



**Baabz Freight Forwarders Limited v Galgalo (Appeal E193 of 2025)
[2026] KEELRC 593 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 593 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E193 OF 2025
M MBARÚ, J
FEBRUARY 26, 2026**

BETWEEN

BAABZ FREIGHT FORWARDERS LIMITED APPELLANT

AND

RASHID ABDIGOROD GALGALO RESPONDENT

*(Being an appeal from the judgment of Hon. J. B. Kalo
delivered on 29 August 2025 in MCELRC No. E160 of 2023)*

JUDGMENT

1. The appeal arises from the judgment delivered on 29 August 2025 in Mombasa MCELRC No. E160 of 2025. The appellant seeks that the respondent's claim be dismissed with costs, on the basis that the learned magistrate erred in finding that an employer-employee relationship existed between the parties. The finding of liability lacks a legal basis, as the appellant is a distinct legal personality from its directors and cannot be held to account for their actions by lifting the corporate veil. Hence, the finding of unfair termination of employment does not arise, and the claims against the appellant were not proved.
2. The respondent filed his claim before the trial court on the basis that he was employed by the appellant as a night security guard on 2 October 2020 and assigned duties to the appellant's garage located at Mikindani, Mombasa, at a wage of Ksh. 13,000 per month. The wages were paid by the appellant's directors, numbers 0720 - - - - 14 and 0723 - - - - 61, through M-Pesa. He worked continuously until 2 January 2023, when he requested a one-month leave from the director, Abdikadir, to attend to his ailing mother in Tana River County. He had not taken leave before and hence proceeded home. On 11 January 2023, the respondent was called back to work by Bashir with effect from 12 January 2023. However, he could not get transport back to Mombasa and only reported on 13 January 2023 when he was informed that his services were no longer required and another guard had been employed. He called Abdikadir about the termination of his employment, but Abdikadir confirmed the decision, resulting in an unfair termination without payment of terminal dues. He claimed the following:



- a. Notice pay Ksh. 13,000
 - b. Unpaid public holidays for 2 years Ksh. 4,330.
 - c. Unpaid leave for 2 years Ksh. 18,186.
 - d. House allowance for 2 years Ksh. 54,600.
 - e. Underpayments for 28 months Ksh. 59,973.20.
 - f. 12 months' compensation Ksh. 156,000.
 - g. Unremitted NHIF for 28 months Ksh. 14,000
 - h. Service pay for 2 years, Ksh. 13,000.
 - i. Certificate of service.
 - j. Costs of the suit.
3. In response, the appellant denied the claims and that the respondent is a stranger and there was no employment as alleged. The respondent is in the business of clearing and forwarding, and its officers are at Cannon Towers Building in Mombasa and do not engage the services of security guards, as the building's landlord provides security services. The respondent does not own a garage in Mikindani or anywhere as alleged, and the claims are without merit.
 4. The learned magistrate heard the parties and held that the respondent produced M-Pesa statements confirming payments made by one Abdikadir Abikar, whom the appellant admitted was the director. Hence, there was an employer-employee relationship between the parties, and employment was terminated unfairly; thus, the respondent was awarded Ksh. 288,759 with costs.
 5. On the appeal, the appellant submitted and reiterated the response that there was no proof of the employment relationship. The appellant's business was unrelated to the claim that the respondent was a security guard. The appellant did not require the services of the security guard, and it had no garage where the respondent was alleged to have been allocated work at Mikindani. The trial court failed to properly address the facts of the case and hence arrived at an incorrect decision, which should be set aside and the claims dismissed with costs.

The respondent did not attend these proceedings.

Determination.

6. This being a first appeal, the court has the duty to review the record, reassess the findings and make its conclusions. However, keep in mind that the trial court had the opportunity to see and hear the witnesses.
7. The employment relationship has been denied. This then became a fundamental question.
8. In his evidence, the respondent emphasised that he was well known to the appellant's director, who paid his wages through Mpesa. He was based at the garage in Mikindani and had no written contract. He was offered employment by Abdikadir, and the garage belonged to the appellant.
9. Upon cross-examination, the respondent admitted that the appellant is owned by Abdikadir.



10. The appellant maintained that it is a clearing and forwarding entity and operates from Cannon Towers in Mombasa. It does not own any garage at Mikindani or require the services of a security guard since the landlord offers security.
11. In evidence, Abdihamid Mohamed Ibrahim, the manager, testified that there was no employment relationship with the respondent. He admitted that the director is Abdikadir Ali Abika, but he did not employ the respondent to work for the respondent. The M-Pesa payments were unrelated to the appellant's work.
12. Indeed, upon the response that challenged the employment relationship, the respondent should have stopped all else and addressed. His claim was filed on 3 March 2023, barely two months after his employment was terminated at Mikindani, the garage where he was being paid by Abdikadir Abikar.
13. The respondent had the evidence in his hands. The MPesa statements that led him to include the paymaster, Abdikadir Abikar, as a respondent. Indeed, the appellant's response is clear: it is a clearing and forwarding company based at Cannon Towers in Mombasa. The respondent was assigned work at a garage in Mikindani.
14. Although a suit cannot be defeated for misjoinder or nonjoinder of a party under Order 1 rule 9 as held in *Joseph Kitunga Baya & 64 others v Simon Mukuha* [2015] KEELC 464 (KLR), where the respondent sued is the wrong party and raises such an issue in response, the respondent ought to have taken the cue and addressed. See *Maureen Onsongo v EOH Limited, an EOH/Copy Cat Limited Company* [2021] KEELRC 676 (KLR).
15. The appellant's response was filed in May 2023. The respondent had time under section 89 of the *Employment Act* to move the court and amend his suit. In this regard, misjoinder of a party is not severe. However, non-joinder of a party renders a claim fatal. Rule 14 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (now repealed) allowed the respondent the right to amend his pleadings.
16. The suit must be against a proper party as held in *KTK Advocates v Nairobi City County Government & 5 others* [2026] KEHC 1255 (KLR). A respondent to a claim must be the proper employer. Once the employment relationship was challenged, the trial court had the duty to address this with finality. The finding that there were M-Pesa transactions between a director of the appellant and the respondent was not sufficient to confer employment between the appellant and the respondent.
17. Without an employment relationship between the parties, the trial court lacked the requisite jurisdiction to proceed further. The basis and foundation of the claim against the appellant, as the employer, were lost.
18. Without jurisdiction, this having been addressed by the appellant in the first instance, the appeal is found with merit and is hereby allowed.
19. Accordingly, judgment in Mombasa CMELRC No. E160 of 2023 is hereby set aside in its entirety. Costs to the appellant.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 26TH DAY OF FEBRUARY 2026.

M. MBARŪ

JUDGE

In the presence of:

Court assistant: Omar



..... and

