



REPUBLIC OF KENYA



**Cyka Manpower Services v Nzuki & 9 others (Appeal E046 of 2024)  
[2025] KEELRC 179 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 179 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E046 OF 2024  
M MBARÚ, J  
JANUARY 30, 2025**

**BETWEEN**

**CYKA MANPOWER SERVICES ..... APPELLANT**

**AND**

**MAKAU NZUKI ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS MWASHUMA ..... 2<sup>ND</sup> RESPONDENT**

**WILFRED WACHUGU ..... 3<sup>RD</sup> RESPONDENT**

**BERNARD ATANDI ..... 4<sup>TH</sup> RESPONDENT**

**MBUVI MWINZILA ..... 5<sup>TH</sup> RESPONDENT**

**KEFFA OSUMBA ..... 6<sup>TH</sup> RESPONDENT**

**RAYMOND KAI ..... 7<sup>TH</sup> RESPONDENT**

**SAMUEL GARAMA ..... 8<sup>TH</sup> RESPONDENT**

**PIUS MUEMA ..... 9<sup>TH</sup> RESPONDENT**

**BEN SOKOBE ..... 10<sup>TH</sup> RESPONDENT**

*(Being an appeal from the judgment of D.O. Mbeja delivered on  
29 February 2024 in Mombasa CMELRC No.E355 of 2021))*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 29 February 2024 in Mombasa CMELRC E355 of 2021. The appellant seeks that the judgment be set aside and substituted with an order dismissing the claim with costs.



2. The background of the appeal is claims filed by the respondents herein before the lower court. Their case was that the appellant terminated their employment unfairly, refused to pay notice, compensation, house allowance, and leave pay, made unlawful deductions, and failed to issue a certificate of service.
3. The respondent's case was that the appellant employed them as machinists and stuffers. The appellant terminated their employment unlawfully. The 1st respondent was earning Ksh.40, 500 while the other respondents were earning Ksh.21, 000 per month. Employment was at different points for each respondent; 1<sup>st</sup> respondent was employed on dates not specified.
4. The 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> respondents were employed in 2009; 3<sup>rd</sup> respondent was employed in 2015; and 6<sup>th</sup> respondent was employed in 2012.
5. Their case was that employment was terminated on 31 March 2021 without payment of terminal dues. During employment, the appellant had made unlawful deductions from their wages for 16 months from January 2018. They made the following claims;
  - 1<sup>st</sup> respondent;
    - a. Notice pay Ksh.40,500;
    - b. Compensation for unfair termination Ksh.486,000;
    - c. Unlawful deductions for 16 months Ksh.48,000;
    - d. Leave pay Ksh.283,500;
    - e. House allowance at 15% Ksh.510,300;
    - f. Public holidays Ksh.226, 800.
  - 2<sup>nd</sup> respondent;
    - a. Notice pay Ksh.21,000;
    - b. Compensation for unfair termination Ksh.252,000;
    - c. Unlawful deductions for 16 months Ksh.8,096;
    - d. Leave pay Ksh.231,000;
    - e. House allowance at 15% Ksh.415,800;
    - f. Public holidays Ksh.184, 800.
  - 3<sup>rd</sup> respondent;
    - a. Notice pay Ksh.21,000;
    - b. Compensation for unfair termination Ksh.252,000;
    - c. Unlawful deductions for 16 months Ksh.32,000;
    - d. Leave pay Ksh.105,000;
    - e. House allowance at 15% Ksh.189,000;
    - f. Public holidays Ksh.84, 000.
  - 4<sup>th</sup> respondent;



- a. Notice pay Ksh.21,000;
- b. Compensation for unfair termination Ksh.252,000;
- c. Unlawful deductions for 16 months Ksh.31,684;
- d. Leave payKsh.231,000;
- e. House allowance at 15% Ksh.415,800;
- f. Public holidays Ksh.184, 800.

5<sup>th</sup> respondent;

- a. Notice pay Ksh.21,000;
- b. Compensation for unfair termination Ksh.252,000;
- c. Unlawful deductions for 16 months Ksh.32,000;
- d. Leave payKsh.231,000;
- e. House allowance at 15% Ksh.415,800;
- f. Public holidays Ksh.184, 800.

6<sup>th</sup> respondent;

- a. Notice pay Ksh.21,000;
- b. Compensation for unfair termination Ksh.252,000;
- c. Unlawful deductions for 16 months Ksh.168,000;
- d. Leave payKsh.302,400;
- e. House allowance at 15% Ksh.189,000;
- f. Public holidays Ksh.134, 400.

7<sup>th</sup> respondent;

- a. Notice pay Ksh.21,000;
- b. Compensation for unfair termination Ksh.252,000;
- c. Unlawful deductions for 16 months Ksh.12,800;
- d. Leave payKsh.321,000;
- e. House allowance at 15% Ksh.415,800;
- f. Public holidays Ksh.184, 800.

8<sup>th</sup> respondent;

- a. Notice pay Ksh.21,000;
- b. Compensation for unfair termination Ksh.252,000;
- c. Unlawful deductions for 16 months Ksh.37,936;
- d. Leave payKsh.252,000;
- e. House allowance at 15% Ksh.453,600;



- f. Public holidays Ksh.201, 600.
- 9<sup>th</sup> respondent;
- a. Notice pay Ksh.21,000;
  - b. Compensation for unfair termination Ksh.252,000;
  - c. Unlawful deductions for 16 months Ksh.16,000;
  - d. Leave pay Ksh.231,000;
  - e. House allowance at 15% Ksh.415,800;
  - f. Public holidays Ksh.184, 800.
- 10<sup>th</sup> respondent;
- a. Notice pay Ksh.21,000;
  - b. Compensation for unfair termination Ksh.252,000;
  - c. Unlawful deductions for 16 months Ksh.36,608;
  - d. Leave pay Ksh.252,000;
  - e. House allowance at 15% Ksh.453,600;
  - f. Public holidays Ksh.201, 600.
6. The respondents also claimed that they were not issued Certificates of Service.
7. In response, the appellant made mere denials and said the respondents would be engaged on a piece-rate basis. During that period, the appellant contracted to provide the workforce to Tata Magadi Chemicals. The contract ran from 21 June 2018 to 31 March 2021, when it expired and was not renewed. The respondents were not permanent and would be engaged on a needs basis and paid for work. The appellant's contract with Tata Chemicals Magadi, Mombasa, expired, and the respondents had no work to offer the respondents. There were consultations, and they were informed of the expired contract that affected their employment. There was no redundancy, but issued contracts automatically lapsed. The appellant notified the labour officer of the expiry of the main contract that affected the respondents' employment. The claims made for leave pay are not due since each respondent had a term contract. Notice pay is not due in a fixed contract. Severance pay is not due as there was no redundancy, employment was lawfully terminated, and notice was issued.
8. The trial court heard the parties and delivered judgment on 29 February 2024. It held that there was unfair and unlawful termination of employment and that the respondents were entitled to the reliefs sought in the Memorandum of Claim, guided by the evidence so far on record. In the result, judgment is entered in favour of the claimants against the respondent as sought in the memorandum of claim, all circumstances considered. The above award shall carry the costs of the suit plus interest at court rates from the date of filing the suit.
9. Aggrieved by the judgment, the appellant filed the appeal on nine (9) grounds;
- 1. The trial magistrate erred in law and fact by holding that terminating the respondent's employment was unfair and unlawful.
  - 2. The trial magistrate erred in law and fact by awarding the respondents compensation for notice in lieu of termination.



3. The trial magistrate erred in law and fact by awarding the respondents compensation for unfair and unlawful termination.
4. The trial magistrate erred in law and fact by awarding the respondents compensation for unlawful deductions for 16 months.
5. The trial magistrate erred in law and fact by awarding the respondents leave pay.
6. The trial magistrate erred in law and fact by awarding the respondents' house allowance at 15%.
7. The trial magistrate erred in law and fact by awarding the respondents compensation for public holidays.
8. The trial magistrate erred in law and fact by ordering the respondents to provide a Certificate of Service.
9. The learned magistrate erred in law and fact by awarding the respondent's costs of the suit.
10. On these grounds, parties attended and agreed to address the appeal through written submissions.
11. The appellant submitted that it had a contract with Tata Chemicals Magadi from 21 June 2018 to 31 March 2021, when the contract expired without renewal. The respondents were employed at a piece rate under the main contract. They would be employed on a needs basis, both casually and intermittently. Employment was dependent on the availability of work. The respondent's employment ended after the Tata Chemicals Magadi contract. There was no termination of employment as alleged. The appellant had issued letters of offer of casual employment as produced in the letter dated 27 January 2009 and 1 April 2009 to the 2nd respondent. In the case of *Kago v Inades Formation Kenya Cause No.E953 of 2021*, the court held that where the employment contracts ended by effluxion of time, any claim for wrongful termination of employment could not be maintained.
12. The appellant submitted that the respondents were paid for time worked under their casual employment. As held in *Rashid Mazuri Ramadhan v Doshi & Co. (Hardware) Ltd & another [2017] eKLR*, the provisions of Section 37 of the *Employment Act* did not apply to them. In this case, the respondents remained casual employees for their entire engagement period. They had no prima facie case of unfair termination of employment under Section 47(5) of the *Employment Act*.
13. The appellant was not required to issue notice before the end of employment under Section 35 or pay any redundancy dues under Section 40, and there was no case of unfair termination of employment under Section 45 of the *Employment Act*.
14. The appellant submitted that the trial court's awards are without merit. Under Section 28 of the *Employment Act*, an employee has the right to annual leave, but this did not apply to the respondents. The alleged unlawful deductions arose from NHIF and payments to the Kenya Revenue Authority, which are statutory as held in *Simiyu v Nzoia Sugar Company Limited, Cause No.E005 of 2021*. The appellant had to deduct and remit these dues.
15. The respondents did not qualify under Section 51 of the *Employment Act* for the claim for a Certificate of Service, and the appeal should have been allowed with costs.
16. The respondents submitted that they were employed by the appellant, who terminated their employment without due process or payment of terminal dues. The response that there was piece rate employment was without evidence. Despite the appellant having a contract with Tata Chemicals Magadi that expired on 31 March 2021, there was no notice to the respondents.



16. The respondents were initially employed as casuals from 2008 and posted to Tata Magadi until 2021. Employment was not based on the Tata Magadi contract since they remained in the appellant's service. The letter of casual jobs to the 8th respondent is dated 22 June 2008 for 3 months from 1 July 2009, and the workstation was Magadi Soda Limited-Mombasa.
17. At the time of employment, the appellant was known as Cyka Fuelmart Limited, which later changed to Cyka Manpower Services Ltd. The respondents remained in the appellant's continuous employment because they were protected under Section 37 of the *Employment Act*. Under such protection, the respondents were entitled to the rights and benefits under the law which is notice and reasons before termination of employment as held in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR.
18. The respondents submitted that the awards in notice and compensation pay were justified. The respondents were not allowed annual leave for the entire period of employment, which is due as held in *Trust Bank Limited v Paramount Universal Bank Limited & 2 others HCC No.1243 of 2001*.
19. House allowance is due under Section 31 of the *Employment Act*. The respondents were not provided with housing or an allowance. Certificates of Service are due at the end of employment together with costs, and the appeal should be dismissed.

### **Determination**

20. This is a first appeal. The role of a first appeal court as restated in *Selle & Another v Associated Motor Boat Co. Ltd. & Others* (1968) EA as follows:

...An appeal to this court ... is by way of retrial, and the principles upon which this court acts in such an appeal are well settled. Briefly put, this court must reconsider the evidence, evaluate it, and draw its own conclusion. However, it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance to this respect; in particular, this court is not necessarily bound on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistency with the evidence in the case generally.
21. The appellant's case is that it employed the respondents intermittently under its contract with Tata Chemicals Magadi, which ran from 21 June 2018 to 31 March 2021. The respondents had letters of offer as casual employees, and when the main contract lapsed, there was no work for them.
22. The respondents, on their part, assert that they remained in the appellant's service from 2008 to March 2021, when their employment was unfairly terminated without notice or payment of terminal dues.
23. The respondents produced the letter of offer of casual employment of the second respondent dated 1 April 2009 for 3 months and the letter dated 27 January 2009 for a period of 2 months. Letter to the 8th respondent dated 22 June 2008 for casual employment for 3 months. Letter dated 31 May 2010 to the 5th respondent for 3 months.
24. The appellant did not produce any work records except for its contract with Tata Chemicals Magadi from 21 June 2018 to 31 March 2021. There was an admission that the appellant engaged the respondents intermittently under its contract, which ended on 31 March 2021.
25. The respondents have produced their bank statements that testify to the fact that they were paid by the appellant from 2018 to March 2021. Section 37 of the *Employment Act* protects employees who remain at the shop floor engaged for work that is not reasonably expected to be completed within



- several working days, amounting to the equivalent of three months or more. From 21 June 2018 to 31 March 2021, the appellant did not produce any work records on how it engaged the respondents, either on piece rate as alleged or otherwise. Such records would have been crucial to assess the terms and conditions under which the respondents were employed.
26. Without these records, the evidence by the respondents that they were in the continuous service and employment of the appellant is correct. They became protected under Section 37 of the *Employment Act* as held in *Kenyatta University v Maina* [2022] KECA 1201 (KLR) that;
- ... an employer cannot have an employee under the guise of being casual because it has peak and off-peak sessions. Subjecting an employee to such treatment is unfair because being laid off during off-peak season does not guarantee the employee permanency, nor can the employee look for employment elsewhere during the off-peak season. ...
27. The essence is that Section 37(1) (b) of the *Employment Act* protects such an employee;
- (1) Notwithstanding any provisions of this Act, where a casual employee—
- (a) ...
- (b) Performs work which cannot reasonably be expected to be completed within a period of several working days amounting in the aggregate to the equivalent of three months or more,
28. In this case, the respondents were protected under the law with rights and benefits under the *Employment Act* as held in *Mungai v Kabuito Contractors Limited* [2022] KECA 1235 (KLR).
29. Termination of employment is unfair if the employee is not issued a notice under the mistaken belief that he is a casual employee. The reasons leading to termination of employment were shared with the Labour Office; it was imperative to notify the respondents of the reasons leading to termination of employment first.
30. The trial court addressed the matter and correctly allocated notice pay and compensation.
31. However, the learned magistrate did not evaluate the claims outlined in the Memorandum of Claim. As pleaded in the Memorandum of Claim, there was a general award.
32. Unlike commercial disputes, employment claims are anchored in the law, and each must be reviewed and allocated accordingly. A general award meets the Wage Orders threshold, the law and the contract of service.
33. Notice pay is due based on the last wage earned. This is due to each response.
34. Compensation for unfair termination of employment where there is no due process and the employer has not produced the work records has no justification. Under the defined contract with Tata Chemicals Magadi, the respondent worked for the appellant for 33 months, from June 2018 to March 2021.
35. An award of 3 months' compensation is hereby found appropriate.
36. On the claims for alleged unlawful deductions, the evidence on record is that these deductions related to periods from 2008 to 2021 for NHIF and payments to the Kenya Revenue Authority. Statutory payments by an employer are the property of the statutory body. Each employer is under a legal duty to deduct and remit. Although no work records prove these deductions and remittances by the employer,



the respondent submitted part of their payment statements demonstrating that the stated deductions over the years related to statutory payments. These are not due to them but to the statutory bodies.

37. The employer must submit work records regarding leave pay on the leave pay claim. However, under Section 28(4) of the [Employment Act](#), leave can only accumulate for up to 18 months unless the employee has evidence that he requested to take annual leave but was deferred by the employer.
38. In this case, the respondents are only entitled to annual leave for 33 days. This is calculated based on the last wage paid.
39. On the claim for house allowance, as casual employees, from June 2018, the minimum wage was Ksh. 13,572.90, a house allowance of Ksh.2 035.80, and a gross wage of Ksh.15 608.70.
40. The appellant paid the respondents Ksh.21,000 and above. Such a wage is above the legal minimum and to claim a house allowance is unjust enrichment.
41. On the claim for payments for work during public holidays, such are special days published by the Minister. They cannot form the basis of a general claim. The employee seeking such payment must particularize the special day worked.
42. The respondents' claims were based on a good foundation, and the costs awarded by the trial court are justified.
43. On the claim for a Certificate of Service, at the end of employment, whatever the reasons leading to such termination, the employee is entitled to a Certificate of Service under Section 51 of the [Employment Act](#). Such a certificate should be issued unconditionally upon clearance by the employee.
44. For the appeal, the analysis above is taken into account, each party should bear its costs.
45. Accordingly, the judgment in Mombasa CMELRC E355 of 2021 is set aside and the following orders are issued;
  - 1) 1<sup>st</sup> respondent;
    - a. Notice pay Ksh.40,500;
    - b. Compensation for unfair termination Ksh.121,500;
    - c. Leave pay for 33 days Ksh.44,550;
  - 2) 2<sup>nd</sup> to 10<sup>th</sup> respondents;
    - a. Notice pay Ksh.21,000;
    - b. Compensation for unfair termination Ksh.63,000;
    - c. 33 leave days Ksh.23,100;
  - 3) Each respondent is to be issued with a Certificate of Service under Section 51 of the [Employment Act](#);
  - 4) Costs of the suit as awarded by the trial court;
  - 5) For the appeal, each party bears its costs.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 30 DAY OF JANUARY 2025.**

**M. MBARŪ**



**JUDGE**

