



REPUBLIC OF KENYA



KENYA LAW
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**Ayesa v Elosiuba & another (Cause E939 of 2022)
[2026] KEELRC 575 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 575 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E939 OF 2022
AK NZEI, J
FEBRUARY 27, 2026**

BETWEEN

SEVNCA AYESA CLAIMANT

AND

PATRICK ELOSIUBA 1ST RESPONDENT

CHIKA ELOSIUBA 2ND RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent vide a Statement of Claim dated 16th December, 2022 and sought the following reliefs:-
 - a. Kshs.257,492/= special damages.
 - b. General damages.
 - c. Interest on (a) and (b) above at Court rates.
 - d. Costs of the suit.
 - e. Any other further relief that the Court may deem just and fit to grant.
2. The Claimant pleaded:-
 - a. that on 5th October, 2020, the Respondent engaged the services of the Claimant to work as a domestic servant at a net monthly salary of Kshs.13,000/=, which was below the minimum legal wage as at 2020.
 - b. that on 30th July, 2022, the Claimant received a message in her mobile phone from the 2nd Respondent informing her that her services were no longer needed; that the Respondent had already employed someone else in the Claimant's place.



- c. that the Claimant was not given any notice prior to termination, and that it was not shown that the Respondents were entitled either legally or contractually to terminate the Claimant's employment.
 - d. that the Claimant was not paid her full terminal dues.
3. The Claimant set out and pleaded her claim as follows:-
- a. One month salary in lieu of notice Kshs.15,201/= (legal minimum wage).
 - b. Salary underpayment (21 months Kshs.17,471/=).
 - c. 12 months' compensation for loss of employment Kshs.182,412/=.
 - d. Unutilized and unpaid leave days Kshs.42,345/=.
 - e. Certificate of service.
4. Documents filed alongside the Statement of Claim included an affidavit in verification of the claim, the Claimant's written witness statement dated 16th December, 2022, a demand letter dated 15th December, 2022 and M-Pesa statements.
5. The Respondent defended the suit vide a Statement of Response dated 9th January, 2023 and pleaded:-
- a. that the Claimant first came in as a casual worker on 5th October, 2020 and was paid on daily basis for the days worked; and that later, the Claimant requested that her daily payments be consolidated and paid at the end of the month.
 - b. that on one occasion when the 2nd Respondent was supposed to travel out of the Country, the Claimant refused to go and receive briefing on what was expected from her during the 2nd Respondent's absence, and switched off her phone, thus becoming unreachable at a very critical time; and only sent a text at night with an excuse for not showing up.
 - c. that the Claimant was an unreliable person and could desert work at different times.
 - d. that the Claimant finally deserted work and was paid what was due to her.
 - e. that the Claimant could leave in mid-December and return in late January without any explanation.
 - f. that the Claimant damaged a lot of the Respondents' property and was never charged, and a lot of the Respondents household items went missing under the Claimant's watch.
 - g. that by her conduct, the Claimant absconded [duty] and was not entitled to any notice; and is not owed or entitled to Kshs.257,492/=.
 - h. that the Claimant's separation was not unlawful or unjustified; but was due to desertion by the Claimant.
 - i. that the Respondent denied the Claimant's claim.
6. The Respondents also filed witness statements of the 1st Respondent dated 16th October, 2024 and 5th January, 2025 respectively.
7. The Claimant filed a Reply to the Respondents' Response dated 20th September, 2023 and a further affidavit sworn by her on 20th February, 2023.



8. Trial opened before me on 14th October, 2024. The Claimant adopted her filed witness statement dated 16th December, 2022 and the affidavit sworn on 20th February, 2023 as her testimony. The Claimant also produced in evidence the documents referred to in paragraph 4 of this Judgment. The Claimant further testified:-
 - a. that she worked for 1 year and 10 months, and that she was not issued with a letter of appointment (contract) when she was employed.
 - b. that she was being paid a monthly salary of Kshs.13,000/=, and was being paid via M-pesa.
 - c. that there was no complain against her (the Claimant), and that she was not alerted of any lost item during her employment. That there was another employee in the house who used to work/help 3 times a week.
 - d. that when the Claimant received a message from the 2nd Respondent on 30th July, 2022 asking her not to go back to work, she tried to call the 2nd Respondent; but the 2nd Respondent told her that what she was telling her were stories of the past.
9. Cross-examined, the Claimant testified:-
 - a. that the Respondents were Nigerians.
 - b. that some amounts reflected on the M-pesa statements produced by the Claimant in evidence were for salary advance, and another was for shopping, sent to her while in the supermarket when shopping exceeded the money given to her.
10. Re-examined, the Claimant testified that her employers, the 1st and 2nd Respondents, were a husband and wife. That according to the M-pesa statements, there was no time when the Claimant received her full salary of Kshs.13,000/=. She testified that this was because she used to take salary advance.
11. The Respondent called one witness (RW-1), who adopted his filed witness statements as his testimony. Cross-examined, RW-1 testified:-
 - a. that the Claimant worked for the Respondents from 4th October, 2020 to 29th July, 2022 as a day worker, and was not given a written contract.
 - b. that the Claimant worked for 19 months.
 - c. that the Claimant absconded duty, and the Respondents called her phone from the morning until late at night, but no evidence on the calls had been filed.
 - d. that the Claimant was being paid on daily basis, and that there was nothing for the Respondents to pay her. That there was no evidence filed by the Respondents to show that the Claimant absconded.
 - e. that the Respondents did not make a report on lost items because the Claimant was a good worker.
12. Having considered the pleadings filed by both parties and the evidence presented thereon, issues that present for determination, in my view, are:-
 - a. Whether termination of the Claimant's employment was unfair.
 - b. Whether the reliefs sought are merited.



13. On the first issue, although the Respondents alleged that the Claimant absconded and/or deserted duty, no evidence was presented in Court to show that the Claimant indeed absconded and/or deserted duty. Section 44(4)(a) of the [Employment Act](#) states that, an employee who absents himself or herself from the appointed place for the performance of his work without leave or lawful cause commits a gross misconduct.
14. Section 41 of the [Employment Act](#) provides a mandatory procedure that the employer of such an employee must follow before terminating the employee's employment. The 1st Respondent (RW-1) testified that no show cause letter was issued to the Claimant after she allegedly failed to report on duty, and that no notice of termination of employment was issued.
15. An employer who just goes silent when an employee absconds or deserts duty, and possibly just replaces such an employee without first invoking lawful disciplinary measures against the absconding employee and terminating his or her employment compromises his defence/plea of desertion in the event of the deserting employee suing the employer for alleged unfair termination. An employer's defence of alleged desertion/absconding of duty by an employee must always be backed up by tangible evidence, but not mere words of mouth.
16. For any termination of employment to pass the fairness test, the employer must demonstrate a lawful justification for the termination and a fair procedure in effecting the termination. (Walter Ogal Anuro v Teachers Service Commission [2013] eKLR).
17. Section 45(4)(b) of the [Employment Act](#) provides that termination of employment shall be unfair if;

“in all circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.”
18. In the present case, the Court was told that the Claimant only received a text message in her phone, sent to her by the 2nd Respondent, telling her not to report on duty as she had been replaced with somebody else. This averment/testimony was not rebutted by the Respondents. The 2nd Respondent never testified in Court.
19. I find and hold that termination of the Claimant's employment by the Respondents was unfair, and that the Respondents did not act in accordance with justice and equity in terminating the Claimant's employment.
20. On the second issue, the Respondents did not rebut the Claimant's pleading and testimony that she was earning a monthly salary of Kshs.13,000/=. Indeed, the 1st Respondent testified (under cross-examination) that the Claimant worked for 19 months. It cannot be alleged that the Claimant was a casual and that she was being paid daily wages.
21. Section 37 of the [Employment Act](#) is called in aid. Further, the Claimant testified that her salary was being paid via M-pesa, and produced M-pesa statements in that regard.
22. Further, the Claimant testified that the reason why the M-pesa statements did not reflect a sum of Kshs.13,000/= as having paid in any one M-pesa transaction is that she used to take salary advances. This evidence was not challenged or rebutted by the Respondents.



23. Although the Claimant pleaded and testified that her said monthly salary of Kshs.13,000/= was below the minimum wage at the time, and that she was being underpaid, no evidence was led in that regard. Section 107(1) of the Evidence Act provides as follows:-

“(1) Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.”

24. Based on the foregoing, the claim for Kshs.17,471/= being salary underpayment is declined.
25. I allow the claim for one month salary in lieu of notice, and award the Claimant Kshs.13,000/= pursuant to Section 35(1)(c) of the Employment Act.
26. Having made a finding that termination of the Claimant’s employment was unfair, I award the Claimant the equivalent of nine (9) months’ salary being compensation for unfair termination of employment; which is Kshs.13,000/= x 9 = Kshs.117,000/=.
27. The claim for unpaid leave days was not specifically pleaded, and was not proved, and is declined.
28. The prayer for issuance of a certificate of service is allowed.
29. In sum, and having considered the written submissions filed, Judgment is hereby entered for the Claimant against the Respondents, jointly and severally, as follows:-
- a. One month salary in lieu of notice Kshs.13,000/=.
 - b. Compensation for unfair termination of employment
Kshs.117,000/=.
- TotalKshs.130,000/=.
30. The awarded sum shall be subject to Pay as You Earn (PAYE) statutory deduction pursuant to Section 49(2) of the Employment Act, but only if such deduction used to be made and remitted to the relevant authority (KRA) during the Claimant’s employment period.
31. The Respondents shall issue the Claimant with a certificate of service pursuant to Section 51 of the Employment Act within thirty days of this Judgment.
32. The Claimant is awarded costs of the suit and interest. Interest shall be calculated at Court rates from the date of this Judgment until payment in full.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS

27TH DAY OF FEBRUARY 2026

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:



Miss Achieng for the Claimant

No appearance for the 1st Respondent

No appearance for the 2nd Respondent

DRAFT

