

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

APPEAL NO. E156 OF 2025

BROLLO KENYA LIMITED..... APPELLANT

VERSUS

ALI JUMA MWADZOMBO.....RESPONDENT

**[Being an appeal from the judgment of Hon. J. B. Kalo delivered on 30th
July 2025 in Mombasa CMELRC No. E462 of 2023]**

JUDGMENT

The appeal arises from the judgment delivered in the Mombasa CMERC No. E462 of 2023 on 30th July 2025.

The appeal is on the grounds:

- 1. The learned trial magistrate erred in law and fact by holding that the claimant/Respondent was illegally, unlawfully, and unfairly terminated.*
- 2. The learned magistrate erred in law and fact in failing to consider the lapse of the three-month contract.*
- 3. The learned magistrate erred in law and fact by concerning himself on the reason for non-renewal of the contract rather than the fact that the employment had ended after the lapse of the contract.*

4. *The learned magistrate erred in law and fact by finding that severance pay was payable while NSSF deductions were made and paid.*
5. *The learned magistrate erred in law and failed in awarding unpaid leave while the same was paid to the claimant in the pay slip provided in evidence.*
6. *The learned magistrate erred in law and fact by failing to take into consideration the Appellant's evidence in reaching his determination.*

The Appellant seeks that the judgment of the trial court be set aside and the awards reassessed, with costs.

The background to the appeal is a claim filed by the Respondent against the Appellant. The case was that the Appellant employed the Respondent as a machine operator on 5th March 2005 and worked until 1st March 2022, when employment was terminated. At the time, the wage paid was Ksh. 18,550 per month. The case was that on 1st March 2022, the Respondent reported to work and was handed the letter terminating employment, claiming redundancy. The supervisor said there was no work. The workload had reduced, and his dues would be paid. The Respondent claimed that he waited for his dues to be paid without success. He thus claimed the following:

- a) Notice pay Ksh. 18,550.
- b) Untaken leave days for 17 years ksh. 315,350.
- c) Severance pay for 17 years Ksh. 157,675.

- d) For the unfair termination, 12 months' compensation Ksh. 222,600.
- e) Costs of the suit.

In reply, the Appellant's case was that the Respondent's employment commenced on 2nd January 2022 and expired upon the contract ending after 3 months on 31st March 2022. There was thus no unfair termination of employment as alleged. One month's notice was issued before the term contract expired. There was no declaration of redundancy as alleged. There were no pending leave days, and the claim was not justified.

The learned magistrate heard the parties and held that employment terminated due to an unconducive business environment. In this case, due process for redundancy should have been followed, but it was not. This resulted in unlawful and unfair termination of employment. The trial court thus awarded the following:

- a) Notice pay.
- b) Leave pay for 3 years.
- c) Severance pay for years worked.
- d) Compensation for unfair termination of employment.
- e) Costs of the suit.

On the appeal, the Appellant submitted that the Respondent was employed on term contracts that expired and were renewed accordingly. The last contract

lapsed on 31st March 2022, and notice of non-renewal was issued. There was therefore no unlawful or unfair termination of employment. The employment relationship lapsed at the end of each contract, as held in **Emmanuel Wambua Muthusi & 6 others v Khoja Shia Ithna Ashari Education Board t/a Jeffery Academy [2020] eKLR.**

The Appellant submitted that at the end of each contract, the Respondent was paid terminal dues, including leave pay, as evidenced in the pay slips. The awards for notice, leave, severance, and compensation are not justified.

The Respondent did not attend these proceedings.

Determination

As this is a first appeal, the court may review the record, reassess the findings, and reach a conclusion. However, consider that the trial court had the chance to hear and see the witnesses.

By a notice dated 1st March 2022, the Appellant informed the Respondent that the employment contract commencing on 1st April 2021 would not be renewed due to extremely difficult business conditions. The contract was due to lapse on 31st March 2022.

The Appellant has filed the term contracts issued to the Respondent. Each is for a distinct and separate term. Each starts and ends on its own terms.

Under section 10(3) of the Employment Act, the employer may employ an employee on a term contract with a start and end date. This is lawful and legitimate as held in **Transparency International - Kenya v Omondi [2023] KECA 174 (KLR)**. The employer has no duty to issue notice before the end of a term contract. See **Keen Kleeners Limited v Kenya Plantation and Agricultural Workers' Union [2021] KECA 352 (KLR)**.

A fixed-term contract starts and terminates on its terms.

In this case, the Appellant issued a notice to the Respondent that the contract, which ended on 31st March 2022, would not be renewed. This was courteous and not necessary under section 10(3) of the Employment Act. The court takes it that the Respondent had served the Appellant for many years and was kept to end the employment relationship on a high note.

In this regard, notice pay, compensation or redundancy pay are remedies not available where a term contract ends as agreed by the parties.

In support of the claim for accrued leave days, the Appellant filed work records to confirm payment of leave days under each contract. This is not challenged by the Respondent.

On this basis, the appeal has merit. The learned magistrate erred to the extent that the notice giving the Respondent the reasons for non-renewal of his

contract was not necessary. He was already bound by a term contract with start and end dates.

Accordingly, the appeal is allowed. Judgment in Mombasa CMELRC No. E462 of 2023 is set aside in its entirety. The Respondent did not attend. Each

party shall bear its costs.

Delivered in open court at Nairobi, this 23rd day of April 2026

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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