



**Pride Kings Security Service v Okukuma (Appeal E079 of 2025)
[2026] KEELRC 297 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 297 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E079 OF 2025
JK GAKERI, J
FEBRUARY 4, 2026**

BETWEEN

PRIDE KINGS SECURITY SERVICE APPELLANT

AND

MILLICENT OUNDO OKUKUMA RESPONDENT

JUDGMENT

1. This is an appeal from the Judgment of Hon. V. Ogotu delivered on 9th September 2025 in KISUMU MCELRC No.E271 of 2024 Millicent Oundo Okukuma V Pride Kings Services Ltd.
2. The case before the trial court was that the claimant was employed by the respondent in March 2023 at Kshs.7,450 per month and worked from 6am to 6pm daily, with no off days, leave or public holidays and employment was terminated by the respondent on 30th December 2023.
3. The claimant prayed for a declaration that termination of employment was unfair, Kshs.710,715.35 comprising salary in lieu of notice, underpayment, unpaid wages (July-December 2023), off days, house allowance, public holidays, overtime, severance pay, service pay and compensation, certificate of service, costs and any other relief the court deemed fit and just to grant.
4. The respondent denied all the allegations made by the claimant and sought the dismissal of the suit with costs and did not file a witness statement.
5. After considering the respective cases, evidence before the court and submissions by counsel, the learned trial magistrate found that termination of the claimant's employment was not unfair and awarded underpayment and house allowance as vested rights.

This is the judgment appealed against.

6. The learned trial magistrate is faulted on eight (8) grounds which may be condensed into two namely; misapprehension and incorrect analysis and evaluation of the evidence and the awards made.



Appellant's submissions

7. As to whether termination of the respondent's employment was unlawful, reliance was placed on the provisions of Section 47(5) of the *Employment Act* to urge that the respondent bore the burden of proof and failed to discharge the same as no evidence of a summary dismissal was availed and the respondent refused to be deployed elsewhere and was thus not entitled to a declaration that termination of employment was unfair and was equally not entitled to damages, notice pay, holiday, off days and overtime.
8. Counsel further submitted that the respondent was not underpaid and worked for a fairly short time, and was not entitled to severance pay because there was no redundancy.

Counsel urged the court to allow the appeal with costs.

Respondent's submissions

9. As regards reliefs, counsel urged that the respondent was entitled to all the reliefs awarded by the court, underpayment Kshs.65,754 because the respondent's evidence was unconverted and was also entitled to house allowance because she was neither housed by the appellant nor paid a house allowance.
10. Reliance was placed on the decisions in *Johnson Otsieno Ogola V Hatari Security Guards Ltd* [2021] eKLR and *Dede Esi Annie Wilks V Action and International* [2014] eKLR on housing allowance and minimum standards respectively, to urge that the sum of Kshs.7,450 paid to the respondent was below the minimum wage.

Counsel urged the court to dismiss the appeal with costs.

Analysis and determination

11. This being a first appeal, it is essential to underscore the role of the court in that respect as enunciated in previous decisions.
12. In *Selle & another V Associated Motor Boat Co. Ltd* [1968] E. A. 123 *Lestang V – P* stated:

“I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. 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 neither seen nor heard the witnesses and should make due allowance in this respect”.

13. See also *Gitobu Imanyara V Attorney General & another* [2016] eKLR, *Kenya Ports Authority V Kutson (Kenya) Ltd and Peters V Sunday Post* [1958] EA.
14. Since the trial court is for the most part faulted on its appreciation and application of the evidence on record, it behoves the court to reconsider the evidence and critically re-evaluate it.
15. In her written witness statement, the claimant stated that her last day at work was 30th December 2023 when at around 7:00am the Area Controller contacted her and told her that the owner of the assigned post did not renew the security contract and as a consequence, her employment had been terminated and subsequent attempts to contact the Area Controller on terminal dues were unsuccessful. The witness added that the respondent was not remitting NHIF or NSSF deductions.

That she was a day guard.



16. On cross-examination the witness confirmed that they were told not to report to work and she turned down another assignment in Kisumu and was thus not entitled to notice pay and could not recall when she was employed by the respondent and had no evidence of having worked from July to December 2023, or having worked on public holidays, off days or overtime.
17. Creditably, the respondent admitted that the respondent paid NSSF dues and admitted that her employment was not unlawfully terminated having refused to proceed to Kisumu.
18. On re-examination, the respondent stated that she was told not to go to work and repeated that she had no evidence of having worked up to December 2023.
19. Other than a copy of the national identify card, the only other verifiable evidence of the respondent was a half page Equity Bank statement for the period 1st January 2023 to 31st December 2023 which showed that on 5th June 2023 the appellant deposited the sum of Kshs.7,450 into the respondent's account.
20. Since the respondent had no staff card or anything to show that she worked for the respondent, the only piece of evidence that showed a relationship was the single deposit.
21. If the respondent's oral evidence is to be believed, the respondent worked for the respondent company for 10 months but was only paid the salary for May/June 2023. The claimant did not disclose whether the deposit related to May or June or any other month and on cross-examination, the respondent admitted that she could not remember when she was employed by the appellant.
22. Although the respondent's evidence at the trial court was uncontroverted, the respondent was still bound to prove her case on a preponderance of probabilities failing which the suit was for dismissal.
23. The mantra that who alleges must prove the allegations remains the operative principle by dint of the provisions of Section 107, 108 and 109 of the *Evidence Act*.
24. See *Mary Wambui Kabugua V Kenya Bus Services Ltd* [1997] eKLR where the court stated:

“The age/long principle of law is that he who alleges must prove...”
25. Similarly, in *Karugi & another V Kabiya & 3 others* [1983] KECA 38 (KLR) the court emphasized that

“The burden on the plaintiff to prove his case remains the same...”
26. The respondent was bound to prove that she was an employee of respondent for the duration pleaded, that is March 2023 to December 2023 but the only verifiable evidence was the bank statement which revealed that she was only paid one (1) month's salary in early June 2023.
27. Without any other piece of evidence to prove that she worked for appellant for any duration, a possible inference is that she only worked and was paid for one (1) month and the court so finds.
28. The court is in agreement with the appellant's case that the trial court erred in the analysis of the evidence on record in relation to employment and the duration served by the respondent.
29. On termination of the respondent's employment by the respondent, the respondent merely alleged that the Area Controller/Supervisor did so after contacting her on 30th December 2023.
30. It is trite law that for a termination of employment to pass the fairness test, it must be demonstrated that employer had a valid and fair reason to terminate the employee's employment and did so in accordance with a fair procedure.



31. Put in alternative terms, the relevant provisions of the *Employment Act* must be complied with.
32. See *Naima Khamis V Oxford University Press (EA) Ltd* [2017] eKLR and *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR.

Notably, Section 47(5) of the *Employment Act* provides:-

33. For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
34. This provision has been interpreted to mean that the employee must demonstrate a prima facie case of an unfair termination of employment for the burden to shift to the employer.
35. In *Nicholus Kipkemoi Korir V Hatari Security Guards Ltd* [2016] KEELRC 1044 (KLR) Abuodha J held:

“The burden of proof does not become any less on the employee simply because the employer has not defended the claim or absent at trial. The claimant must still prove his or her case. It is therefore not enough for the employee to simply make allegations on oath or in pleadings which are not backed by any evidence and expect the court to find in his or her favour”.
36. Concerning the alleged termination of the respondent’s employment, her evidence was plainly contradictory on the one hand, and lacked particulars on the other which diminished its probative value.
37. Although the respondent had alleged that an unnamed Area Supervisor informed her that her employment had been terminated owing to non-renewal of the security contract by the owner of the site, during cross-examination the respondent admitted that she was requested to do another assignment in Kisumu but she declined and admitted that she could not allege that her employment was terminated unlawfully.
38. Over and above the admission which the trial court relied upon, the circumstances in which the alleged termination of employment took place were neither pleaded nor testified about. For instance, the alleged Area Controller/Supervisor was unnamed as was the method used to contact the respondent on 30th December 2023 or on any other day.
39. Similarly, the Area Controller was not the respondent’s employer and the respondent did not allege or testify that she visited the appellant’s offices or spoke to any other person on the matter.
40. Strangely, the respondent stated that she tried to call the Area Controller/Supervisor on terminal dues.
41. With or without the respondent’s admission of having declined another assignment in Kisumu, the respondent failed to prove that a termination of employment had taken place on 30th December 2023 and that it was unfair.
42. The attempt to alter the evidence on re-examination rendered the respondent’s evidence contradictory and of nominal probative value.
43. To this extent, the court is in agreement with the finding of the trial court that the claim for unfair termination of employment was unsustainable and fell by the way side.



44. The court has noted that in ELRCA No.E075 of 2025, ELRCA No.E076, ELRCA No.E077, ELRCA No.E078 of 2025 and this appeal, the alleged termination of employment occurred in May 2023 or August 2022, May 2022 and December 2023, but in all instances the same reason and sequence of events took place. Could the termination of a security contract by the respondent's client be the causa causan for the dismissal for over a duration of one (1) year and seven (7) months? The court is not so persuaded bearing in mind that all respondents provided incomplete bank statements and none had anything to show that they worked for a long time they were claiming to have worked.
45. On reliefs, the trial court was faulted for having awarded underpayment and house allowance, total of Kshs.86,792.1.
46. The declaration sought was not proved and was not decreed and this court affirms the trial court's finding.
47. On underpayment, it is trite that the Cabinet Secretary Ministry of Labour and Social Protection prescribes the minimum wage as by law required and does so through Regulation of Wages (General) (Amendment) Order which are published for information and forceability.
48. Employers are required to comply with the relevant Regulation Wage Orders and failure to pay the minimum wage is a criminal offence.
49. In this case, the sum of Kshs.7,450.00 paid to the respondent on 5th June 2023 was below the minimum wage and the respondent was underpaid under the Regulation of Wages (General) (Amendment) Order 2022 effective 1st May 2022 under which the basic salary of a day watchman was Kshs.9,672.70 + 15% house allowance, Kshs.1,450.90 total Kshs.11,123.61 – Kshs.7,450.00=Kshs.3,673.61
50. The respondent was underpaid by Kshs.3,673.61 which is awarded, inclusive of house allowance.
51. The court is in agreement with the trial court that claims for unpaid wages for July to December 2023, off days, unpaid leave, public holidays and over time were not proved as the respondent threw figures to the court to award without any supportive evidence.
52. Similarly, the court is in agreement with the findings of the trial court that the claim for severance pay had neither legal nor factual basis as the respondent had neither alleged nor proved that she was declared redundant.
53. Finally, on service pay, the respondent admitted on cross-examination that the appellant was remitting NSSF deductions on her behalf and was thus disqualified from service pay by dint of Section 35 (6) of the *Employment Act*.
54. In the court's view, the learned trial magistrate cannot be faulted on the awards made save for the amount, which justifies interference with the trial court's exercise of judicial discretion as held in *United India Insurance Co. Ltd & 2 others V East African Underwriters (K) Ltd [1985] EA 898* and *Mbogo & another V Shah [1967] EA 116*.
55. Flowing from the foregoing the award of underpayment by the trial court is adjusted to Kshs.3,673.61. Others Order of the trial court are upheld.
56. Due to the partial success of the appeal, parties shall bear their own costs.

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

