



**Total Security Surveillance Limited v Ambutsi (Appeal E027 of 2025)
[2026] KEELRC 210 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 210 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E027 OF 2025
M MBARŪ, J
JANUARY 29, 2026**

**BETWEEN
TOTAL SECURITY SURVEILLANCE LIMITED APPELLANT
AND
ISAAC MUGALAVAI AMBUTSI RESPONDENT**

*(Being an appeal from the judgment of Hon. J. B. Kalo delivered
on 6 February 2025 in Mombasa CMELRC No. E834 of 2021)*

JUDGMENT

1. The appeal arises from the judgment in Mombasa CMLECR No. E834 of 2021 delivered on 6 February 2025. The appellant seeks that the judgment be set aside and, in the alternative, that the respondent's claim be dismissed with costs before the trial court.
2. The background to the appeal is a claim filed by the respondent, alleging that the appellant employed the respondent in December 2020 as a night guard, earning Ksh. 9,700 per month. The respondent claimed that on 11 November 2021, his child had a serious burn accident at 3 pm, and he sought treatment at Port Reiz Hospital due to the degree of burns the child had sustained. He immediately called the respondent's controller, Wambua, at 0733XXXX, but the call went unanswered. He opted to write a text message and explained what had happened. Wambua replied and instructed the respondent to report to the office. On 15 November 2021, the respondent reported to the office, and the operations manager, Towett, directed him to write a report on the reasons for his absence from work. He complied, explained why he had been absent, and was given 3 days to await feedback. There was no response, resulting in an unfair termination of employment without notice or payment of his terminal dues. He claimed the following dues:
 - a. Notice pay Ksh. 15,141.95
 - b. Underpayments for 11 months Ksh. 59,861.45



- c. Unpaid salary for 10 days worked in November 2021, Ksh. 5,823.82
 - d. Unpaid prorated leave for 11 months Ksh. 11,210.82
 - e. 14 public holidays Ksh. 8,153.32
 - f. Breach of contract and damages for 12 months Ksh. 181,703.40
 - g. Compensation for unfair termination of employment Ksh. 181,703.40
 - h. Costs of the suit.
3. The respondent further sought a declaration that his employment had been unfairly terminated on account of redundancy and hence entitled to compensation.
 4. In reply, the appellant admitted that the respondent was employed as a security guard on 8 January 2021 until 11 November 2021, when he was absent without official leave. He was paid Ksh. 15,609 per month, inclusive of house allowance. He also earned benefits under the law, including NSSF and NHIF, earned off days and rest days, was allowed public holidays, and worked 8 hours per day. The house allowance due was paid with the wages. The respondent initiated a self-termination of employment. He was enrolled in the training school in December 2020 and then issued with a term contract from 8 January 2021. From 11 November 2021, he did not attend to his duties. He was summoned for a disciplinary hearing on 15 November 2021, but declined to provide a reason for his absence. He also refused to provide medical records to support why he was away. The document he presented indicated that it was an active TB case, yet he claimed that a child had been burnt. The absence from duty was not authorised, and the reasons given were not genuine. The absence was not justified, hence summary dismissal for absenteeism.
 6. For the absence, the respondent should pay the appellant notice pay of Ksh. 15,609 together with costs for the company uniforms. The claims made are not justified and should be dismissed with costs.
 7. The learned magistrate heard the parties and held that the respondent's employment was constructively terminated, and that the termination was unfair and unlawful. He was not subjected to the disciplinary process leading to unfair summary dismissal. He was awarded the following dues:
 - a. 10 months' wages in compensation, Ksh. 151,419.50.
 - b. Other claims as pleaded.
 - c. Total sum of Ksh. 276,595 to be paid within 45 days after which costs plus interests to accrue.
 8. Aggrieved by the judgment, the appellant filed the appeal on the grounds that the learned magistrate erred in law and fact in the findings that there was unfair termination of employment contrary to the evidence on record by the appellant. The trial court failed to appreciate that there were fair and proper grounds for termination of employment; hence, the finding that the respondent was entitled to the dues as pleaded was in error. The award of 10 months' compensation was unjustified, lacked reasons, and was excessive in the given case; hence, it was not justified.
 9. The appellant's other grounds of appeal are that the trial court awarded a global sum of Ksh 276,595 without giving reasons or justification. Hence, the judgment should be set aside and the claims dismissed with costs.
 10. The appellant submitted that the respondent was indeed an employee as a security guard, but on 11 November 2021, he absented himself without authorisation. When called to account, he submitted records that were not genuine, hence justified termination of employment. The trial court failed to



assess the response and the facts, leading to an erroneous finding of unfair and unlawful termination of employment.

11. Absence from employment is an act of gross misconduct that justifies summary dismissal. The award of compensation in the amount of 10 months' wages should be set aside. The further global award failed to take into account the lack of proof and was therefore unjustified.
12. The appellant submitted that in *Roadtainers Mombasa Limited v Choga Tsuma*, ELRC Appeal E078 of 2024, the court held that where an employee commits gross misconduct by remaining absent from work without permission, the employer has the right to terminate employment by summary dismissal. In the case of *Eric Ngowa Masha v A. A. Bayusuf & Sons Limited* ELRCA E085 of 2025, the court held that mistakes do occur in the ordinary practice of law and court processes. However, the given facts must be addressed on the merits. The respondent took his annual leave, rest, and off days.
13. In this case, the respondent initiated termination of employment. He willfully absconded from duty without justification. He is not entitled to notice pay or compensation. Regarding the underpayment claim, the appellant paid the correct wage. There is no evidence to the contrary. The full wages for days worked in November 2021 were paid and should not have been awarded, as this is a double payment.
14. The house allowance claimed was already included in the wages paid. The alleged breach of contract arose from the conduct of the respondent, and his claim in this regard had no evidence and should not have been awarded in view of the judicial precedents in *Trustees of Premier Academy Charitable Trust t/a Premier Academy v Thomas Ndani Njuguna* [2020] eKLR and *Dzila v Kwale County Assembly Service Board & 6 others* [2023] eKLR.
15. The judgment of the trial court should be set aside and the claims dismissed with costs.
16. The respondent submitted that employment was terminated unfairly and without due process. The trial court correctly assessed the facts and applied the law; the judgment should be upheld, and the appeal dismissed. The respondent had an accident relating to his child, who required medical attention, and he called the appellant's officer on the same.
17. The appellant failed to participate in the trial proceedings and cannot urge its case on appeal. The alleged dismissal following a disciplinary hearing is incorrect. The respondent was not afforded due process or a fair opportunity to state his case, resulting in an unwarranted and unfair termination of employment.
18. Under section 43 of the *Employment Act* (the Act), there was no justification leading to the termination of employment. In *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, the court held that the due process before termination of employment requires that the employee be given notice and a hearing. The respondent was not subjected to a disciplinary hearing.
19. The appellant failed to produce the required work records under section 10(7) of the Act. There is no record of the wage paid in KSh. 15,141.95 or a payment slip. There was underpayment of wages in violation of the Wage Orders. The respondent testified that he earned Ksh. 9,700 per month, and the difference in underpayment is due.
20. For the 10 days worked in November 2021, there is no evidence of payment.
21. On the claim for house allowances and leave pay, the appellant did not submit any records. The house allowance and leave pay are due under sections 31 and 28 of the Act, respectively.



22. The respondent addressed all the public holidays when he was at work. There is no counter record that he was allowed a day off in compensation, and hence this award is justified. The trial court properly assessed compensation, and the appeal lacks merit and should be dismissed with costs.

Determination

23. This being a first appeal, the court is required to review, reassess, and make its findings and conclusions. The court must, however, consider that the trial court had the opportunity to observe and hear the witnesses.
24. In this case, the respondent's case is that on 11 November 2021, his child had an accident and was taken to Port Ritz hospital with burns. He called his immediate supervisor, but did not answer. He sent a text message. The operations manager replied to him and directed him to report to the office. He did so on 15 November 2021.
25. To support his absence from duty, the respondent produced his child's medical treatment notes from Portreiz Sub-county hospital on 11 November 2021. It indicated a case of burns.
26. Absence from work without authorisation is classified as an act of gross misconduct under section 44(4) (a) of the Act. Where the employee is absent from work, authorisation must be obtained from the employer.
27. However, where the absence from work relates to illness or sickness, sections 30 and 34 of the Act allow the employee to be absent from work, provided they inform the employer immediately or within a reasonable time. Where the employee is not able to inform the employer, the law allows a third party to do so. See *Paul v Kantaria t/a Commercial Registrars* [2025] KEELRC 867 (KLR) and *Charo v Shreeji Enterprises Limited* [2025] KEELRC 2684 (KLR).
28. The sickness must relate to the employee. Upon return to work, the employee must submit the medical certificate issued by a medical practitioner.
29. Where the sickness relates to the employee's dependents, such as a child, the employee must demonstrate that they were personally involved in attending to the child and that they were unable to attend to duty. The employer must be informed immediately and given approval. The rationale is that the employee is not the one who is sick or ill, but a third party to the employment relationship. Further rationale is under section 44 of the Act. Absence from work without authorisation is a breach of contract and subject to summary dismissal.
30. The medical notes filed by the respondent from Port Reitz hospital are not similar to the medical certificate envisaged under section 34 of the Act.
31. The emergency necessitating the respondent's absence from duty from 11 to 15 November 2021 is not explained. Upon writing a text message from the operations director, as alleged, the respondent has not produced such a message for the court to assess the emergency he needed to attend to justify his absence from work.
32. Absence from work without the employer's authorisation is gross misconduct. The respondent admitted that he had absented himself from work without the employer's approval. He is frustrated with his employment and cannot justify a claim of unlawful or unfair termination.
33. Termination of employment in this case was justified.
34. Notice pay or compensation, or alleged breach of contract, is not justified.



35. The learned magistrate assessed the claims and awarded a global sum as pleaded, allocating Ksh. 276,595. However, each employment claim should be analysed and assessed, with a conclusion. Each claim is based on the law or Wage Orders and, therefore, requires an appropriate allocation.
36. Regarding underpayment, the respondent claimed for 11 months on the basis that he was earning Ksh. 9,700 per month. That the due wage was Ksh. 15,191.45, thus an underpayment.
37. The appellant filed a response and attached work records, including the contract dated 8 January 2021 and pay slips. These records were not challenged.
38. Under the contract, Respondent was employed as a day guard in Mombasa. The wage paid was Ksh. 15,609 per month. This was to be paid less statutory deductions.
39. There is the payment statement for October and November 2021. The wage is Ksh. 15,609, inclusive of the house allowance.
40. Under the Wage Orders for Mombasa, a security guard in 2021 had a basic wage of Ksh. 13,572.90 and the due house allowance Ksh. 2,035.95 and gross pay Ksh. 15,608.85
On the wage paid of Ksh. 15,609, there was no underpayment.
41. The claim for a house allowance is not justified, and it was paid as part of the monthly wage.
42. For the 10 days worked in November 2021, there is a payment record on the November 2021 payment statement.
43. On the untaken leave days, the applicant filed work sheets. The record reveals the following:
 - a. January 2021, the respondent was on annual leave.
 - b. June 2021, he was on annual leave.
 - c. October 2021, he was on annual leave.
44. There is no justification for the claim for 11 months of prorated leave. The claim is exaggerated and without justification.
45. In response to the claim for 14 public holidays, the respondent set out a schedule of days on which he was at work during those holidays.
46. On New Year's Day, 1 January 2021, the contract of employment dated 8 January 2021 had not taken effect.
47. On Good Friday, 2 April 2021, the appellant did not file the worksheet.
48. Easter Sunday and Easter Monday are placed for 4th and 5th October 2021. Such days were not gazetted as such.
49. On Labour Day on 1 May 2021, the respondent was at work. However, the off days allocated in the month exceed the lawfully allowed limit under section 27 of the Act. Two days off were allocated as compensation.
50. Madaraka day, the days off are over and above the legal minimum.
Eid al-Fitr 24 and 25 May 2021
51. Eid al Adha on 11 and 12 August 2020 is outside the scope of the subject contract.



52. Cumulatively, only a single day on 2 April 2021 is due. On the gross wage of Ksh. 15,609 per month, the respondent is entitled to Ksh. 520.20.
53. With regard to the breach of contract claim, the basis was the employee's absence from work, leading to termination of employment. As addressed above, an employee who is absent from work without justification frustrates his employment and therefore cannot justify a claim of breach of contract.
54. On costs, the respondent's claim had no justification save for the single public holiday of Ksh. 520.20, which shall be paid. The essence of the claim is without justification. Each party is to meet its costs.
55. Accordingly, the appeal is with merit save for the award of Ksh. 520.20 in public holiday. Judgment in Mombasa CMELRC No. E834 of 2021 is set aside to this extent. Each party is to bear its costs for the appeal and the lower court proceedings.

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

M. MBARŪ

JUDGE

