



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

APPEAL NO. E094 OF 2025

PRIDE KINGS SERVICES LTD.....

APPELLANT

VERSUS

GABRIEL

ODONGO.....**RESPONDENT**

(Being an appeal from the Judgment and Decree of Hon. B. Ileri in Kisumu CMELRC No. E280 of 2024 delivered on 9th October 2025)

JUDGMENT

1. This appeal arises from the Judgment of Hon. B. Ileri delivered on 8th October 2025 in **Kisumu CMELRC No. E280 of 2024, Gabriel Odongo v Pride Kings Services Ltd**. Being aggrieved by that decision, the Appellant lodged

a Memorandum of Appeal with this court dated 5th November 2025 setting out the following grounds:

- i. That the Learned Magistrate completely misunderstood the evidence before him, wrongly analysed the evidence and therefore came to the wrong conclusions of fact and law.*
- ii. That the Learned Magistrate erred in law and in fact by awarding the sum of Kenya Shillings Sixteen Thousand Nine Hundred and Fifty-Nine as salary in lieu of notice without taking in to consideration that the Claimant did not prove that he was unfairly terminated.*
- iii. That the Learned Magistrate erred in fact and in law by awarding the sum of Kenya Shillings Sixteen Thousand Nine Hundred and Fifty-Nine as unpaid salary without taking in to consideration that the same was not proved.*
- iv. That the Learned Magistrate erred in fact and in law by awarding the sum of Kenya Shillings Three Hundred and Seven Thousand Three Hundred and*

Twelve for underpayment without taking in to consideration that the same was not proved.

- v. *That the Learned Magistrate Erred in fact and in law by awarding the sum of Kenya Shillings Thirty Thousand as service pay without taking in to consideration that the same was not proved.*
- vi. *That the Learned Magistrate erred in fact and in law by awarding the sum of Kenya Shillings Ninety-Three Thousand Nine Hundred and Five as house allowance without taking in to consideration that the same was proved.*
- vii. *That the Learned Magistrate erred in law and in fact by awarding the sum of Kenya Shillings Thirty-Three Thousand Nine Hundred and Two without taking in to consideration that the Claimant did not prove that he was unfairly terminated.*
- viii. *That the Learned Magistrate totally misunderstood and wrongly evaluated the evidence before him and therefore arrived at a wrong conclusion.*

2. Consequently, the Appellant urged the Court to allow the appeal, re-evaluate the evidence on record, arrive at an independent conclusion, and award it the costs of the appeal.

3. The appeal was canvassed by way of written submissions.

Appellant's Submissions

4. The Appellant identified two issues for determination namely:

- (i) whether the Respondent was unlawfully terminated from employment and
- (ii) whether he was entitled to the damages awarded by the Trial Court.

5. On the issue of termination of employment, the Appellant submitted that the Respondent voluntarily left employment. It contended that upon the expiry of its contract with Sinohydro, where the Respondent had been deployed, the Respondent declined to report to Kisumu for redeployment. Accordingly, the Appellant submitted that the Respondent had not discharged his burden of proving that an unfair

termination of employment had occurred under section 47(5) of the Employment Act, to cause a concomitant obligation for it to justify reasons for dismissal under section 43(1) of the same act. In support of this position, the Appellant invited the Court to note the absence of evidence, both in the pleadings and in the Respondent's testimony during cross-examination, demonstrating how his employment was unlawfully terminated.

6. On entitlement to the damages sought, the Appellant submitted that the Respondent was not entitled to damages for unlawful termination having failed to prove he was unlawfully terminated from employment. On notice pay, the Appellant contended that the Respondent was not entitled to notice pay since he declined redeployment after the Sinohydro Corporation assignment ended. Moreover, it contended that it had no control over the termination of the contract with Sinohydro hence it could not issue prior notice. Regarding unpaid holidays, off days, and overtime the Appellant submitted that they should be disallowed as no evidence had been produced before the Trial Court to show

that the Respondent worked overtime, on holidays, or during off days. On underpayment, the Appellant submitted that there was none as the Respondent was being paid Kshs. 7,500/- as opposed to Kshs. 7,770/- stipulated in the Regulation of Wages Orders for 2017 and 2018. On house allowance, the Appellant submitted that no evidence in form of payslips was produced demonstrating non-payment. The Appellant further contended that the Respondent was not entitled to severance pay since his employment did not terminate on account of redundancy.

7. In conclusion, the Appellant submitted that the Trial Court misdirected itself in arriving at its decision and therefore urged this Court to allow the appeal.

Respondent's Submissions

8. The Respondent on his part identified four issues for determination, namely:

- a) Whether the Respondent's termination of employment met the mandatory test of a valid reason and a fair procedure;

- b) Whether the awards made by the Trial Court were lawful and proved;
- c) Whether the appeal meets the threshold for appellate interference; and
- d) Who should bear the costs of this appeal.

9. On the first issue, the Respondent submitted that there was neither a valid reason for the termination of his employment nor was the proper procedure followed. He submitted that the Appellant did not call any witness or produce any documentary evidence to controvert his testimony that he was verbally dismissed without notice or a hearing. In support of his position, the Respondent relied on section 43 of the Employment Act, which obligates an employer to prove the reasons for termination, as well as section 45, which requires the employer to demonstrate that the reasons for termination are valid and fair. The Respondent further submitted that the statutory procedure governing termination is intended to guide employers in handling employment disputes fairly, rather than to ratify flawed processes. In that regard, he cited the case of **Mary**

Chemweno Kiptui v Kenya Pipeline Company Limited

[2014] eKLR, where the court held that section 41 of the Employment Act is couched in mandatory terms and that failure by an employer to comply with those provisions renders the termination unfair as the employee must be informed of the charges and given an opportunity to defend themselves in the presence of a fellow employee or union representative.

10. The Respondent also relied on the decision in the case of **Stella Kanana Gitonga & 2 others v Bliss GVS Healthcare Limited [2022] eKLR**, which cited the Court of Appeal decision in **Kenfreight (E.A.) Limited v Benson K. Nguti [2016] KECA 409 (KLR)**, for the proposition that an employer must explain to an employee the reasons for termination in the presence of another employee or union official in a language the employee understands and must give the employee an opportunity to be heard before the decision to terminate employment is made. Consequently, he submitted that in consideration of the foregoing cases as well as sections 41, 43, and 45 of the Employment Act the

Learned Trial Magistrate correctly found that he had been unfairly dismissed.

11. On the awards made, the Respondent submitted that the Trial Court correctly found that he was entitled to the reliefs sought as they were supported by statute and uncontroverted evidence. He asserted that the Appellant failed to discharge its evidentiary burden thus the trial court could not be faulted. On the award of Kshs. 16,959/- as pay in lieu of notice the Respondent submitted that it was justified on account of his dismissal without notice contrary to section 36 of the Employment Act, which requires payment of remuneration equivalent to the notice period where termination is effected without notice.

12. With respect to the sum awarded as unpaid salary for March 2022 amounting to Kshs 16,959/-, the Respondent submitted that it was justified as the Appellant did not adduce any evidence showing that his salary was paid, despite being the custodian of employment records. On the issue of underpayment, the Respondent urged the Court not to disturb the Trial Court's award of Kshs. 307,312/- as his

salary was below the minimum stipulated in the relevant Wages Orders. He relied on section 48(1) of the Labour Institutions Act, which provides that minimum wages prescribed in a wages order constitute mandatory terms of employment that cannot be varied by agreement. With respect to house allowance, the Respondent submitted that the award of Kshs. 93,905/- was justified as he had not been paid house allowance as required under section 31 of the Employment Act. Moreover, the Respondent asserted that the Appellant failed to produce any payslips to demonstrate that house allowance was being paid.

13. Regarding the award of Kshs. 30,106/- service pay, the Respondent submitted that he was entitled to 15 days' salary for every year worked as the Respondent never remitted deductions to NSSF and NHIF. The Respondent also supported the award of Kshs. 33,918/- as compensation for unfair termination, maintaining that the termination was unlawful due to the Appellant's failure to adhere to procedural and substantive fairness requirements under the Employment Act, particularly sections 40 and 45. In any case the Respondent argued that the award of two months' salary

as compensation was reasonable and not excessive so as to warrant interference by this Court.

14. On whether the Appellant had invoked this Court's appellate jurisdiction, the Respondent submitted that the Appellant had not adduced any evidence warranting the court's intervention. Additionally, the Appellant had not demonstrated any misdirection in law or fact; hence, the appeal did not meet the threshold for appellate interference. On costs the Respondent urged the Court to award them to him pursuant to section 27 of the Civil Procedure Act. In conclusion, the Respondent urged the Court to find that the appeal lacked merit and to dismiss it in its entirety with costs.

Disposition

15. This being a first appeal, I am obliged to evaluate and examine the record before the Magistrates' Court and the evidence presented before that Court in order to arrive at my own conclusion. This principle of law was enunciated in the celebrated case of **Selle v Associated Motor Boat Co. Ltd [1968] EA 123** where the Court of Appeal outlined the duties of a first appellate court as follows:

"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 is by way of 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."

[Emphasis supplied]

16. Having properly warned myself that I neither saw nor heard the Appellant nor the Respondent testify in trial, I have duly evaluated the evidence the parties presented in the Trial Court, and which evidence and documents in support thereof, are before this Court and I have come to the following determination.

17. The issues for this Court must determine are:

- a. Whether the Respondent was unfairly terminated from employment;
- b. Whether the Respondent was entitled to the orders granted; and
- c. Whether there is a competent appeal before me.

18. On the first issue, the Appellant seeks reversal of the finding of the Learned Magistrate asserting that the Court misdirected itself in the determination that there was unfair termination. On the one hand, the Appellant asserts that the Respondent resigned from his employment by failing to report to Kisumu for redeployment. The Respondent is said to have voluntarily left employment. It is also asserted that after expiry of the Appellant's contract with Sinohydro where the Respondent had been deployed, the Respondent refused to report to Kisumu for redeployment. This second aspect of the reasons for the end of the Respondent's contract is indicative of redundancy or circumstances that would lend themselves to declaration of a redundancy. In the Court's considered opinion, the alleged refusal of the Respondent to report to Kisumu for redeployment and the assertions the

Appellant makes that it had no control over the termination of the contract with Sinohydro thence it could not issue prior warning does not comport with the alleged voluntary departure of the Respondent. It is the finding of this Court that there was unlawful termination of the Respondent from employment after the lapse of the contract with Sinohydro.

19. The second issue is on the awards granted. The Appellant was the employer and had records which would have dispelled the claim had they been availed. Under sections 43 and 45 of the Employment Act, it was incumbent upon the Appellant to prove there was no unfair or unlawful termination. The Appellant's failure to demonstrate there was payment of the sums led to the grant of the relief by the Court. Instructively, the statutory minima set by the Wages Orders is not a suggestion but must be met. No contract that permits payment of sums below the guidelines can be said to be lawful. Where the payments are called into question, the true north on payment is the wages order. If the payment in question is below the statutory minimum provided, a court is entitled, as the Learned Magistrate found, to award the

difference. The Appellant failed to demonstrate payment of house allowance and therefore the sums awarded were properly granted.

20. On the question of the competence of the appeal before the Court, the proper approach would have been to file a motion for the striking out of the appeal. Raising the issue at the tail end of submissions on the merits of the Appeal is lackadaisical and the Court will not waste its precious time determining whether there was a competent appeal before it.

21. In the final analysis, the Court upholds the findings of the Learned Magistrate as he neither misdirected himself on the facts or the law. He arrived at the correct conclusions on all points in dispute and therefore his decision cannot be overturned. The Appeal herein is accordingly dismissed with costs to the Respondent.

It is so ordered.

Dated and delivered at Kisumu this 12th day of March

2026

Nzioki wa Makau, MCI Arb.

JUDGE

Original