

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET**

ELRC APPEAL NO. E021 OF 2024

RILEY FALCON SECURITY SERVICES APPELLANT

VERSUS

ALBERT OMONDI OGUSO

RESPONDENT

(Being an appeal arising from the Judgment and Decree of the Honourable Keyne Gweno (Senior Resident Magistrate) delivered on 14th June 2024 in Eldoret CMELRC No. 333 of 2019)

JUDGEMENT

1. By a Memorandum of Claim dated 29th October 2021, the Respondent (Claimant in the trial court) alleged that he was unlawfully terminated from employment by the Appellant on 21st August 2019 and was not paid his terminal dues.
2. The Respondent further averred that during his employment with the Appellant, he was grossly underpaid without regard to the Regulation of Wages (General) Amendment Orders in force, and that he worked overtime and on rest days without pay. The Respondent also asserted that he worked on public

holidays without pay and that he was not paid house allowance for the entire period he worked for the Appellant.

3. The Respondent particularized his terminal benefits as follows: -

- i. One month pay in lieu of notice ... Kshs 15,374.93
- ii. House allowance dues Kshs 3,034.80
- iii. Underpayment Kshs 292,398.90
- iv. 12 months compensation for
unlawful termination Kshs 184,498.80
- Total Kshs 495,307.40

4. The Appellant entered appearance and filed a Response to Claim dated 22nd July 2021 which was amended on 14th August 2024. In its defence, the Appellant denied the allegations made by the Respondent in his claim. In particular, the Appellant asserted that the Respondent was employed on a one-year fixed term contract commencing on 26th June 2013 renewable yearly subject to satisfactory performance.

5. The Appellant maintained that the Respondent was employed as a day security guard on a one-year contract which run from 19th July 2018 to 18th July 2019 and that during this period, the Respondent was paid in accordance with the agreement

executed between the parties. It was averred that after the contract came to an end, the Respondent was required to re-apply and be considered afresh subject to satisfactory performance and availability of work. It was the Appellant's case that it was under no obligation to re-contract the Respondent.

6. In response to the Respondent's claim for underpayment and unpaid house allowance, the Appellant contended that the claims arose from the period between June 2013 through August 2019 and as such have been overtaken by time and are thus time-barred.

7. The suit proceeded to full hearing and thereafter the trial court delivered its judgment on 14th June 2024 in favour of the Respondent in the following terms: -

- i. One month pay in lieu of notice.....Kshs
15,374.93
- ii. House allowance dues.....Kshs
3,034.80
- iii. Underpayment.....Kshs
249,673.30
- iv. Compensation for unlawful termination....Kshs 61,499.72

Total.....Kshs 329,582.75

8. The trial court also directed the Appellant to issue a Certificate of Service to the Respondent and awarded the Respondent costs of the suit with interest at court rates.
9. The Appellant being dissatisfied with the said Judgement instituted the instant appeal vide the Memorandum of Appeal dated 25th June 2024 on the following grounds of appeal:
 - a) The Learned Magistrate erred in law and fact in finding that the Claimant had been unlawfully dismissed from employment when there was no evidence to support the said termination.
 - b) The Learned Magistrate erred in law and fact in failing to find that the Claimant's contract had lapsed by efflux ion of time and hence it would have been impossible for the Appellant to terminate the Claimant from employment.
 - c) The Learned Magistrate erred in law and fact by wholly ignoring the uncontroverted evidence that the Claimants' employment was governed by a contract between parties as such parties were bound by the terms of the said employment contract.

- d) The Learned Magistrate erred in law in making awards for house allowance and underpayments based on statute-barred claims.
- e) The Learned Magistrate erred in law and in awarding the Claimant the sum of Kshs.15,374.93 being one month salary in lieu of notice whereas there was no basis to make the award in view of the evidence presented before court.
- f) The Learned Magistrate erred in law and fact by awarding exorbitant sum of Kshs. 61,499.72 as six months' compensation for damages for loss of employment whereas there was no basis to make the award in view of the evidence presented before the court.
- g) The Learned trial magistrate erred in fact and law by failing to appreciate the evidence tendered by both the Appellant and the Respondent and analyze and apply the correct law thereby arriving at an erroneous conclusion that is not premised on evidence and the law.

h) The learned magistrate erred in law and in fact in disregarding the submissions made and filed by the Appellant in arriving at judgment in the case.

10. The Appellant prays for the following orders:

a) This Appeal be allowed with costs.

b) The judgment of the subordinate court be set aside and be substituted with a judgment dismissing the Respondent's suit in the subordinate court.

c) The costs of this appeal, as well as those of the subordinate court be awarded to the Appellant.

11. The appeal was disposed of by way of written submissions. The Appellant's submissions are dated 15th January 2026 while the Respondent's submissions are dated 24th November 2025.

The Appellant's submissions

12. The Appellant framed the following issues for determination: -

- i. Whether the Respondent's employment was terminated or whether it lapsed by effluxion of time
- ii. Whether the claims for underpayment and house allowance are statute-barred.

13. On the first issue, the Appellant submitted that the Respondent was initially employed in 2013 under a fixed-term contract running from 13th June 2013 to 30th May 2014 and that he continued to serve under successive fixed-term contracts, as evidenced by end-of-contract letters dated 1st April 2016 and 15th May 2017 produced by the Respondent. The Appellant maintains that these documents demonstrate that the Respondent was aware that his employment was contractual and terminable upon expiry.
14. The Appellant further relied on the contract dated 19th July 2018 which ran up to 18th July 2019 and averred that it was duly executed by the Respondent. That even though the Respondent disputed the signature therein, he failed to adduce any expert evidence to challenge its authenticity.
15. The Appellant argued that the said contract satisfied the requirements of Section 9 of the Employment Act and that the Respondent not only executed the contract but also performed his obligations under it, as evidenced by pay slips and his own pleadings.
16. It is the Appellant's submission that the Respondent's employment came to an end upon expiry of the contract and

that the Appellant duly notified him of the same through a letter dated 15th July 2019. The Appellant averred that the Respondent subsequently applied for re-employment, thereby acknowledging the lapse of the contract.

17. The Appellant contended that no claim for unlawful termination could arise in circumstances where the employment relationship ended by effluxion of time and that no notice was required in such cases.
18. In support of this position, reliance was placed on the decisions in ***Josephat Rubia Oyangi v Kenya Education Management Institute (2018) eKLR***, ***Trocaire v Catherine Wambui Karuno (2018) eKLR*** and ***Amatsi Water Services Company Limited v Francis Shire Chachi (2018) eKLR***.
19. On the second issue, the Appellant submitted that the claims for underpayment and house allowance were statute-barred under Section 90 of the Employment Act, as they related to periods beyond three years prior to the filing of the suit.
20. It was the Appellant's submission that claims for underpayment accrue monthly each instance giving rise to a

separate cause of action and therefore any claims falling outside the statutory period are not recoverable.

21. The Appellant thus urged the Court to allow the appeal and set aside the judgment of the trial court.

The Respondent's Submissions

22. In his submissions, the Respondent urged the Court to dismiss the appeal, submitting that the trial court considered all the evidence placed before it and arrived at a sound and reasoned judgment.
23. The Respondent maintained that the trial court correctly found that he was a protected employee under Section 37 of the Employment Act and that his termination was unfair and unlawful.
24. The Respondent further submitted that the trial court properly awarded him underpayments based on the applicable minimum wages orders, as well as notice pay and compensation for unfair termination.
25. He therefore prayed that the appeal be dismissed with costs.

Analysis and Determination

26. This being a first appeal, this court is obliged to re-assess, re-evaluate and re-examine the evidence adduced before the trial court and arrive at its own independent conclusion bearing in mind the fact that it neither heard nor saw the witnesses as they testified and therefore giving allowance for the same. **[See *Selle & another v Associated Motor Boat Co. Ltd. & others* (1968) EA 12].**
27. This appeal has no record of appeal. The lower court file was destroyed during the 2024 Gen-Z protests when the Eldoret county court building was burnt down by arsonists. The parties therefore agreed that the court prepares the judgment in the appeal by considering the records produced by the parties and the judgment rather than having to go through another fresh hearing of the suit before the trial court.
28. This court is thus called upon to review the judgement of the trial court based on the documents filed before the court as produced by the parties but without the benefit of the record of the trial court proceedings. Both parties also filed submissions in which they summarized their positions.
29. The position of the Appellant is that the Respondent was employed by the Appellant in June, 2013 on successive yearly

contracts and that his employment terminated upon expiry of the last contract which was for the period 19th July, 2018 to 18th July, 2019. The Appellant avers that upon expiry of the last contract the Respondent failed to apply for renewal until 18th August, 2019, by which time his contract had terminated. The Appellant produced the employment contract dated 15th May 2013 signed on the same date by the Respondent and by the Appellant on 3rd June, 2013 and a second contract dated 19th July, 2018 which is alleged to have been signed by the Respondent and thumb printed on 19th July, 2018 but which is not signed by the Appellant.

30. The Respondent on the other hand stated that he only signed one contract at the commencement of his employment on 1st June, 2013 and thereafter worked continuously without signing any other contract until his employment was terminated by the Appellant upon resuming duty from annual leave in August, 2019 without notice.
31. The determination of this case therefore revolved around two facts, whether the Respondents employment was on yearly contracts which were renewed upon expiry or whether he worked continuously without a contract after the expiry of the

first contract; and whether the contract dated 19th July, 2018 is valid.

32. The trial court found that the contract dated 19th July, 2018, having not been signed by the Appellant and the Respondent having denied signing the same, was invalid. The trial court further found that the Respondent was in continuous employment from June, 2013 to August, 2019 and was terminated without due process, the Appellant having failed to produce renewal contracts signed between 2014 and 2018 after the lapse of the initial contract. The Trial court further found that the Respondent's application for employment letter dated 18th August, 2019 did not prove procedural termination of his employment. The trial court further found that there was no evidence that the Respondent received the letter dated 15th July, 2019 informing the Respondent of the end of his contract and advising him to reapply for renewal of the same.
33. From the documents on the record, it is factual that there was no contract signed by the parties after the initial contract which lapsed on 14th May, 2014. The Respondent thus worked continuously from 1st June, 2013 to 18th July, 2018.

34. It is further factual from the record that the contract produced by the Appellant dated 19th July, 2018, though indicating that it is signed by the Respondent, is not signed by the Appellant. The Respondent denied signing the same.
35. Section 9 of the Employment Act places the responsibility of ensuring a contract is drawn up and signed upon the employer. Section 10(7) of the Act provides that in any proceedings between the parties the burden shall be on the employer to prove or disprove an alleged term of employment of the employment contract.
36. In the instant case the Appellant did not prove that there was any valid contract signed by the parties after the initial one-year contract dated 15th May, 2013.
37. The court further notes that there is no evidence that the letter dated 15th July, 2019 addressed to the Respondent titled: "END OF CONTRACT" was received by the Respondent.
38. The court further notes that there is no evidence on record that the Respondent applied for renewal of his contract pursuant to the end of contract letters dated 1st April, 2016 and 15th May, 2017 produced by the Claimant at pages 22 and 23 of his bundle. This signifies that the failure of the

Respondent to reapply for renewal of his contract in 2019 was not a valid reason for termination of the contract as he had never applied for renewal of contract over the years that he worked for the Appellant.

39. From the foregoing I agree with the finding of the trial court that the Respondent was in continuous employment of the Appellant from 1st June, 2013 to the date of termination of his employment in August, 2019.
40. On the second issue whether the contract dated 19th July, 2018 is valid, I also agree with the finding of the trial court that the same was not valid because it was not signed by the Appellant and therefore could not form the basis of an enforceable contract of employment. I further agree with the trial court finding that the Appellant failed to prove that there were renewal of contract or applications by the Respondent for renewal of contract from 2014 to 2019. I thus confirm the trial court finding that the Respondent, having worked for the Appellant continuously from 1st June, 2014 without any renewal of contract, was protected under section 37 of the Employment Act, and could only be terminated upon notice or for valid reason following a fair process.

41. I now consider the remedies awarded by the Trial Court, which are contested by the Appellant in its Memorandum of Appeal being house allowance, underpayments, pay in lieu of notice, compensation of 6 months salary for unfair termination of employment.

a. House allowance

House allowance is provided for in section 31 of the Employment Act to the effect that the same is payable over and above the basic pay unless the employee is housed by the employer. In the instant case the Respondent was not housed by the Appellant.

The Appellant supported its arguments that the Claim for house allowance was statute barred under section 90 (now 89) of the Employment Act using the decision in **Bernard Khaemba Malaba v Board of Trustees Mount Kenya University [2018] eKLR** in which the court observed that where an employee is on fixed term contract the claims ought to be addressed under section 90 of the Act. In the instant case I have found that the Respondent was not on fixed term contract. The decision relied upon by the Appellant is thus distinguishable from

the facts of this case. The position applicable is therefore that in **Kethra Hussein Noor & another v Kaderdina Hajee Essak Limited [2016] eKLR** in which the court applied the decision in **David Wanjau Muhoro v Ol Pajeta Ranching Ltd [2014] eKLR** to the effect that arrears of salary and other employment benefits cannot be defeated by limitation under section 90 of the Act as they involve an injury of a continuing nature and that so long as the whole claim is not time barred the arrears are payable.

I thus find no basis for interfering with the finding of the trial court on this award.

b. Underpayments

The arguments of the Appellant in respect of underpayments is similar to the arguments made in respect of house allowance in a above. For the same reasons given above, I find no basis to interfere with the award on the same by the trial court.

c. Pay in lieu of notice

The Appellant did not make any submissions to support its claim under this head. Having found the termination

of the Respondent's employment to be unfair, he is entitled to pay in lieu of notice. I thus find no reason to interfere with the award of the trial court on this head.

d. Compensation of 6 months' salary

As in (c) above, the Appellant did not make any submissions to support its claim under this head. Having found the termination of the Respondent's employment to be unfair, he is entitled to compensation for unfair termination of his employment. There is no complaint about the quantum which in my view is reasonable taking into account the circumstances under which the Respondent's employment was terminated and the factors for consideration by the court in making such award under section 49(4) of the Act. I thus find no reason to interfere with the award of the trial court on this head.

42. Based on the foregoing, I find the appeal to be without merit and dismiss the same with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 16TH DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**