



REPUBLIC OF KENYA



**Rotich v Trans Valley Travellers Sacco (Appeal E027 of 2024)
[2026] KEELRC 124 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 124 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
APPEAL E027 OF 2024
MA ONYANGO, J
JANUARY 22, 2026**

BETWEEN

WILLY KIPLAGAT ROTICH APPELLANT

AND

TRANS VALLEY TRAVELLERS SACCO RESPONDENT

*(Being an appeal against the entire Judgment of Honourable Principal
Magistrate E. Kigen delivered on 2nd July 2024 in Iten CMELRC No. E005
of 2021 between Willy Kiplagat Rotich vs Transvalley Travellers Sacco)*

JUDGMENT

Background

1. The Appellant herein sued the Respondent at the trial court vide a Statement of Claim dated 7th June 2021 seeking the following remedies:
 - a. A declaration that the termination of his employment was discriminatory, malicious, unlawful, unprocedural and a fundamental violation of his rights.
 - b. Maximum compensation as per section 49(1)(c) of the *Employment Act*
 - c. An order that the Respondent pay the Claimant as per section 51 of the *Employment Act*
 - d. A certificate of service as per section 51 of the *Employment Act*
 - e. Costs and interests of this suit
 - f. Any other award as the Honourable Courts deem fit to grant in the circumstances of this suit
2. The Respondent filed a Response to the Statement of Claim and a Counterclaim dated 21st July 2021. In its defence, the Respondent denied that the Claimant was its employee. It averred that the Claimant



- was engaged by the Respondent as a tout collecting fare from the passengers and retaining Kshs 50 as his wage.
3. In the Counterclaim, the Respondent alleged that the Claimant failed to remit Kshs. 23,700 on 1st July 2019 and Kshs. 8,500 on 17th May 2021, totaling Kshs. 32,200, which amount it claimed from the Claimant.
 4. Upon hearing the parties, the trial court found that the Claimant had failed to prove, on a balance of probabilities, that he was an employee of the Respondent or that his services were unfairly terminated as alleged. Consequently, the Claimant's suit was dismissed with costs. The court further found that the Respondent had failed to prove its Counterclaim and dismissed the same.
 5. The Appellant (Claimant in the lower court) was aggrieved by the said judgment and filed the instant appeal vide the Memorandum of Appeal dated 30th July 2024 on the grounds that:
 - a. The learned Magistrate erred in law and in fact by holding that the Appellant did not prove that he was an employee of the Respondent.
 - b. The Learned Magistrate erred in law and in fact by failure to observe that the Appellant was unlawfully terminated from his employment service by the Respondent.
 - c. The learned Magistrate erred both in law and fact by failing to observe and find that the Appellant being an employee and unlawfully terminated he was entitled to be compensated.
 - d. The learned magistrate erred in law and in fact by being biased in dismissing the Claimant's claim with costs and the Respondent's Counterclaim without costs.
 - e. The learned magistrate erred in law and in fact in rendering a decision that was contrary to the law and fact and the rules of natural justice.
 - f. The learned magistrate erred in law and in fact by ignoring the weight of the evidence tendered and the submissions made by the Appellant
 6. Consequently, the Appellant seeks the following orders:
 - a. The appeal be allowed and the entire judgment of the Honourable E. Kigen delivered on 2nd July 2024 be set aside by allowing the claim and compensate the Appellant his terminal dues as per the claim.
 - b. Costs of this appeal be awarded to the Appellant.

The Appeal

7. The appeal was disposed of by way of written submissions. Both parties filed their submissions. The Appellant's submissions are dated 26th September, 2025 while the Respondent's submissions are dated 23rd October 2025.
8. This being a first appeal the court is required to consider the evidence adduced, evaluate it and draw its own conclusions, bearing in mind that it did not hear or see the witnesses who testified. See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123.
9. In his Statement of Claim, the Appellant pleaded that he was employed by the Respondent on 1st July 2018 as a route inspector, a position he held until 31st December 2020 and thereafter served as a stage clerk from 1st January 2021 until 17th May 2021 when his employment was allegedly terminated.



10. He further averred that his contract was never reduced into writing and that he worked from 8.00 a.m. to 6.00 p.m. daily, seven days a week, including public holidays, without rest days or overtime compensation.
11. According to the Appellant, his employment was terminated on 17th May 2021 without notice and without compliance with the provisions of the *Employment Act*. He further averred that his terminal dues were withheld.
12. The Appellant averred that the Respondent's conduct towards him violated his rights to fair employment terms as guaranteed under Article 41 of *the Constitution* of Kenya.
13. According to the Appellant, upon his termination from employment, he was entitled to terminal dues which he tabulated as hereunder:
 - i. One month pay in lieu of notice.....Kshs. 15,000
 - ii. Accrued leave earned but not taken.....Kshs. 45,000
 - iii. 12 months compensation
for unfair termination.....Kshs. 180,000
 - iv. Unpaid overtime dues.....Kshs 51,077
 - v. Underpayment of wages.....Kshs. 466,200
 - vi. Outstanding salary.....Kshs.480,000
 - vii. Unpaid Public Holidays.....Kshs. 35,000

TOTAL KSHS. 1,318,477 /=
14. The Appellant therefore sought for the prayers in paragraph 13 above, in this judgment.
15. The Respondent on its part filed a Response to the Claimant's Claim dated 21st July 2021 denying the averments made in the Statement of Claim and particularly, that the Claimant was its employee. The Respondent maintained that the Claimant was merely one of several touts operating in Iten town who intermittently assisted the Respondent in collecting fares from passengers on a commission basis.
16. The Respondent asserted that route inspectors must be Sacco members who own vehicles registered under the Sacco, and that stage clerks are competitively recruited by the Board through advertisement and interviews, none of which applied to the Appellant.
17. In the Counterclaim, the Respondent averred that in its engagement with the Claimant where he was a tout, the Claimant failed to remit to the Respondent Kshs. 23,700/= on 1/7/2019 and Kshs.8,500/= on 17/5/2021 totaling to Kshs. 32,200. The Respondent thus sought a refund of the said amount from the Claimant and urged the court to dismiss the Claimant's suit.
18. The Claimant filed a Reply to the Respondent's Response to Statement of Claim dated 3rd August 2021 reiterating the averments in his Statement of Claim.

The Evidence adduced

19. At the hearing the Claimant testified as CW1. He adopted his witness statement as his evidence in chief and relied on the documents he filed in support of his claim. It was his testimony that his employment was terminated by the Respondent without any reason and that he was not given notice. The Claimant thus to be compensated for the unlawful termination, costs of the suit and the outstanding salary.



20. Under cross-examination, the Claimant stated that he was employed by one Mr. Kimeli, whom he identified as the Respondent's chairman. He further stated that he did not know whether the Respondent has a Board of Directors. He testified that he earned a monthly salary of Kshs. 15,000 which salary he alleged was paid through his wife's Equity Bank account. The Claimant denied having taken any money belonging to the Respondent as alleged in the Counterclaim.
21. The Respondent on its part called three witnesses in furtherance of its case. Timothy Kimelio, its manager testified as RW1 and adopted his witness statement and the documents filed on behalf of the Respondent as his evidence in chief.
22. In his testimony, RW1 asserted that the Claimant was never employed by the Respondent and that the chairman had no mandate to employ staff. He stated that stage clerks are recruited through advertisement and vetting, and that route inspection is voluntary and restricted to Sacco members owning vehicles registered under the Sacco. He asserted that the Claimant met none of these criteria.
23. Regarding the job ID produced by the Claimant as Exhibit 2, RW1 testified that it was not genuine, stating that it was laminated, lacked a photograph, and differed from the Respondent's authentic plastic badges bearing photographs, samples of which were produced in court as part of the Respondent's bundle. He further testified that the termination letter produced by the Claimant was not genuine, noting discrepancies in the logo orientation and the official stamp.
24. RW2, Oliver Kibet Maiyo and RW2, Obadiah Biwott Kibet, testified in support of the Respondent's case and each adopted their respective witness statements as their evidence in chief. Their testimony largely corroborated that of RW1.
25. After hearing the parties, the trial court, in its judgment held that the Claimant had failed to prove his case on a balance of probabilities and dismissed the Claimant's suit with costs. The trial court also dismissed the Respondent's counterclaim.

The Submissions

26. In his submissions the Appellant framed the following issues for determination in the appeal:
 - i. Whether the Appellant was an employee of the Respondent;
 - ii. Whether the Appellant was unlawfully terminated
 - iii. What relief is the Claimant entitled to
27. On the first issue, the Appellant submitted that the trial Magistrate made an erroneous finding when she held that the Respondent had produced a copy of their letterhead and a stamp used in their office, which was different from that contained in the Claimant's Exhibit 3. According to the Appellant, no such document was produced by the Respondent.
28. The Appellant further contended that the trial Magistrate erred in holding that a job card and a job badge are two separate things. The Appellant argued that this distinction is immaterial as the two refer to the same thing.
29. Further, the Appellant submitted that although the Respondent denied having employed him as a route inspector and a stage clerk, it admitted at paragraph 9 of its Counterclaim that it had employed him as a tout with respect to the Respondent's vehicles on various dates between July 2019 and May 2021 on a casual, temporary, and inconsistent basis.



30. The Appellant submitted that while the Respondent alleged that the Job Card and termination letter were forgeries, it never reported the matter to the police or confronted the Appellant regarding the legality of the Job Card or the logo on the termination letter.
31. The Appellant further contended that the Respondent's argument that one must be a member of the Sacco and have a registered vehicle to be a route inspector is unsupported by any records or minutes. It was submitted further that the Respondent denied that the Appellant was a stage clerk, arguing that the position is competitively recruited by the Board following advertisement and interviews yet the Respondent produced no evidence to show that it had ever advertised, interviewed, or appointed anyone as a stage clerk, thereby failing to substantiate this claim.
32. While citing Section 108 of the *Evidence Act*, the Appellant submitted that he discharged his burden of proof by producing a demand letter dated 27th May 2023 as Claimant Exhibit 1, a Job Card as Exhibit 2, and a termination letter as Exhibit 3. The Job Card, according to the Appellant, established that he was employed as a route inspector by the Respondent, while the termination letter made it apparent that the Respondent terminated him from service effective 17th May 2021.
33. The Appellant submitted that upon discharging both the legal and evidential burden, the burden shifted to the Respondent to prove that the said documents were not authentic as alleged.
34. The Appellant further contended that under Section 74 of the *Employment Act*, it is the duty of an employer to maintain records containing particulars of its employees. According to the Appellant, the Respondent did not produce any record to support its allegation that the Appellant was not employed as a route inspector or a stage clerk.
35. The Appellant emphasized that the Respondent, in its Counterclaim at paragraph 9 admitted to having engaged him as a tout with respect to its vehicles on various dates between July 2019 and May 2021 on a casual, temporary and inconsistent basis. In this regard, the Appellant submitted that under Section 9 of the *Employment Act*, this engagement spanning more than two years demonstrated that he was an employee of the Respondent.
36. On the second issue, the Appellant submitted that the termination letter dated 17th May 2021, produced as Exhibit 3, did not provide any reason for the termination nor did it indicate that he was given a hearing before dismissal. The Appellant maintained that the termination was effected on the same date as the letter, and no opportunity was given to respond, contrary to the requirements of Section 41 of the *Employment Act*, rendering the termination unfair and unlawful.
37. On the issue of reliefs sought, the Appellant submitted that having proved unlawful termination, he was entitled to the reliefs outlined in his Statement of Claim.
38. Regarding the Respondent's counterclaim, the Appellant submitted that the Respondent did not adduce any evidence to show that the Appellant had any duty to collect fares on behalf of the Respondent, nor did it produce any accounting showing that it suffered any financial loss.
39. The Appellant concluded that the appeal is meritorious and urged the court to allow it as prayed.
40. For the Respondent, it was submitted that the demand letter referred to by the Appellant concerned the return of misappropriated or stolen funds, not acknowledgment of employment. It is the Respondent's submission that the relationship described in the demand letter was sporadic, casual and temporary engagement to collect fares and thus fundamentally inconsistent with employment.



41. The Respondent averred that while the Appellant cited paragraph 9 of the Counterclaim as evidence of employment, the description of the engagement as casual, temporary, and inconsistent negates employment.
42. The Respondent therefore submitted that the trial Magistrate correctly analyzed the evidence and found that the Appellant failed to establish employment relationship and that this finding by the trial court is well founded and supported by evidence.
43. The court was urged to dismiss with costs.

Analysis And Determination

44. Upon analyzing the Record of Appeal and the rival submissions of the parties herein, I find that the issues that fall for this court's determination in the appeal are:
 - i. Whether the Appellant was an employee of the Respondent;
 - ii. Whether the Appellant's employment was terminated unfairly by the Respondent; and
 - iii. Whether the Appellant is entitled to the reliefs sought

Whether the Appellant was an employee of the Respondent

45. The trial court dismissed the Appellant's claim on the basis that he had failed to prove that he was an employee of the Respondent.
46. The existence of an employment relationship is the foundation upon which the Appellant's claim rests. Section 2 of the *Employment Act* defines an "employee" as a person employed for wages or a salary, and an "employer" as any person or entity who employs or has employed an employee.
47. It is trite that the burden of proving the existence of an employment relationship rests with the party asserting it. See *Nairobi Golf Hotels (Kenya) Ltd v Wilson Karuga Kiarie* [2019] eKLR. However, where the employee alleges employment and produces prima facie evidence thereof, the evidential burden may shift to the alleged employer, particularly where statutory employment records are exclusively within the employer's custody.
48. In the present case, the Appellant asserted that he was employed by the Respondent first as a route inspector and later as a stage clerk. In support of this assertion, he produced a job card and a termination letter, which he contended were issued by the Respondent.
49. The Respondent, on the other hand, consistently denied the existence of any employment relationship and maintained that the Appellant was merely engaged sporadically as a tout on a commission basis. The Respondent further challenged the authenticity of the documents relied upon by the Appellant, asserting that they were not genuine and pointing out specific discrepancies in the alleged job card, termination letter, logo, and stamp.
50. Notably, the Appellant conceded under cross-examination that his alleged employment was not reduced into writing, that he did not know whether the Respondent had a Board of Directors, and that his alleged salary was paid through his wife's bank account. No bank statements were produced to corroborate this claim.
51. Further, while the Appellant relied heavily on the job card and termination letter, RW1 explained in detail the discrepancies between the documents produced by the Appellant and the documents that emanate from the Respondent. The Appellant did not rebut this evidence with any documentary



proof such as an appointment letter, payroll records, or testimony from any officer of the Respondent, particularly Mr. Kimeli, whom he alleged employed him.

52. The Appellant further relied on paragraph 9 of the Respondent's Counterclaim as an admission of employment. This Court has carefully examined that pleading. While the Respondent admitted engaging the Appellant as a tout on various dates, it expressly described that engagement as casual, temporary, and inconsistent. Such an admission does not establish a contract of employment within the meaning of the *Employment Act*.
53. Section 9 of the *Employment Act*, which the Appellant has relied upon in his submission on appeal, does not make any reference to conversion of casual or intermittent engagement into regular employment.
54. In the totality of the evidence, the Court finds that the Appellant failed to discharge the primary burden of proving that he was employed by the Respondent.
55. Consequently, the Court upholds the trial court's finding that no employment relationship existed between the Appellant and the Respondent.

Whether the Appellant's employment was terminated unfairly

56. Having found that the Appellant was not an employee, the issue of unfair or unlawful termination does not arise. Employment protection under the *Employment Act*, including Section 41, 43 and 45 apply only to persons in an employment relationship. Since no such relationship was proved, the claim of unfair or unlawful termination therefore fails.

Whether the Appellant is entitled to the reliefs sought

57. Having failed to prove that he was an employee of the Respondent, the Appellant is not entitled to the reliefs sought in the Statement of Claim or in this appeal.
58. With regard to the Respondent's Counterclaim, the trial court dismissed the same for want of proof. One of the grounds of appeal raised by the Appellant was that whereas his claim was dismissed with costs, the Respondent's Counterclaim was dismissed without an order as to costs. It is trite that the award of costs is a matter within the discretion of the trial court. In the absence of any demonstration that the trial court acted on wrong principles or misdirected itself, this Court finds no basis upon which to interfere with that discretion.
59. Accordingly, the appeal is dismissed and the judgment of the trial court is hereby upheld.
60. Each party is directed to bear its own costs of the appeal.

DATED, DELIVERED AND SIGNED THIS 22ND DAY OF JANUARY, 2026.

M. ONYANGO

JUDGE

