

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT MOMBASA**

**APPEAL NO. E155 OF 2025**

**CENTURY STEEL FURNITURE LIMITED ..... APPELLANT**

**VERSUS**

**PUNNET TSANGWA CHOME ..... RESPONDENT**

**[Being an appeal from the judgment of Hon. Dominuca Nyambu delivered on 30 July 2025 in Mombasa CMELRC No. E579 of 2023]**

**JUDGMENT**

The appeal arises from the judgment delivered on 30 July 2025 in Mombasa CMELRC No. E579 of 2023. The appellant, aggrieved by the judgment, is seeking that the same be set aside and the awards re-assessed on the basis that the findings that there was unlawful and unfair termination of employment were in error, and hence the award of notice pay, severance pay for 14 years, service pay, and payment of damages were not justified.

The background to the matter is a claim filed by the respondent against the appellant. The case was that he was employed by the appellant as a machine operator in April 2009 at a daily wage of Ksh. 720 and worked until 18 August 2023, when his employment was terminated following a redundancy. However, there was no due process or payment of his terminal dues. He claimed the following:

1. Notice pay Ksh. 21,521.50.
2. Underpayments from 1 May 2022 to 31 July 2023 for 15 months, Ksh. 42,022.50.
3. Underpayments from 1 April 2009 to 1 May 2022 for 169 months Ksh. 1,050,385.70.
4. Leave allowance for 14 years Ksh. 243,358.50.
5. Prorate leave for 12 months Ksh. 5,790.75.
6. NSSF deductions not remitted Ksh. 12,400.
7. Severance pay at 15 days for 14 years ksh. 173,827.50.
8. Compensation for unfair termination of employment Ksh. 258,258.

In reply, the appellant's case was that the respondent was employed on a contract for service for piecework and was paid upon completion of each task. He was not employed in 2009 as alleged. He was not required to report to work every day as a full-time employee; therefore, he was not a salaried employee. He was thus engaged as and when work was available. His work was completed on 18 August 2023, and he was an independent contractor, paid on a per-work-done basis. The claims for unfair termination of employment or payment of terminal dues do not arise. The appellant had no control over the respondent. Piece rate employment does not require notice or the benefits sought in the claim.

The learned magistrate heard the parties and held that there was unlawful and unfair termination of employment, and hence the respondent was awarded the following:

- a) Notice pay Ksh. 21,521.50.
- b) 3 months' salary in lieu of notice, Ksh. 64,564.50.
- c) 14 years' severance pay Ksh. 173,564.50.
- d) Leave allowance Ksh. 43,043.
- e) Certificate of service.
- f) Costs and interests.

On the appeal, the appellant submitted that the respondent was not in the permanent employment of the appellant. His employment was on a piece-rate basis, with payment per completed task, as an independent contractor. The respondent failed to discharge the burden of proof that he was employed full-time, as held in **Denis Oduori Ouma v Steel Makers Limited, Cause No. 259 of 2025**.

As a piece rate employee and independent contractor, there was no termination of employment as alleged. The respondent testified that he reported for work on 18 August 2023 and that, before resuming his duties, his supervisor, Ali Juma, informed him that there was no work. However, the appellant called Nassim Waliji, who testified that the respondent reported to work on 18 August 2023, performed his duties and was paid. She produced the Muster Roll, which showed that the respondent was at work.

Subsequently, the respondent reported to work on 13 September 2023. He was paid for the day. It is thus incorrect that his employment was terminated on 18 August 2023, as alleged. He would report to work without supervision and be paid for the work performed. There was no unfair termination of employment under section 45 of the Employment Act (the Act).

As a piece rate employee, leave pay is not due. There was no redundancy declared to claim severance pay or compensation. The trial court's awards are unjustified and should be reassessed and set aside.

The respondent submitted that the appellant filed various work records, including an NSSF statement, which demonstrate that he was employed from 2010 to 31 July 2023. He is recorded as the employee of the respondent. For the period worked, section 37 of the Act protected him as an employee.

The allegations that the respondent was a casual employee are without evidence. The fact of statutory remittances establishes employment. There is no record of the reasons leading to the termination of employment due to adherence to the due process.

The learned magistrate well assessed the case and made correct awards, which should be confirmed, and the appeal dismissed with costs.

### **Determination**

As this is a first appeal, the court is required to review the record, reassess the findings, and reach its conclusions. However, note that the trial court had the benefit of hearing the evidence and seeing the parties testify.

The respondent asserted that he was employed as a machine operator by the appellant from January 2010 until his unlawful summary dismissal on 18 August 2023. There was no written service contract.

The appellant, on its part, asserts that the respondent was employed on a piece-rate basis and as an independent contractor. However, there is no record of employment on piece rate, independent contractor or any other form of employment as required under sections 10 and 18 of the Act. The only record filed is the Muster Roll. It is not challenged by the respondent. The witness called by the appellant asserted that the respondent was a casual employee.

The employer has a legal duty to provide the employee with written terms and conditions of employment.

In this case, what is clear to the court is that the appellant is making deductions and remittances of statutory payments for the respondent to the NHIF and NSSF. Ordinarily, a piece-rate employee, an employee engaged for service, or an independent contractor does not

enjoy such benefits as those held in **Kensalt Limited v Abukuse [2026] KEELRC 336 (KLR)**.

The Muster Rolls submitted for different months show staggered work attendance.

In July 2022, the respondent worked for 6 days.

In April 2023, he worked for 8 days.

In May 2023, he worked for 8 days.

June for 6 days.

July and August 2023, 4 and 5 days respectively.

September 2023, a single day.

This record of the Muster Roll bears crucial details. Work attendance was staggered. It was not consistent. It has no pattern. Payments were made as and when there was work attendance.

The respondent cannot claim under the protections of section 37 of the Act. His work attendance was in the nature of casual work in the absence of any written letter of appointment as a machine operator. He was paid for work performed as a defined employee under section 2 of the Act. He cannot claim protection under section 37 of the Act.

Casual employment starts and ends with each day. The muster rolls produced were not challenged in any material way. The payment to NSSF and NHIF is not confirmation of an employment relationship. Whenever the respondent attended work, the appellant made remittances. For months, not at work; no remittance. This is reasonable and as expected of casual employment.

The claim that there was a redundancy does not arise from the employment relationship of the parties that was causal. No compensation or notice pay is due.

The awards of severance pay should only accrue upon a declaration of a redundancy. None issued in this case.

On the analysis of the muster roll, there was no continuous work attendance beyond 8 days in any given month. To claim leave pay is without merit.

**On this basis, the appeal is with merit and is hereby allowed. The judgment in Mombasa CMELRC No. E579 of 2023 is set aside in its entirety. The appellant is awarded costs of the appeal.**

Delivered in open court at Mombasa, this 19th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and .....