

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET**

ELRC APPEAL NO. E025 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

UNGA COMPANY LIMITED 1ST

APPELLANT

MANPOWER NETWORK LIMITED 2ND

APPELLANT

VERSUS

ISAAC INZIANI ISABWA

RESPONDENT

*(Being an appeal against the Judgment of Honourable S.D. Sitati
(Senior Resident Magistrate) delivered on 25th February 2025 in
Chief Magistrates Court at Eldoret in CMELRC No. E.101 of 2023)*

JUDGMENT

1. The Appellants herein were the Respondents in Eldoret CMELRC No. E101 of 2023, where the Respondent (then Claimant) sued the Appellants via a Statement of Claim dated 7th November 2023, seeking compensation and terminal dues for alleged unfair termination of his employment.
2. After hearing the parties, the trial court delivered judgment on 25th February 2025 in favour of the Claimant, awarding him

Kshs. 964,708.84 as compensation for unfair termination, one month's salary in lieu of notice, salary underpayment, leave dues and house allowance. The Claimant was also awarded costs and interest on the suit.

3. Dissatisfied with the judgment, the Appellants filed the instant appeal via a Memorandum of Appeal dated 14th March 2025 on the following grounds:

a) THAT he Learned Magistrate erred in law and in fact in failing to appreciate that the Respondent was not a permanent employee but was employed on a casual basis.

b) THAT the Learned Magistrate erred in law and in fact in failing to appreciate that the Respondent was engaged on need be basis and paid in accordance to the work done.

c) THAT the Learned Magistrate erred in law and in fact in failing to appreciate that there was a valid reason for termination of the Respondent's employment.

d) THAT the Learned Magistrate erred in law and in fact in failing to appreciate that the Appellant terminated the services of the Respondent in accordance with fair procedure.

- e) THAT the Learned Magistrate erred in law and in fact in awarding the Respondent service pay despite the Respondent being a member of NSSF.
- f) THAT the Learned Magistrate erred in law and in fact in awarding the Respondent underpayment when there was no claim for underpayment in the Respondent's pleadings.
- g) THAT the Learned Magistrate erred in law and in fact in failing to consider the limitation period under section 90 of the Employment Act in awarding leave dues to the Respondent.
- h) THAT the Learned Magistrate erred in law and in fact in failing to consider the limitation period under section 90 of the Employment Act in awarding house allowance to the Respondent.
- i) THAT the Learned Magistrate erred in law and in fact in failing to analyze the evidence on record and the submissions of the Appellant.
- j) THAT the Learned Magistrate erred in law and in fact in failing to appreciate that the Respondent was not entitled to leave since his employment was not continuous hence no leave is due.

- k) THAT the Learned Magistrate erred in law and in fact in failing to separate the claim against the 1st Appellant and the 2nd Appellant.
4. The Appellants pray for the following orders:
- a) That the Appeal be allowed
 - b) That the trial judgment in cause No. E101 of 2023 be set aside and the Respondent's claim be dismissed with costs to the Appellants
 - c) That costs of the Appeal be provided for
5. The appeal was disposed of by way of written submissions. The Appellants' submissions are dated 7th November 2025 while the Respondent's submissions are dated 6th November 2025.

Analysis

6. This being a first appeal, this court is guided by the principles espoused in several decisions among them, **Selle & Another v Associated Motor Boat Co. Ltd & Another (1968) EA 123**, to re-evaluate and re-examine the evidence adduced in the trial court in order to reach its own finding, taking into

account the fact that this court had no opportunity of hearing or observing the parties as they testified.

7. Vide a Statement of Claim dated 7th November 2023, the Claimant (now the Respondent) averred that he worked at the 1st Respondent's premises as a packager on permanent basis with effect from January 2002 and was earning a salary of Kshs. 14,000 per month as at the time of employment, which was paid on a monthly basis exclusive of house allowance and other allowances.
8. The Claimant averred that he worked for the Respondents on a day-to-day basis, continuously for all the days of the month from the date of his employment until the time he was orally terminated. He further stated that throughout the entire period he was employed by the Respondents, he reported on duty daily from 8.00 a.m. to 5.00 p.m., save for Sundays, which constituted his weekly rest day.
9. The Claimant contended that he was paid his salary on a weekly basis and that some statutory deductions were remitted by the Respondents on a monthly basis, the same having been duly deducted from his monthly salary.

10. The Claimant averred that on 22nd June 2023, he reported to work as usual and worked overtime until 8.00 p.m. He stated that as he was preparing to leave, a security guard instructed him to bring 5 kilograms of cooking flour, which the guard indicated belonged to him. He contends that he proceeded to collect the 5 kilograms of flour and while taking it to the security guard, he was intercepted by another security guard.
11. The Claimant stated that he attempted to explain that the flour did not belong to him, but the guard did not accept the explanation and directed the Claimant to write an apology letter.
12. The Claimant further averred that he initially declined to write the apology letter arguing that he had not stolen the flour but the security guard forced him and told him that if he failed to do so he would lose his job.
13. The Claimant contended that upon reporting to work the following day, he explained the entire incident to the 2nd Respondent's manager but the response he received was that the 2nd Respondent had no alternative but to go along with the 1st Respondent's decision to orally terminate his employment.

14. The Claimant maintained that the termination of his employment was illegal, unfair and unprocedural, that it violated the provisions of sections 41(1), 43, 44(4) and 45(2) and 43 of the Employment Act.

15. The Claimant averred that as a result of the unfair termination of his employment, he is entitled to terminal benefits which he tabulated as hereunder: -

i. One month in lieu of notice	Kshs
16,100	
ii. Compensation for unlawful termination	Kshs
168,000	
iii. Leave dues from 2002	Kshs
236,670	
iv. Service pay/gratuity	Kshs 49,000
v. House allowance	Kshs
529,200	

16. The Claimant therefore sought for the following reliefs:

- a. Declaration that the Claimant's services were unprocedurally, unlawfully and unfairly terminated and in the circumstances the Claimant is entitled to

compensation of his terminal dues as outlined herein above

- b. The sum of Kshs. 998,970 set out herein above
- c. Certificate of service
- d. Costs of this suit and interests at court rates from time of filing the suit until payment in full
- e. Any other further and better relief the Honourable Court may deem just and fit to grant.

17. The Appellants (who were the Respondents before the trial court) filed a Response to the Memorandum of Claim dated 9th February 2024, in which they denied the averments made by the Claimant. According to the Appellants, the Claimant was not employed on a permanent basis but engaged as a casual labourer and was paid accordingly. They contended that the Claimant worked under the external stores department and was only called upon when the need arose.

18. The Appellants further maintained that the Claimant's engagement was on a daily basis, with each engagement ending at the close of the day depending on the piecework or wage. Payment was allegedly withheld and paid at the end of

the week as a lump sum, as evidenced by the M-Pesa statements produced by the Claimant.

19. In response to the Claimant's assertion that he worked continuously from January 2022 to June 2023 until his alleged unprocedural termination, the Appellants maintained that there were intermittent breaks in his engagement, as his assignment depended on the availability of work.
20. The Respondents contended that on 22nd June 2023, the Claimant was apprehended by a security guard outside his designated workstation while stealing flour from a warehouse.
21. It was the Appellants' case that investigations were thereafter conducted and a report made concerning the alleged theft, following which the Claimant voluntarily tendered an apology.
22. The Appellants further averred that, after investigations and consultations, the 2nd Appellant offered the Claimant an opportunity to await redeployment to another site, as the supervisor at the initial site had lost trust in him. They contended that, instead of taking up this opportunity, the Claimant rushed to court with unclean hands.
23. The Appellant prayed that the suit be dismissed with costs.

Evidence

24. The suit was heard on 5th November 2024 where the Claimant testified as CW1. He adopted his witness statement dated 7th November 2023 as his evidence in chief and relied on the documents he filed in support of his case. The Claimant testified that he was first employed by the 1st Appellant in 2002. That in 2010 the 2nd Respondent assumed operations pursuant to a contract with the 1st Respondent. He stated that he worked for the 2nd Appellant until June 2023 on a piece-rate basis and continuously except during periods when materials were unavailable.
25. The Claimant testified that he worked from Monday to Friday, 8.00 a.m. to 6.00 p.m., and occasionally undertook night shifts from 6.00 p.m. to 7.00 a.m. That his duties involved packaging flour into bags. He further testified that when there was excess flour, he and other workers were sometimes instructed to halt packaging pending customer purchases but continued to report to work and were assigned other duties within the store.
26. The Claimant denied stealing 5 kilograms of flour and stated that he was accused by a security guard of attempting to steal a bag which had fallen to the flour. He stated that his

employment was terminated immediately and that he was forced to write an apology letter, and ordered to leave the premises, never to return. He contended that he was neither issued with a notice to show cause nor invited to a disciplinary hearing, and that no termination letter was ever served on him. He further stated that he was never charged in a criminal court. He testified that he never proceeded on leave and was not paid house allowance. The Claimant testified that the 2nd Respondent only commenced remittance of NSSF and NHIF contributions in 2015 several years after his engagement.

27. On cross-examination, the Claimant stated that he was engaged on a piece-rate basis and not on a permanent basis. He denied stealing from the 1st Appellant and further denied writing any letter admitting liability for theft, stating that he was instructed to write an apology letter solely to retain his job. He reiterated that NSSF contributions were only remitted from 2015.
28. The Respondents called Mercy Wanjua, the site supervisor, who testified as RW1. She adopted her witness statement dated 9th February 2024 as her evidence in chief and relied on

the documents filed by the Respondents in support of their case.

29. On cross-examination, RW1 maintained that the Claimant was engaged on a casual basis. She testified that he was terminated on 29th June 2023 after being found by a security officer inside the warehouse with flour concealed in his overall, after all other warehouse workers had left. She stated that investigations were conducted immediately following the incident and that the Claimant was terminated without being issued with a notice to show cause or being invited to a disciplinary hearing. She further stated that the Claimant was not entitled to house allowance as he was a casual employee.
30. The Respondents also called Lawendi Kinjo Erich, who testified as RW2 and adopted his witness statement dated 9th February 2024 as his evidence in chief.
31. On cross-examination, RW2 stated that he was the security officer who found the Claimant in possession of the flour.
32. Upon the close of the Respondents' case, the trial court delivered its judgment on 25th February 2025 in favour of the Claimant.

Appellants' submissions

33. The Appellants while submitting on grounds 1, 2 and 10 of the Grounds of Appeal averred that the trial court erred in law and fact in failing to appreciate that the Respondent was engaged on a "need-be" basis and was paid in accordance with the work done. In addition, it was submitted that the trial court also erred in failing to recognize that the Respondent was not entitled to leave as his employment was not continuous.
34. The Appellants thus submitted that the Respondent was a casual employee and not a permanent employee, contrary to the finding of the trial court. In addition, the Appellants asserted that the Respondent produced M-Pesa statements showing that his payments were dependent on the work done and were not continuous. The Appellants further submitted that the Respondent in paragraph 2 of his Statement of Claim, stated that he worked as a packager on a casual basis from January 2002.
35. While submitting on ground 3, the Appellants submitted that the trial court erred in failing to recognize that there was a valid reason for termination. It was submitted that the

Respondent was suspected of stealing 5 kilograms of flour from the warehouse. That in support of its case, the Appellants produced three documents in evidence to wit, the attempted theft report, the investigation statement, and the Respondent's statement during investigation. Relying on section 45(1) of the Employment Act, the Appellants submitted that a valid reason existed, as the Respondent was suspected of theft and an investigation was conducted.

36. With regard to ground 4, the Appellants submitted that the trial court erred in failing to appreciate that the Respondent's termination was conducted in accordance with fair procedure. The Appellant maintained that the Respondent was afforded a fair process as he was given an opportunity to record his statement during the investigation.
37. On ground 6, the Appellants submitted that parties are bound by their pleadings and maintained that the Respondent in his Memorandum of Claim did not pray for underpayment of salary but the trial magistrate awarded him Kshs. 503,713.46. Further, the Appellant submitted that the trial court erred in calculating underpayment yet the Respondent's pay was not

fixed but dependent on the work done and number of days worked as evidenced by his M-Pesa statements.

38. On grounds 7, 8 and 9, the Appellants submitted that the trial court ought to have considered Section 90 of the Employment Act, the evidence and the submissions of the parties. According to the Appellants, the trial court awarded the Respondent house allowance and leave for the period 2016-2025 yet the Respondent did not work continuously. On this basis, the Appellants argued that any claim for leave or house allowance should have been limited to the actual period worked (2020-2023). Accordingly, the Appellants submitted that the award was excessive and could not stand.
39. On ground 11, the Appellants contended that the trial court erred in failing to separate the claims against the 1st and 2nd Appellants, who are separate legal entities. The Appellants maintained that the trial court entered judgment against both Appellants jointly and severally, despite the 2nd Appellant managing casual employees under a contract with the 1st Appellant since 2012. The Appellants therefore submitted that the claims against each Appellant ought to have been specified separately.

40. In the end, the Court was urged to allow the appeal and set aside the entire judgment of the trial court.

The Respondent's submissions

41. The Respondent set out the issues for determination to be:
- i. The nature and status of the Respondent's employment.
 - ii. Whether the Respondent was fairly and procedurally terminated.
 - iii. Whether the Trial Court erred in awarding the Respondent underpayment of wages.
 - iv. Whether the trial Court failed to consider and apply the limitation period in awarding leave pay and house allowance.
 - v. Whether the Trial Court erred in awarding the Respondent leave pay.
42. On the first issue, the Respondent submitted that although he was employed orally on a casual basis, he worked continuously throughout his employment. He contended that the Appellants' claim that he was engaged only on a "need-be" basis was unsupported by evidence. He further asserted

that he worked continuously for over five years and that the trial court correctly relied on Section 37 of the Employment Act, which provides for the conversion of casual employment into a term contract.

43. The Respondent further submitted that his employment had effectively converted from casual to a contract, entitling him to statutory benefits, including protection against unfair termination. In support of this position, the Respondent cited the case of ***Okello & 4 Others v. University of Nairobi*** [2025] KEELRC 52 (KLR)
44. On the second issue, the Respondent submitted that he performed his duties diligently and was never issued with a notice to show cause or called to a disciplinary hearing. He contended that his termination over the alleged theft of 5 kilograms of flour was not justified. The Respondent maintained that the termination of his employment was both substantively and procedurally unfair.
45. On the third issue, the Respondent submitted that the trial court correctly awarded underpayment of wages. At the time of his termination on 22nd June 2023, the Appellants had failed to comply with the Regulation of Wages (Agricultural Industry)

(Amendment) Order, 2022, which set the minimum monthly wage at Kshs. 7,544.65. The Respondent submitted that the trial court's award of Kshs. 503,713.46 was therefore within its discretion under Section 3(1) of the Judicature Act and Section 3A of the Civil Procedure Act to ensure justice.

46. On the fourth issue, the Respondent submitted that the claim for leave pay and house allowance was timely. The Statement of Claim was filed within the limitation period prescribed under Section 89 of the Employment Act. The trial court correctly recognized that the cause of action was continuing, and therefore the claim was valid.
47. Regarding leave pay, the Respondent submitted that his employment was continuous from January 2002 until 22nd June 2023. He submitted that by operation of Section 37 of the Employment Act, his casual employment had converted into a term contract, entitling him to statutory benefits including leave pay. The Respondent further submitted that Section 28(1)(a) provides for 21 working days of leave for every twelve months of service and that as such he was therefore entitled to leave pay. He cited **Mwabaka v. Bungoma**

Branch Manager, Kenya Farmers Association Limited & Another [2025] KEELRC 1677(KLR).

48. In conclusion, the Respondent submitted that the trial court correctly assessed his entitlement to unpaid leave and leave pay, given his more than twelve years of continuous service.
49. The Respondent prayed that the appeal be dismissed with costs.

Determination

50. I have considered the Appellant's Record of Appeal and the submissions by both parties. The grounds of appeal may be summarized into the following issues for determination:
- i. Whether the Respondent's employment was casual or converted to contract employment,
 - ii. Whether the trial court erred in holding that the Respondent's termination was unlawful, unfair and unprocedural,
 - iii. Whether the trial court erred in awarding the remedies as were awarded to the Respondent,

- iv. Whether the Learned Magistrate erred in law and in fact in failing to separate the claim against the 1st Appellant and the 2nd Appellant.

Whether the Respondent's employment was casual or converted to contract employment

51. The trial court, in its judgment at page 71 of the Record of Appeal, found that although the Respondent was initially engaged on a casual basis, his continuous service over several years effectively converted his employment into a term contract under Section 37 of the Employment Act.
52. The Respondent submitted that he had worked continuously for more than five years. He argued that the Appellants' assertion that his engagement was on a "need-be" basis was not support by any attendances. The Respondent while relying on Section 37 of the Employment Act asserted that his status of employment converted from a casual employee to a contract employee thus making him eligible to enjoy statutory benefits that come with contract employment which include protection from unfair termination.

53. The Appellants on the other hand, contended that the Respondent was engaged as a casual laborer as his mode of employment was on a day to day basis and therefore did not receive a salary but wages as per the piece work done or daily targets. It was submitted that each contract ended at the end of the day but payment was weekly. The Appellants further argued that the Respondent could not claim statutory benefits such as leave pay or service pay, as he was never formally a contract employee.
54. The *Employment Act* defines a casual employee under Section 2 as *an individual whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time.*
55. Section 37 of the *Employment Act* further provides for conversion of casual employment to regular contracts as follows:

(1)Notwithstanding any provisions of this Act, where a casual employee

(a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or

(b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.

(2) In calculating wages and the continuous working days under subsection (1), a casual employee shall be deemed to be entitled to one paid rest day after a continuous six days working period and such rest day or any public holiday which falls during the period under consideration shall be counted as part of continuous working days.

(3) An employee whose contract of service has been converted in accordance with subsection (1), and who works continuously for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have

been entitled to under this Act had he not initially been employed as a casual employee.

(4) Notwithstanding any provisions of this Act, in any dispute before the Industrial Court on the terms and conditions of service of a casual employee, the Industrial Court shall have the power to vary the terms of service of the casual employee and may in so doing declare the employee to be employed on terms and conditions of service consistent with this Act.

(5) A casual employee who is aggrieved by the treatment of his employer under the terms and conditions of his employment may file a complaint with the labour officer and section 87 of this Act shall apply.

56. The import of Section 37 of the Employment Act is that the contract of service of an employee engaged on casual basis converts to regular term contract by operation of the law upon working continuously for an aggregate number of days amounting to one month.
57. Further, in the definition of a casual employee, the contract is deemed to expire and payment made on a daily basis. An employee paid by the week is not a casual employee

irrespective of the description of the relationship by the parties.

58. In the instant case, the evidence on record shows that the Respondent commenced work with the 1st Appellant in January 2002 as a casual worker until 2010 when the 2nd Appellant assumed operational management of the Respondent pursuant to a contract with the 1st Appellant. From that time until June 2023, the Respondent worked continuously and although paid on a piece-rate basis, he worked continuously except during periods when materials were unavailable. Further, from M-pesa statements tendered in court by the Respondent, it is clear that the Respondent received weekly payments over a long period of time which is not consistent with casual engagement. He was thus not a casual employee.
59. The Appellants' submission that the Respondent was merely a casual employee does not conform with the law. While his initial engagement was casual, the duration, continuity, and regularity of his work elevated his status to that of a regular contract employee.

60. In the case of **Krystalline Salt Limited v Kwekwe Mwakele & 67 others [2017] eKLR** the Court of Appeal pronounced itself on a similar issue and observed as follows;

“Under section 37 of the Employment Act, this court has the power to vary the terms and conditions of service of workers and declare that employees are employed on terms and conditions consistent with the said Act. In this case, the claimants worked continuously for days, which in the aggregate was more than a month and as such under Section 37(1) (a) they had become protected by Section 35(1) (c) from arbitrary dismissal. Under Section 31(1) (c) an employee cannot be terminated without prior written notice of 28 days. In this case therefore, the respondent was barred from terminating the Claimants employment without a prior written notice of 28 days....”

61. Similarly, this court in the case of **Bett & 27 others v County Government of Uasin Gishu & 2 others [2023] KEELRC 1527 (KLR)** while dealing with a similar issue held:-

“36. Flowing from the above, the Petitioners herein, having worked continuously for over 6 years for the Respondents, are regular employees as their contracts were converted by

operation of the law to regular contracts upon the lapse of 3 months from the date of engagement by the Respondents.

37. This court therefore makes a finding that by dint of Section 37 of the Employment Act, the Petitioners are regular employees entitled to the safeguards available to an employee on a regular contract of employment which safeguards include, protection from unfair termination, benefits such as leave and overtime.”

62. In view of the above, it is the finding of this Court that the Respondent’s employment, while initially casual, converted to term contract employment due to continuous engagement. Consequently, the Respondent became entitled to statutory benefits including protection under Sections 41, 43, 44, and 45 of the Employment Act.
63. Contrary to the averments of the Appellant, all employees are entitled to leave and house allowance irrespective of the nature of employment. The Employment Act does not exclude casual employees from earning leave and house allowance. According to section 31 of the Act, annual leave is earned by any employee upon completion of two months while house

allowance is payable for all days worked with daily statutory rates of pay being inclusive of house allowance while monthly rates attract 15% house allowance, irrespective of length of service or nature of engagement.

Whether the trial court erred in holding that the Respondent's termination was unlawful, unfair and unprocedural

64. In his claim and witness statement, the Respondent stated that on 22nd June 2023, he was instructed by a security guard to collect 5 kilograms of flour and while taking the flour, he was intercepted by another security guard and directed to write an apology letter. The Respondent asserted that he was coerced into writing the apology under threat of losing his job. He testified that he was neither issued with a notice to show cause, nor invited to a disciplinary hearing, and that the termination was verbal.
65. On their part, the Appellants submitted that the Respondent was a casual employee and that his termination was based on the allegation that he had attempted to steal 5 kilograms of flour from the warehouse. They argued that the Respondent

had been investigated and had apologized and thus the termination was valid and procedurally fair.

66. As already held in issue (i) above, the Respondent's continuous service converted his employment to a term contract under Section 37 of the Employment Act. Consequently, he was entitled to statutory protections, including protection from unfair termination.
67. In the absence of a hearing, the Appellants failed to demonstrate a valid reason for the termination of the Respondent. The alleged theft was therefore never proved by evidence.
68. Further, the procedural requirements for termination under Sections 41 and 43 of the Employment Act were not observed. The Respondent was not issued with a notice to show cause, was not invited to a disciplinary hearing, and was not served with a termination letter. These are fundamental elements of procedural fairness, the absence of which render a termination unlawful.
69. In the circumstances, the trial court correctly held that the Respondent's termination was unlawful, unfair, and procedurally defective.

the circumstances of this case. The award was thus well within the discretion of the trial court under Section 49(1)(c) of the Act. This Court finds no basis for interfering with that exercise of discretion.

72. On the award of one month's salary in lieu of notice, this Court finds that the Respondent was entitled to notice under Section 35 of the Employment Act, having been deemed a term contract employee pursuant to Section 37 of the Act. The termination having been effected orally and without notice, the award of one month's salary in lieu of notice was lawful and justified.

73. With regard to the award for salary underpayment, the Appellants contended that there was no specific prayer for underpayment in the pleadings. A perusal of the Statement of Claim shows that the Respondent did not specifically plead or particularize a claim for salary underpayment. It is trite law that parties are bound by their pleadings and that a court may not grant a relief that has neither been pleaded nor specifically prayed for. In the absence of pleadings in respect of the prayer, the trial court had no basis upon which to make an award for underpayment. The award of Kshs. 503,713.46

for salary underpayment was therefore made in error and is hereby set aside.

74. On the award of leave dues, the Appellants argued that the Respondent failed to prove that he did not take leave and that the claim was time-barred. Under Section 28 of the Employment Act, the duty to keep leave records rests with the employer. No leave records were produced by the Appellants to demonstrate that the Respondent proceeded on annual leave. Further, the Respondent's claim was based on a continuing employment relationship that only ceased in June 2023, and the suit was filed within the statutory limitation period. The court further notes that the Appellants advanced the erroneous argument that the Respondent having been a casual employee was not entitled to leave. The award of leave dues was proper and is therefore confirmed.
75. As regards the award of house allowance, Section 31 of the Employment Act obligates an employer either to provide reasonable housing or to pay house allowance unless the salary is consolidated. The Appellants did not demonstrate that the Respondent's wages were consolidated or that housing was provided. The trial court therefore correctly

awarded house allowance, and this Court finds no error in that determination.

Whether the Learned Magistrate erred in law and in fact in failing to separate the claim against the 1st Appellant and the 2nd Appellant

76. From the Respondents' Response to the Memorandum of Claim at page 32 of the Record of Appeal, it is evident that the claim was addressed to both the 1st and 2nd Appellants jointly. The allegation that the trial court erred in failing to separate the claims is therefore not supported by the pleadings, as the pleadings of the Respondents treated the employment relationship as involving both Appellants.
77. In the circumstances, the Court finds that the trial court cannot be faulted for holding the Appellants jointly and severally liable, as the pleadings and evidence on record disclosed a joint employment relationship and there was no basis laid for apportionment of liability between the Appellants. This ground of appeal therefore fails.

What orders should issue

78. In the upshot, the appeal succeeds partially. Consequently, the award of Kshs. 503,713.46 for salary underpayment is hereby set aside.
79. All other findings and awards of the trial court including compensation for unfair termination, one month's salary in lieu of notice, leave dues, and house allowance are hereby affirmed.
80. Each party shall bear its costs of the Appeal.
81. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THIS 12TH DAY OF FEBRUARY, 2026.**

**M. ONYANGO
JUDGE**