



REPUBLIC OF KENYA



**Krish Commodities Limited v Kenga & 4 others (Appeal E151 of 2025)
[2026] KEELRC 562 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 562 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E151 OF 2025
M MBARŪ, J
FEBRUARY 26, 2026**

BETWEEN

KRISH COMMODITIES LIMITED APPELLANT

AND

SAMUEL HINZANO KENGA 1ST RESPONDENT

PATRICK ALI KAHINDI 2ND RESPONDENT

MWAGARADI CHIPULI MWARIRI 3RD RESPONDENT

MATHEW MUTULA MWANZA 4TH RESPONDENT

RASHID BAKARI MARO 5TH RESPONDENT

JUDGMENT

1. The appeal arises from the judgment delivered on 30 July 2025 in Mombasa CMELRC No. E297 of 2023.
2. The background to the appeal is a claim filed by the respondents.
3. The claim was that the respondents were employed by the appellant as packagers on 6 March 2020, 15 December 2019, 16 August 2021 and 16 August 2021, respectively. They were all paid Ksh. 18,000 per month. The respondents worked until 15 May 2023, when their employment was terminated. Their claim was that in April 2023, the respondents complained to the go-down manager, Dereck, about their low wages. On 15 May 2023, they were invited to a meeting and aired their grievances with other employees. One director, Mital Shah, was present. However, the respondents were singled out for termination, while others were allowed to resume their duties. They claimed that their employment was unlawfully and unfairly terminated, without due process. They claimed their terminal dues. The 1st respondent claimed the following:



- a. Notice pay Ksh. 18,000.
 - b. Unpaid wages for 15 days Ksh. 9,000.
 - c. House allowance for 42 months Ksh. 113,400.
 - d. Unpaid leave for 4 years Ksh. 50,400.
 - e. Unremitted NHIF for 42 months Ksh. 21,000
 - f. 12 months compensation Ksh. 216,000.
 - g. Service pay for 4 years Ksh. 36,000.
 - h. Costs.
4. In response, the appellant denied the claims and asserted that the respondents were casual employees selected at random from the yard. They were paid daily wages upon allocation of duties. Work would be negotiated daily. There were no employment contracts since employment was casual. The claims should be dismissed.
5. The learned magistrate heard the parties and held that the respondents were on the appellant's payroll, and the 2nd appellant's witness was the gang leader, who had the duty to look for casual labourers whenever there was excess work. Thus, under section 37 of the *Employment Act*, the respondents were protected and were entitled to the claims made, including the following:
- a. Notice pay.
 - b. Unpaid salary for March 2023.
 - c. Unremitted NHIF;
 - d. Compensation for unfair termination of employment.
 - e. Costs and interests.
6. Aggrieved by the judgment, the appellant argues that the learned magistrate erred in failing to consider that there was no contract of employment since the respondents were casual labourers and thus not entitled to NSSF, NHIF, service charge and house allowances. The respondent admitted that they were paid daily wages and were recruited when labour was needed. The claims made were not proved on a balance of probabilities or under section 47(5) of the *Employment Act* (the Act). The awards made should be set aside and dismissed with costs.
7. The appellant submitted that the appeal should be allowed and the judgment of the trial court set aside. In evidence, only the 1st respondent testified while the others failed to argue their case. The case closed without the call of their evidence. There was no proof. The 1st respondent did not produce an employment contract, and the finding of unfair termination was unjustified. The award of 8 months to all respondents was not warranted, as each respondent was employed on a separate date.
8. Section 37 of the Act only protects an employee who is not employed on a casual basis and paid a daily wage. The evidence relied upon was from a single respondent, without the benefit of the others. To apply this basis to the claims was an error. There was no continuous employment as alleged. This was not proved as held in *Kibogo & 83 others v Caribbean Contractors Company Ltd* [2022] eKLR and *Rashid Mazrui Ramadhan v Doshi & Co. (Hardware) Ltd & another* [2017] eKLR.



9. The finding of unlawful and unfair termination of employment lacked a legal foundation and should be set aside. The awards have not been given a basis.
10. There are no written submissions by the respondents.

Determination

11. This is a first appeal. The court is allowed to review the record, reassess the findings and make its conclusions. However, consider that the trial court had the chance to see and hear the witnesses.
12. The appellant has challenged the trial court's findings on the ground that only one respondent testified, and therefore, there was no basis to assess the claims of the three respondents. That there was casual employment and hence no basis to apply the provisions of section 37 of the Act. The findings of unfair termination of employment lacked evidence, were excessive, and lacked justification for the 8-month awards, since each representative was employed at a different time.
13. The respondents filed their Memorandum of Claim in March 2023. At the time, the applicable rules of procedure were the Employment and Labour Relations Court (Procedure) Rules, 2016, which were subsequently repealed. Under the repealed Rules, where several claimants sought relief under the same Memorandum of Claim, Rule 9 allowed each to set out his/her claim with the particulars thereof, without the need to file a separate claim. Further, under Rule 9, once the claims were particularized, the need to call each claimant as a witness became unnecessary.
14. Rule 9 of the repealed Rules allowed the court to proceed under a Memorandum of Claim that particularized the claims by several claimants without a call of evidence. Thus, unlike other superior courts regulated by the *Civil Procedure Act* and the rules thereto, in employment claims recognition is given to several employees or claimants, such as the respondents, who may file a single claim giving particulars of their individual claims.
15. In this regard, the learned magistrate proceeded to analyse the claims as filed by each respondent on a good basis.
16. In evidence, the respondents testified that they were in the continuous service of the appellant. They produced various work records to support such claims. They would be allowed to log in to the system upon entering the shop floor.
17. The records produced demonstrate that the respondents would work for up to 6 days a week. They earned a wage of Ksh. 18,000 per months.
18. Under sections 10(6) and (7) and 74 of the Act, the employer, such as the appellant, has the duty to file work records once a dispute, such as herein, is before the trial court. The only records filed by the appellant relate to 3, 4, 6, 7, February 2020, and 19 March 2021.
19. There are no casual employee records for the subject period from 15 December 2019 to 15 May 2023, during which the respondents assert they were employed and their employment terminated. The duty to file work records is not only to assist the court but to ensure that the party relying on them is heard on merit.
20. Without the necessary records, the respondents' evidence that they were continuously engaged by the appellant as packagers must be taken as correct. Under section 37 of the Act, an employee who works continuously and for work that is not likely to end in a day is protected with rights and benefits under the Act as held in *Humphrey Nyaga Thomas & 25 others v Kenyatta University* [2021] KEELRC 18 (KLR) and in *Kenyatta University v. Esther Njeri Maina* (Civil Appeal 261 of 2020) [2022] KECA



120. The courts have emphasized that it is a violation of employment rights when an employer keeps an employee on the shop floor as a casual for many years under the guise that the work is seasonal. Such practice amounts to unfair labour practices, since the employer is at liberty to issue a term contract, a piece-rate contract, or to ensure a daily wage is paid at the end of each day.
21. In this case, the learned magistrate properly analyzed the evidence and reached a sound finding. Section 37 of the Act applied to the respondents.
 22. Under the mistaken belief that the respondents were casual employees, the application did not follow due process in terminating their employment.
They were entitled to notice pay and compensation.
 23. The appeal is that the award of compensation was excessive and not rationalized since each respondent worked for a different term period.
Indeed, the awards under section 49 of the Act must be given a basis.
 24. 1st respondent worked from 6 March 2020 to 15 May 2023, a period of 3 full years. On this basis, his compensation should have taken into account the time served, which is distinct from that of the other respondents. A general award may be convenient, but it must be supported by a basis.
 25. The 1st respondent's compensation is awarded at the rate of 3 months' wages. $18,000 \times 3 = \text{Ksh. } 54,000$.
 26. The 2nd respondent worked from 15 December 2019 to 15 May 2023, a period of 3 full years. An award of 3 months is appropriate at Ksh. 54,000.
 27. The 3rd and 4th respondents worked from 16 August 2021 to 15 May 2023. They had one (1) full year. An award of one month's compensation is appropriate at KSh. 18,000.
 28. The 5th respondent worked from 3 February 2021 to 15 May 2023, a period of 2 years. An award of Ksh. 36,000 is appropriate.
 29. Regarding the claim for unpaid wages for May 2023 for work done, section 18 of the Act requires such dues to be paid at the end of employment.
 30. Each respondent is entitled to the claim for 15 days at Ksh. 9,000 each.
 31. On the claim for unremitted NSSF and NHIF dues, these are statutory dues which should be remitted to the statutory body and not the employee.
 32. Where there is no payment or remittance to the statutory body, the remedy is the claim for service pay. The respondent claimed for service pay, which is due at 15 days for each full year worked.
 33. 1st respondent worked for 3 years and is entitled to service pay at KSh. 27,000.
 34. The 2nd respondent worked for 3 full years and is entitled to Ksh. 27,000.
 35. 3rd and 4th respondents worked for 1 full year and are entitled to Ksh. 9,000.
 36. The 5th respondent worked for 2 years and is entitled to Ksh. 18,000 in service pay.
 37. Regarding the claim for leave pay, once protected under section 37 of the Act, the right under section 28 of the Act is due. Such should have been assessed accordingly. Under section 28(4) of the Act, annual leave cannot accumulate beyond 18 months. In this case, each respondent is entitled to 33 leave days. The due compensation is Ksh. 19,800.



38. As for costs, the respondents' claims were justified. The appeal is largely without merit save for the reviews addressed above. Costs for the trial court are justified.

39. Accordingly, judgment in Mombasa CMELRC No. E297 of 2023 is hereby reviewed in the following terms:

1st respondent is awarded the following:

- a. Notice pay Ksh. 18,000.
- b. Compensation Ksh. 54,000.
- c. Service pay Ksh. 27,000.
- d. Leave pay Ksh. 19,800.

2nd respondent

- a. Notice pay Ksh. 18,000.
- b. Compensation Ksh. 54,000.
- c. Service pay Ksh. 27,000.
- d. Leave pay Ksh. 19,800.

The 3rd and 4th respondents are entitled to the following:

- a. Notice pay Ksh. 18,000.
- b. Compensation Ksh. 18,000
- c. Service pay Ksh. 9,000.
- d. Leave pay Ksh. 19,800.

5th respondent is entitled to the following:

- a. Notice pay Ksh. 18,000.
- b. Compensation Ksh. 36,000.
- c. Service pay Ksh. 18,000.
- d. Leave pay Ksh. 19,800.

68. The respondents are entitled to costs before the trial court. For the appeal, each party to bear its costs.

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

M. MBARŪ

JUDGE

In the presence of:

Court assistant: Omar

..... and

