



REPUBLIC OF KENYA



**Pride Kings Security Service v Mainya (Appeal E078 of 2025)
[2026] KEELRC 291 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 291 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E078 OF 2025
JK GAKERI, J
FEBRUARY 4, 2026**

BETWEEN

PRIDE KINGS SECURITY SERVICE APPELLANT

AND

PAUL MAINYA RESPONDENT

*(Appeal against Judgment of Hon. V. Adhiambo delivered on
9th September 2025, in Kisumu MCELRC No. E270 of 2024)*

JUDGMENT

1. Aggrieved by the Judgment of Hon. V. Adhiambo delivered on 9th September 2025, in Kisumu MCELRC No. E270 of 2024 Paul Mainya Mujibu V Pride Kings Security Services Ltd, the respondent filed the instant appeal challenging the decision of the trial court in various respects.
2. The brief facts of the case before the trial court were that respondent employed the claimant around 1st March 2020 at kshs.7,450.00 paid via his bank account at Equity Bank and served until 8th May 2023 when his employment was terminated. That he worked in the day shift and was not provided with a work uniform, accommodation or house allowance and was not paid for off-days and public holidays or proceed on leave.
3. The claimant's case was that on 8th May 2023, the Area Controller/immediate supervisor contacted him and informed him that the premises or area he was guarding had been taken over by a different security company and his employment had been terminated and efforts to reach the Area Controller/immediate Supervisor on payment of dues were unsuccessful.
4. The claimant prayed for a declaration that termination of employment was unfair, salary in lieu of notice, underpayment, unpaid wages for April and May 2023, off-days, leave days, public holidays, house allowance, overtime, severance pay, service pay, compensation, certificate of service, costs and interest.



5. The respondent responded to the claim participated but did not call any witness.
6. After considering the evidence before the court, pleadings and submissions by counsel, the learned trial magistrate found that termination of the claimant's employment was unfair and awarded compensation, leave days, underpayment, salary in lieu of notice, house allowance, certificate of service, costs and interest.
This is the judgment appealed against.
7. The appellant faults the trial court on eight (8) grounds, which in the court's view may be condensed into two (2) grounds namely; misapprehension and analysis or evaluation of the evidence on record and the awards made.
8. According to the appellant, none of the awards had been proved as merited.

Appellant's submissions

9. On termination of the respondent's employment, reliance was placed on the provisions of Section 47(5) and 43(1) of the [Employment Act](#) to submit that the respondent provided no evidence before the trial court to prove that he was summarily dismissed by the appellant as alleged and left on his own volition having been aware that the assignment site had been taken over by another service provider.
10. It was further submitted that the respondent declined redeployment to Kisumu.
11. Counsel submitted that based on the evidence before the court, the respondent was not entitled to a declaration that termination of employment was unlawful, notice pay or compensation and had not adduced evidence to demonstrate that he had unpaid holidays, off-days and overtime.
12. Finally, counsel submitted that the respondent was not underpaid and did not avail a copy of the payslip to prove that house allowance was not being paid.
Counsel urged the court to allow the appeal.

Respondent's submissions

13. On termination of the respondent's employment reliance was placed on Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR on the requirements for redundancy, as were the provisions of Section 43 (1) and 45(1), and (2), and Section 2 of the [Employment Act](#) to urge that the respondent's services had become superfluous.
14. Reliance was also placed on Kenfreight (EA) Ltd V Benson K. Nguh [2016] eKLR as well as Mary Njeri Mungi V Peter Macharia & another [2016] eKLR on the weight of uncontroverted evidence to urge that the claimant's evidence was unchallenged.
According to counsel, the respondent was declared redundant.
15. Concerning the reliefs prayed for, counsel submitted that the respondent was entitled to salary in lieu of notice on account of Section 35(1) and 40(1) of the [Employment Act](#), unpaid annual leave, underpayment, unpaid house allowance citing the decisions in Johnson Otsieno Ogola V Hatari Security Guards Ltd [2021] eKLR and Dede Esi Anne -Amanor-Wilks V Action Aid International.
16. Counsel submitted the respondent was entitled to compensation for the unlawful termination of employment and urged the court to award costs.



Analysis and determination

17. Before delving into the grounds of appeal it behoves the court to restate its role as the first appellate court as captured by the Court of Appeal in *Gitobu Imanyara & others V Attorney General* [2016] KECA (KLR) as follows:

“This being the first appeal, it is trite law this court is not bound necessarily to accept the findings of fact by the court below and that an appeal to this court from a trial... is by way of a retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has never seen nor heard the witnesses and should make due allowances in this respect. See *Selle & another V Associated Motor Boat Co. Ltd & others* [1968 EA 123 and *William Diamonds Ltd V Brown* [1970] EAI”.
18. Concerning the evidence on record, the trial court is faulted for having misunderstood the evidence and analysed it wrongly and arrived at wrong conclusion.
19. Needless to belabour evidence in core in judicial proceedings. It is the oil that moves the cogs of justice. Without it a case cannot move and merits dismissal.
20. As adverted to elsewhere in this Judgment, although the respondent file a response, to the claim, it did not adduce any evidence.
21. It is trite law that pleadings are mere averments and do not amount to evidence. Proof is the foundation of evidence as held in *CMC Aviation Ltd V Cruis Air Ltd (1)* [1978] KLR 103.
22. To all intents and purposes the respondent’s evidence was unchallenged save in cross-examination.
23. However, it is trite law that unchallenged evidence and proof on a balance of probabilities are not synonymous. The party suing remains liable to prove its case on a preponderance of probabilities failing which the suit is dismissed.
24. The respondent alleged that he was employed on 1st March 2020 and served until his employment was terminated on 8th May 2023.
25. Concerning employment, the respondent tendered no verifiable evidence save for copy of the national identity card. However, a bank statement in his name from Equity Bank, Siaya Branch for the period 1st January 2020 to 31st December 2020 revealed that his account No. 0970179751371 received payment from Pride Kings Services on 9th May 2020, June 2020, 10th July 2020, October 2020, November 2020 and December 2020 a total of 6 payments, Kshs.41,182.00
26. The date on which the original statement was availed by the bank is illegible.
27. Thus, the only verifiable evidence of there having been an employment relationship between the respondent and the appellant is the bank statement.
28. The respondent’s written witness statement stated that he was on the day shift in paragraph 5 but paragraph 10 stated that he was in the night shift. Equally, the witness statement did not identify his place of work other than his residence in Kisumu.
29. However, on cross examination, the respondent stated that he was stationed at Sino Hydro site in Siaya. He stated that the appellant stopped him from working but admitted that he had nothing to show.



30. Notably, the respondent adduced no evidence to prove that he rendered any services to the appellant from January 2021 to May 2023, having admitted that his salary was paid through his bank account.
31. The court is at a loss as to why the respondent did not attach the statement for 2021 or 2022 or 2023 to evidence of employment or non-payment of salary in April and May 2023.
32. Although, the obligation of preparing the contract of employment is placed on the employer by law, in the absence of a document it is incumbent upon the employee to show that he or she had an employment relationship with the particular employer. Anything showing that the two dealt with each other in some way could be relevant. Evidence of a call, phone message or WhatsApp messages, visitations to the employer's office, particulars of persons met and many more renders the employee's account credible and patently believable.
33. The trial court appears to have accepted the respondent's account hook line and sinker in the absence of verifiable evidence notwithstanding.
34. In the court's view, without any scintilla of evidence to show that the respondent rendered any services to the appellant from 2021 to 2023 or was still employed and paid for services rendered, the court had no credible evidence, for the finding that the employment relationship subsisted until 8th May 2023.
35. This is because the respondent admitted in court that he had no evidence to prove that the appellant terminated his employment at any time.
36. In fact, he was not even aware whether the appellant was still in existence.
37. On re-examination, the respondent stated that they were stopped from work abruptly.
38. On termination of employment, it is trite law that for a termination of employment to pass the fairness test or muster, it must be proved that there was a substantive justification for the termination of employment and the procedure followed was fair as held in *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR.
39. In his witness statement on record, the respondent indicated that the Area Controller or immediate supervisor contacted him around 7:00am and informed him that the unnamed owner of the assigned post had not renewed the security contract with the appellant and had engaged another security company and subsequently informed him that his employment had been terminated on account of non-renewal of the contract.
40. While the alleged conversation may have taken place, the question that begs is who was the Area Controller or immediate supervisor of the respondent? How did he contact the respondent, call or in person? If by a call, what was his cell phone number?
41. Was the respondent alone at the workplace at the time? And what did he do after receiving the information?
42. There is no indication as to what the respondent did except attempting to reach out to the immediate supervisor to find out when unpaid salaries for April and May 2023 would be paid, which attempts were unsuccessful.
43. The respondent adduced no evidence as to how he reached out to the immediate supervisor, whether it was by a call, message or through a 3rd party.



44. Strangely, the respondent tendered no shred of evidence of having visited the appellant's premises for any reasons bearing in mind that his witness statement stated that he was employed by the respondent and the nameless Area Controller or immediate supervisor was not the employer.
45. The respondent's witness statement omitted the fundamental evidence of the alleged call or availment of information by the alleged Area Controller and what transpired thereafter.
46. The dearth of credible evidence as to what may have transpired is intriguing.
47. For unexplained reasons, the respondent allegedly attempted to reach out to the Area Controller/ immediate supervisor for the alleged unpaid salary yet he or she was not the employer and had not represented himself or herself as such, as the respondent did not adduce such evidence.
48. Evidently, the alleged Area Controller/immediate supervisor neither employed nor paid the respondent's salary as his bank statement attested.
49. The learned trial magistrate accepted the respondent's account of there having been non-renewal of contract by the owner of the assignment site, in totality. The respondent availed no evidence to show when the contract for the provision of security services between the appellant and the owner of the assignment site commenced or ended and how.
50. If the alleged security contract came to an end and was not renewed, the appellant had verifiable evidence.
51. After a careful re-evaluation and analysis of the evidence on record, it is discernible that the learned trial magistrate accepted the respondent's witness statement as full proof evidence of what transpired and, in the court's view fell into error on account that the respondent's concatenation of events had several unplugged gaps, which rendered it not credible without any verifying evidence.
52. Evidence of the alleged call or contact having been made with a known person through a particular cell phone number coupled with the actions the alleged information triggered including attempts to confirm the same with the employer or any other person and follow up on any alleged unpaid salary or dues, if any, would have ameliorated the respondent's case and enhanced the credibility of his evidence on the alleged termination of his employment.
53. For the foregoing reasons, it is the finding of this court that respondent failed to prove not only that the respondent terminated his employment on 8th May 2023 as alleged, but also that the alleged termination of employment was unfair.
54. The evidence on record did not disclose any unfair termination of employment or separation between the respondent and the appellant.
55. The foregoing finding is further reinforced by the earlier finding that the respondent failed to adduce any credible evidence to prove that he was an employee of the appellant after December 2020.
56. Having found as above, the claim for compensation was unsustainable and unmerited.
 - i. The declaration sought was unmerited.
 - ii. Underpayment
It is unclear that the appellant underpaid the respondent having served as a day guard at Kshs.7,450.00 for the duration served.



Under the Regulation of Wages (Amendment) (Order) 2018 effective 1st May 2018, the salary of a day guard was Kshs.7,240.95 excluding house allowance. The gross salary was Kshs.8,327.09-7,450=877.092x10 months=Kshs.8,779.20

- iii. Unpaid wages for April 2023 and 7 days in May 2023
This prayer was not substantiated and the trial court correctly declined it.
 - iv. Unpaid off days
This claim was not proved and the trial court correctly declined it.
 - v. Unpaid leave days
On cross-examination, the respondent confirmed although the appellant was supposed to allow him to proceed on leave, he did not apply for leave.
The claim was unproven contrary to the findings of the trial court.
 - vi. Unpaid public holidays and overtime
The claimant adduced no verifiable evidence to prove that he worked during the public holidays, or worked overtime on any day and for how many hours.
The trial court rightly declined the claim.
 - vii. Severance pay
The learned trial magistrate did not award severance pay and correctly so on account that the respondent did not adduce evidence to prove that he was declared redundant and severance pay was payable.
 - viii. Service pay
The trial court did not award service pay rightly so because the respondent admitted on cross-examination that he was a member of the National Social Security Fund (NSSF) and was thus not entitled to service pay by dint of Section 35(6)(d) of the *Employment Act*.
 - ix. Salary in lieu of notice
The learned trial magistrate awarded salary in lieu of notice based on the finding that the appellant terminated the respondent's employment without notice.
57. Having found that the respondent failed to demonstrate a prima facie case that the alleged termination of his employment actually took place and it was unfair, the prayer was unproven and was for dismissal.
58. The prayer for compensation for unlawful termination of employment suffers the same fate.
59. The foregoing clearly shows that the appellant has demonstrated a case for interference with the exercise of discretion by the trial court under the principles espoused in *United India Insurance Co. Ltd & 2 others V East African Underwriters (K) Ltd [1985] E. A. 898*. See also *Mbogo & another V Shah [1968] E. A. 93*.
60. In conclusion, the appeal is partially successful to the extent that the award for salary in lieu of notice, compensation for unfair termination, unpaid leave and house allowance are set aside and the amount payable as underpayment is adjusted to Kshs.8,779.20.
- Other awards by the trial court are upheld.



Parties shall bear their own costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 4TH DAY OF FEBRUARY 2026.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

