

REPUBLIC OF KENYA

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

APPEAL NO. E227 OF 2026

- 1. ERASTUS MITIE NZILI**
- 2. EMMANUEL DORO MWADZUA**
- 3. PETER NYALE KITI APPELLANTS**

VERSUS

ASSOCIATION FOR THE PHYSICALLY

DISABLED OF KENYA (APDK) RESPONDENT

**[Being an appeal from the judgment of Hon. G. Sogomo delivered on 31 October 2025 in
Mombasa MCELRC E044 of 2025]**

JUDGMENT

The appeal arises from the judgment delivered on 31 October 2025 in Mombasa MCELRC No. E044 of 2025. The appellants seek that the judgment be set aside and substituted with an order allowing their claims, with costs.

The background of the appeal is the appellants' claim.

The claim was that the applicants were employed by the respondent at the Bombolulu workshop and Cultural Centre. Their case was that;

The 1st appellant was employed in 2000.

The 2nd appellant was employed in 2005.

The 3rd appellant was employed in 2006.

Their case was that employment was on a piece rate. They would be given successive contracts for different periods. They would produce various handicrafts and be paid for each

piece. In July 2024, the production manager, Shadrack Nderitu, picked quarrels with the appellants and threatened to non-renew their contracts and claimed that no work was available. The option given was short-term contracts of one month. The appellants questioned the term change to one month and, instead, the respondent terminated their employment in October 2024. They claimed that their employment rights were violated. They were underpaid before the Minimum Wage Orders, which allowed a daily rate of Ksh 1,045.89 or a monthly wage of Ksh. 21,748.92. They thus claimed the following:

- a. A declaration that employment was terminated unfairly.
- b. Damages for unfair labour practices under section 12 of the Employment and Labour Relations Court Act.
- c. Notice pay.
- d. 12 months compensation.
- e. Severance pay under section 40 of the Employment Act.
- f. Costs of the suit.

In reply, the respondent admitted that it held fixed-term contracts with the appellants, which were periodically renewed on a piece-rate basis based on the availability of work. The contracts were intermittent and not successive, with varying durations dictated by work availability. At the end of each contract, the respondent did not require the appellants' consent to issue another contract and was at liberty to engage in other enterprises and activities. The term contracts remained binding on the term and end date. In September 2024, the respondent notified the appellants, together with other employees, of the receipt of a production order and invited them to participate in the production process upon execution of a one-month term contract, but they declined. The voluntary rejection of the term contract ended the employment relationship, and the claims made are not justified and should be dismissed with costs.

The learned magistrate heard the party's appeal and held that a fixed-term contract sets out the modalities for the termination of the parties' obligations. Each contract creates and ends the employment relationship, and in this case, the parties were bound by such term contracts, which lapsed by effluxion of time. The claims were dismissed with costs to the respondent.

Thus aggrieved, the appeal is that the learned magistrate erred in disregarding section 37(4) of the Employment Act (the Act) on the long service period that was continuous. The finding

that the separation of employment between the parties was lawful and fair was in error, and there were no specifications of the claims.

The respondent submitted that the employment relationship was regulated under term contracts. The application of section 37(4) of the Act does not apply in this case as alleged. Such provisions apply only to casual employment terminable at the end of the period of service, whereas in this case, there were written term contracts. The appellant failed to sign the last term contract in September 2024 and cannot turn around and assert their rights under section 37 of the Act.

The trial court properly assessed the claims and dismissed them, finding no proof of unlawful or unfair termination of employment. A term contract is lawful and valid, as held in **Transparent Packaging Limited v Kennedy Otieno Onyango [2020] eKLR**. The appeal has no good basis and should be dismissed.

Determination

This is a first appeal. The court is allowed to review the trial court record, reassess the findings and make a conclusion. However, consider that it did not hear or see the witnesses.

The appellants admitted that they were employed under piece rate term contracts. They also agreed that in September 2024, the respondent issued them with a one-month term contract, which they found unacceptable. They declined to accept the terms and conditions.

In their witness statements, the appellants asserted that the production manager started picking quarrels with them, and the threats issued made it impossible to renew their contracts.

Term contracts are a lawful and legitimate mode of employment pursuant to section 10(3) of the Act.

Indeed, piece-rate employment is permitted under section 18 of the Act.

In the case of **Bollore Transport and Logistics Kenya Limited v Masha & another [2023] KEELRC 3460 (KLR)** and **Joash Ogara Mainga & Christopher Munyoki Munene v Dhl Exel Supply Chain (K) Limited [2021] KEELRC 738 (KLR)**, the courts emphasised that piece rate employment is lawful. The parties to an employment relationship are required to agree on the nature of their employment terms and conditions pursuant to section 10(3) of the Act.

In **Krystaline Salt Limited V Kwakwe Mwakele & 67 others C.A, Civil Appeal number 79 of 2015**, the Court of Appeal, while appreciating that there is a distinction between casual and piece rate employment, held that section 37 of the Act applies to casual employment as opposed to piece rate work employees. Hence, under the Act, these two modes of employment and employees are addressed differently. Thus, Parliament intended to draw the distinction, and that is why section 37 does not mention piece-rate work employees. This is specifically regulated under section 10(3) and 18 of the Act.

In this case, employment was regulated under a fixed-term contract based on the availability of work. The applicants declined the invitation to a one-month term contract. This ended the parties' employment relationship.

The claims by the appellants that they had served the respondent for a long time, hence the provisions of section 37 of the Act should apply to them, do not suffice.

The orders sought in this regard, while parties were bound under the term contracts, allowing piece rate work, cannot be issued.

The learned magistrate addressed the facts and the law effectively. The judgment of the learned magistrate cannot be faulted.

Accordingly, the appeal is without merit. The judgment in Mombasa CMELRC No. E044 of 2024 is hereby affirmed. Costs to the respondent.

Delivered in open court at Mombasa on this 26th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court assistant: Omar

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