



**Kavoi v Metal Crowns Limited (Appeal E361 of 2024)  
[2026] KEELRC 617 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 617 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E361 OF 2024  
JW KELI, J  
FEBRUARY 27, 2026**

**BETWEEN**

**NEWTON MUTINDA KAVOI ..... APPELLANT**

**AND**

**METAL CROWNS LIMITED ..... RESPONDENT**

*(Being an Appeal from the Judgment and Decree of the Hon. L. Njora (SPM)  
delivered on 21st November 2024 in Nairobi CMEL No. E1256 of 2020)*

**JUDGMENT**

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. L. Njora (SPM) delivered on 21st November 2024 in Nairobi CMEL No. E1256 of 2020 between the parties filed a Memorandum of Appeal dated the 13<sup>th</sup> December 2024 seeking the following orders: -
  - a. The Appeal be allowed and the Judgment and Decree of the Honourable Magistrate delivered on 21<sup>st</sup> November 2024 be set aside and instead judgment be entered for the Appellant in Milimani MCELRC NO.E1256 OF 2020 as prayed in the suit and the Appellant be awarded costs of the Appeal.

**Grounds Of The Appeal**

2. The Honourable Magistrate erred in law and fact in failing to find that the termination of the Appellant's employment amounted to a declaration of redundancy and that the same was unlawful and unfair.
3. The Honourable Magistrate erred in law and fact in holding that a hearing before termination of employment was unnecessary when an employee was declared redundant and that hearings are a reserve for cases of unlawful termination.



4. The Honourable Magistrate erred in law and fact in dismissing the Appellant's claims despite holding that the Appellant was unlawfully dismissed from employment.
5. The Honourable Magistrate erred in law and fact in failing to properly analyze the evidence on record and the applicable law thereby arriving at a wrong conclusion.

### **Background To The Appeal**

6. The Claimant/Appellant filed a claim against the Respondent vide a statement of claim dated the 10<sup>th</sup> of November 2020 seeking the following orders: -
  - a. One month's salary in lieu of notice Kshs.20,000
  - b. Accrued leave since 2018 Kshs.40,000
  - c. Severance pay @ 20,000x 30 days x 2years Kshs.40,000
  - d. 12 month's salary as compensation for unlawful termination of employment Kshs.240,000Total Kshs.340,000  
(pages 7-19 of Appellant's ROA dated 4<sup>th</sup> March 2025).
7. The Claimant filed his list of witnesses dated 23<sup>rd</sup> November 2020; witness statement of even date; and of documents of even date with the bundle of documents attached (pages 11-21 of ROA).
8. The Respondent entered appearance and filed a response to claim dated 29<sup>th</sup> April 2021 (pages 24-27 of ROA). The Respondent also filed a list of witnesses dated 29<sup>th</sup> April 2021; witness statement of John Karari of even date; and a list of documents of even date with the bundle of documents attached (pages 28-32 of ROA).
9. To counter the response to claim, the Claimant filed a reply to defence dated 26<sup>th</sup> May 2021 (page 33 of ROA).
10. The Claimant/Appellant's case was heard on the 15<sup>th</sup> of February 2023 where the claimant testified in the case, relied on his filed witness statement as his evidence in chief, and produced his documents as exhibits. The Claimant was cross-examined by counsel for the Respondent, Mr. Matara (pages 116-118 of ROA).
11. The Respondent's case was heard on 26<sup>th</sup> September 2024 with John Karari testifying on behalf of the Respondent. He relied on his filed witness statement as his evidence in chief, and produced the Respondent's documents as exhibits. The witness was cross-examined by counsel for the Claimant, Ms. Kang'ethe (pages 122-124 of ROA).
12. The court gave directions on filing of written submissions after the hearing, and both parties complied.
13. The Trial Magistrate Court delivered its judgment on the 21<sup>st</sup> of November 2024, dismissing the Claimant/Appellant's claim, save for the prayer for issuance of a certificate of service, with an order that each party bears their own costs (judgment at pages 126-135 of ROA).

### **Determination**

14. The appeal was canvassed through written submissions. Both parties filed.



## Issues for determination

15. The court having perused the grounds of appeal discerned the issues for determination to be:
  - a. Whether the termination of the employment amounted to redundancy and or whether it was unfair.
  - b. Whether Appellant was entitled to relief sought.
16. This being a first appellate court, it was held in *Selle v Associated Motor Boat Co.* [1968] EA 123 that:-

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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. In particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

## Whether the termination of the Appellant’s employment amounted to redundancy and/or whether it was unfair.

17. The Appellant in his statement of claim alleged he was dismissed from a permanent job for lack of cause and unprocedurally. He stated in statement witness that since his employment was terminated without notice. The termination amounted to redundancy and the laid procedure was not complied with. He alleged to have been employed April 2018 and been terminated on 13<sup>th</sup> April 2020.
18. The ground of appeal was that the trial court erred in law and fact in facing to find that the termination of the Appellant’s employment amounted to a declaration of redundancy and the same was unlawful and unfair.
19. In response, the Respondent stated that the Claimant worked as a casual labourer from April 2018 to 17<sup>th</sup> November 2019 where he earned a casual wage of KShs.13,356. That he never worked continuously and was hired intermittently as and when casual labour was required. That when the Claimant’s services were no longer required he was informed. That he was paid daily wages and his job depended on availability. That the Respondent never intended the Claimant’s services to be permanent (paragraphs 3, 4, 5 and 6 of response at page 25 of ROA).
20. The Respondent further stated the Claimant absconded duty without any valid reason which action could not amount to irregular, unprocedural and unlawful termination as alleged by the Claimant.

## Evidence by parties

21. The Claimant produced as his evidence of employment MPESA statements unto April 2020 which indicated salary payment remitted by POPOTE via API for April 2020 was paid in 3 installments 29<sup>th</sup> April 2020 Kshs.3,182, 9<sup>th</sup> April 2020 Kshs.997, and 4<sup>th</sup> April 2020 Kshs.13,054.
22. In the month of March 2020 26<sup>th</sup> March 2020 he was paid 9,749/-, 13<sup>th</sup> March 11,092, in February, 28<sup>th</sup> February 2020 Kshs.9,585/-, 14<sup>th</sup> April 2020 Kshs.12,383 and further Kshs.1,416.
23. On 30<sup>th</sup> January 2020 there was salary payment by POPOTE Via API Kshs.6,340 and on 17<sup>th</sup> January 2020 Kshs.12,300 and 6<sup>th</sup> January 2020 Kshs.10,260, and 19<sup>th</sup> December 2019 Kshs.11,791 (page 16-19



of ROA). The Claimant further produced his NSSF statement which indicated the Respondent as employer and had only 4 remittances for years 2019 and 2020. The Claimant further had produced a demand letter by his advocates.

24. Conversely the Respondent produced copy of casual wages printout for month of 21<sup>st</sup> October 2019 to 3<sup>rd</sup> November 2019 to 17<sup>th</sup> November 2019. The court noted the Claimant was paid accumulated wages at rate of Kshs.89 per hour with only deduction of canteen and item stated as Livingstone. (pages 31 and 32 of ROA).
25. In reply to defence the Claimant stated he worked from April 2018 – April 2020 with monthly salary of KShs.20,000/-. He denied being a casual. He further stated in actual service his employment termination was redundancy.

### **Witnesses' Cross-examination findings**

26. It was confirmed during cross-examination that the appellant had no employment letter or payslip. He confirmed the salary was paid by instalments and explained he was given an advance salary. He confirmed he had no witnesses in court, confirmed the casual wages produced by the employer indicated 155 hours worked, KShs. 89 per hour. In re-examination, the appellant said the police chased them ( the appellant and other casuals) away from the company. The Appellant said he worked for 2 weeks in April 2020 and was paid. In examination in chief, the appellant told the court that the company gave notice of 2 weeks away for lack of work. On return they were not welcomed back. The employer called the police, and they were chased away. The supervisor was also fired the same day.
27. During cross-examination of the Respondent's witness, conversely, the witness was John Karani, a human resources officer of the Respondent told the trial court that the appellant was a casual paid hourly rate, he left and they did not see him again. That the casuals come to check for work. At cross-examination Karani confirmed that the claimant was engaged intermittently for April 2018. That they kept a register at the entrance. He did not produce the register. He relied on the statement of payment produced (pages 31 and 32 of ROA). He said the Claimant was paid at the end of the week with the calculation done on a daily basis. The witness said that, as per their records, 17<sup>th</sup> November 2019 was the last day of work of the Claimant. The Claimant absconded. He was not issued a notice and was not proceeding on leave.
28. At cross-examination Karani told the court appellant was paid KShs.13,361 via Mpesa. He told the court the wage was Kshs.13,356 and not Kshs.13,361. Karani told the court they did not use the POPOTE Platform in the MPESA statement produced by the appellant. That the Appellant being casual was not entitled to notice or leave.
29. The trial court held the claim of redundancy was not proved. That the employment had converted the under section 37 of the *Employment Act*. The court evaluated the evidence before the trial court to reach our conclusion as guided in in *Selle v Associated Motor Boat Co. [1968] EA 123* that:- “The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the 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. In particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”



30. The court agreed with the trial court the Respondent did not provide evidence to controvert the claim of continuous engagement of the appellant for period of April 2018 to October 2019. The court finds no basis to interfere with the finding that the employment of the appellant as casual had converted to contractual under section 37 of the *Employment Act*. The evidence before the court as analysed above led to a conclusion that the Appellant was engaged and treated as casual, worked continuously until April 2020 then the service was discontinued, the court concluded this as the appellant said they had notice of 2 weeks stoppage of work .and they were not allowed back though no evidence was produced to back that. An independent witness of the appellant being stopped from entry to work premises by the police would have been helpful, as there is always danger of reliance on the allegation of a single witness without corroboration of another witness or documents. Even the alleged notice was not supported. The Respondent's position was that the appellant went away from 17<sup>th</sup> November 2019 and did not come back to check for work.
31. I agreed with the trial court the Respondent was not candid as it did not file in court the entire record of engagement of the appellant. The Respondent's witness denied the POPOTE via API under the MPESA statement. He told the trial court the salary was vide MPESA. The entry of November 2019 indicated a figure of Kshs.13,561 while in the document of the employer it was KShs. 13,561. The employer did not produce evidence to controvert the MPESA statement by the Appellant. The Appellant's evidence was more believable. The court agreed with the trial court that this termination did not account for redundancy. Casual work is on the basis of availability, so if an employee is allowed in the work premises, that does not count as redundancy.
32. Further, the defence of absconding would have required compliance with section 41 of the *Employment Act*. The employment having been held by the trial court as a controverted term contract, the Appellant was entitled to a hearing. That did not happen. The trial court erred by failing to find unfair termination on account of a lack of proof of a valid reason and a procedural hearing. The court holds the termination was normal and not redundancy. That the termination was unfair.

### **Whether the Appellant was entitled to reliefs sought**

33. The trial court held that the Claimant having failed to prove redundancy he was not entitled to notice and compensation and dismissed all reliefs. Section 50 of the *Employment Act* obliges the court, on finding unfair termination, to consider and apply section 49 of the *Employment Act*. Section 49 sets out the remedies the court can award. Having held that there was unfair termination for lack of proof of reason of termination and lack of procedure, I find the claimant was entitled to notice pay and compensation.
34. The issue of applicable salary arises. It was evident the claimant was paid hourly rate for varied hours in a month thus varied wages monthly. The employment having converted to term contract as held by the trial court the court then applied the hourly figures to the 26 days of work with 52 hours per week thus 52 hours x KShs. 89 x 4 weeks in a month total monthly salary KShs. 18,512/-. The court awards the claimant 1 month notice of KShs.18,512/-
35. The Claimant worked for approximately 2 years. He was treated as casual, thus denied the minimum conditions of employment under the *Employment Act*. No valid reason was given for the termination. The court, taking the foregoing into account and the fact that he is entitled to service pay, awards 4 months' compensation, thus KShs. 18,512 x 4 thus kshs.74,048/=.
36. Service pay- The Claimant was treated as casual, and though he produced an NSSF statement, there was no evidence of the deduction of NSSF amounts by the employer. The court holds that NSSF a mere statement is not prove of employment. The court finds the Claimant was entitled to service pay



under section 37, being a benefit of an employee on conversion from casual to term contract. Severance pay was not available as there was no redundancy. The court awards service pay at rate of 15 days for the 2 years thus KShs.18,512/-.

### **Conclusion**

37. The Appeal is allowed. The judgment and decree of Hon. Lucy Njora (Senior Principal Magistrate) of 21<sup>st</sup> November 2024 in Milimani Magistrate Court ELRC No. E1256 of 2020 is set aside and substituted as follows:-
  - a. The Claimant's engagement as casual converted under section 37 of the *Employment Act*.
  - b. The termination was unfair.
  - c. Leave pay 21 days statutory for 2 years thus 21/20 x18,512x2 thus Kshs. 29,904.
  - d. Notice pay of Kshs.18,512.
  - e. Compensation for unfair termination equivalent to 4 months' wages, KShs. 74,048/-.
  - f. Service pay for 2 years Kshs.18,512/-.
  - g. Interest on the above sums (b,c,d,e and f)at the court rate for the judgment date.
  - h. Costs of the suit.
38. The Appellant is awarded costs of appeal.
39. 30 days stay granted.
40. It is so ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**J.W. KELI,**

**JUDGE.**

In The Presence Of:

Court Assistant: Otieno

Appellant- Ms Kulei h/b Kang'ethe

Respondent Ms Odira

