. This was for 12 weeks.



13. There are no records by the respondent to confirm the appellant's status after the lapse of this letter of appointment, save for his word and the notice of resignation. The court is only left with a one-sided case. There is no reason not to believe the appellant since the respondent was made aware, entered an appearance, but failed to file a response or attend the hearing.
14. What is apparent to the court is that the appellant resigned from his employment with the respondent by notice dated 10 January 2022. The respondent received it.
15. Unlike an independent contractor, the applicant was a cook employed by the respondent. There is no evidence to challenge this position.
25. At the end of his employment, he was entitled to rights and benefits under the Act, as earned through his employment.
16. The appellant claimed payment for working during public holidays from 2011 to 2022. However, without a written contract of employment, the accrued benefits for a public holiday constitute a continuing injury that can only be claimed back 12 months under the provisions of section 90 of the Act.
17. The appellant outlined the number of days worked in the last year of service as 12. The wage of Ksh. 18,000, he is entitled to Ksh. 7,200.
18. Regarding the house allowance claim, as a protected employee without a contract in 2022, the basic wage for a general worker applied. The basic wage in Mombasa was Ksh. 13,572.90. The additional benefit of the house allowance of Ksh. 2,035.90 gross wage Ksh. 15,608.90
19. The wage is paid in KSh. 18,000 was over and above the minimum wage due.
20. Accrued leave is a right under section 28 of the Act. The respondent filed no record. Section 28(4) of the Act provides for 18 months' leave, valued at KSh. 33 days. 19,800.
21. On costs, the appeal is successful. The appellant is entitled to his costs.
22. Accordingly, the appeal is with merit and is hereby allowed. The judgment in Mombasa CMELRC No. E105 of 2023 is set aside. Judgment entered for the appellant in the following terms;
 - a. The appellant was the employee of the respondent protected under the law.
 - b. Accrued public holidays Ksh. 7,200.
 - c. Accrued leave days Ksh. 19,800.
 - d. Costs of the suit before the trial court and this appeal.

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

M. MBARŪ

JUDGE

