

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAKURU
APPEAL NUMBER E003 OF 2024**

BETWEEN

ELIAN SECURITY
LIMITEDAPPELLANT

AND

SHARON CHEBET
RESPONDENT

[An Appeal against the Judgment and Orders of Hon. E. Soita in Nakuru MC ELRC No. E318 of 2021, delivered on 19th December 2023, between the Parties herein]

*Rika J
Court Assistant: Emmanuel Kiprono*

Kairu Maina & Associates, Advocates for the Appellant

Willy Maina & Company Advocates

JUDGMENT

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1. The Respondent filed the Claim at the Trial Court, pleading that she was employed by the Appellant, as a Security Guardette.

 2. She claimed that she was unfairly and unlawfully dismissed by the Appellant. She prayed for declaration that termination was unfair and unlawful; compensation equivalent of her 12 months' salary for unfair termination; terminal benefits; certificate of service; costs; and interest.

3. The Trial Court awarded her the declaratory order; compensation equivalent of 1-month salary at Kshs. 14,400; notice at Kshs. 14,300; underpayments of salary at Kshs. 168,000; annual leave at Kshs. 6,172; certificate of service; and costs of the Claim.
4. The Appellant filed a Memorandum of Appeal dated 17th January 2024, raising 5 related grounds of appeal. The grounds are: -
 - a. The Trial Court misdirected itself on matters of law and fact.
 - b. The Trial Court failed to place sufficient weight on the Appellant's submissions.
 - c. The Trial Court failed to consider the Appellant's evidence.
 - d. The Trial Court failed to consider the entirety of the proceedings and evidence of the Appellant.
 - e. The Trial Court misdirected itself on the evidence.
5. It is proposed by the Appellant that: -
 - a. The Appeal is allowed.

- b. Judgment of the Trial Court is set aside, varied or reviewed.
 - c. Costs of the Appeal and the Trial Court be awarded to the Appellant.
6. It was agreed by the Parties that the Appeal is considered on the strength of the Record of Appeal and Submissions. Submissions were confirmed to have been filed and exchanged at the last mention before the Court, on 17th December 2025.

The Court Finds: -

7. The grounds of appeal are too general, to afford the Appellant a serious challenge to the Judgment of the Trial Court.
8. The Appellant does not specify, what aspect of the Judgment amounted to misdirection on matters of law and fact; what part of the Appellant's evidence was disregarded; what submission was not given sufficient consideration; and how the Judgment was flawed, occasioning the Appellant miscarriage of justice.
9. The Trial Court correctly found that the Respondent was working on 24th September 2021. There was a 'please call me' message exchanged between the Parties on 24th September 2021, discounting the Appellant's position that the Respondent absconded, returning on 27th September 2021. There was no letter issued to the Respondent charging her with absconding. She was not heard on absconding. Evidence

available to the Trial Court did not show that the Respondent was taken through a fair procedure under Sections 41 and 45 of the Employment Act, and valid reason established by the Appellant under Sections 43 and 45 of the Act, to justify termination.

10. The Trial Court considered that she worked for about 20 months, and granted her a minimal compensation equivalent of her 1- month salary at Kshs. 14,400, and notice pay of a similar amount.
11. Why would an Employer appeal against such a low compensatory award?
12. A monthly salary of Kshs. 6,000 paid to the Respondent was clearly shown, to offend the private security industrial wage floor.
13. It was never contested that the Respondent was paid a monthly salary of Kshs. 6,000. The Appellant's witness appears to have justified underpayments in his evidence, stating that his business was humble, and the rate was agreed to between the Parties.
14. The Trial Court correctly awarded the Respondent underpayments of salary to align with minimum wage granted under the relevant wage order.
15. Section 48 of the Labour Institutions Act, 2007, provides that a wage order constitutes minimum terms and conditions of employment. The minimum rates of remuneration cannot be varied by agreement of the

Parties. If a contract provides for less than the minimum standards, the wages order shall be inserted in the contract, in substitution of the inferior terms. The Trial Court substituted the inferior and illegal salary of Kshs. 6,000 monthly paid to the Respondent, with the correct salary, under the wages order.

16. There was no error of law or fact, in award of underpayments.
17. The Court has not found any reason to interfere with any award of the Trial Court.

IT IS ORDERED: -

- a. The Appeal is declined.*
- b. Costs of the Appeal to the Respondent.*

Dated, signed and delivered electronically at Nakuru, pursuant to Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 27th day of February 2026.

James Rika
Judge

