



**Mascor Kenya Limited v Odhiambo (Appeal E031 of 2024)
[2025] KEELRC 1199 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1199 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E031 OF 2024**

**J RIKA, J
APRIL 30, 2025**

BETWEEN

MASCOR KENYA LIMITED APPELLANT

AND

STEVE ODONGO ODHIAMBO RESPONDENT

(An Appeal from the Judgment by Hon. L. Akoth [SRM] delivered on 22nd April 2024 in Nakuru C.M.E&LR Cause E 120 of 2024, between the parties herein)

JUDGMENT

1. The Respondent is a former Employee of the Appellant.
2. He successfully sued the Appellant for unfair termination, and was granted compensation and terminal benefits.
3. The Appellant filed this Appeal through a Memorandum of Appeal dated 22nd May 2024, setting down 9 Grounds of Appeal.
4. The Parties agreed on all the Grounds, except 1 – the Trial Court erred by awarding the Respondent leave allowances.
5. That Ground is the subject of this Judgment .
6. Parties agreed that the Ground is considered and determined on the strength of the Record of Appeal, and their Submissions.
7. The Appeal was last mentioned on 6th March 2025, when the Parties agreed on filing and exchange of their Submissions, and the Appeal reserved for Judgment on 30th April 2025.



The Court Finds : -

8. The Respondent pleaded unpaid leave allowance at Kshs. 122,500 in his original Statement of Claim.
9. He amended that Statement, on 30th January 2023.
10. In the Amended Claim, paragraph 25 [c], he asked for unpaid leave allowance of Kshs.168,609.
11. The Trial Court, at paragraph 21 [c] of the Judgment, granted him unpaid annual leave at Kshs. 122,500.
12. This was the amount claimed, in the un-amended Statement of Claim.
13. It is not clear from the Respondent's pleadings, whether he was seeking unpaid annual leave allowances, or unpaid annual leave pay.
14. Annual leave pay, is the salary paid to an Employee while on annual leave. It is the amount receivable by an Employee who has not utilized his annual leave. It is the amount normally paid to the Employee by the Employer, as compensation for unused paid leave days, what is commonly referred to as leave encashment.
15. It is a statutory benefit under Section 28 of the *Employment Act*.
16. The Claimant's contract of employment dated 26th January 2016, granted him annual leave of 21 days.
17. Leave allowance is a separate benefit, which is not provided for under the *Employment Act*. It is not part of the minimum standards under the *Employment Act*.
18. It is normally left to the parties, to negotiate and agree on leave allowance in individual contracts or collective bargaining agreements.
19. Leave allowance is therefore a contractual, rather than a statutory benefit.
20. It is an allowance commonly referred to as leave traveling allowance. It is provided for, to cover the Employee's travel and other expenses, during annual leave. It is not his annual leave pay.
21. It was not included in the Respondent's contract of employment.
22. The award of Kshs. 122,500 as unpaid annual leave, had no foundation. The Respondent lastly pleaded a sum of Kshs.168,609 which he described as unpaid leave allowance. The Court granted him a sum of Kshs. 122,500, which is the sum he originally claimed. The Court described the award as unpaid annual leave, rather than unpaid annual leave allowance, that had been pleaded.
23. The sum was said to represent the totality of the Respondent's annual leave entitlement, over the period he was in employment.
24. Even assuming that in dispute was annual leave pay, rather than leave allowance, there was evidence placed before the Trial Court that the Respondent had been receiving annual leave pay.
25. The pay slip for the period 31st March 2018, shows that he received Kshs. 21,000 as annual pay. This is the same in pay slips for 31st December 2018, 31st January 2019, 31st May 2020, 31st August 2020, and 31st October 2020.
26. The Respondent also conceded in his evidence that he was familiar with the annual leave application system operated by the Appellant, which was called SAGE. He was aware that the system indicated he had taken some annual leave days.




It is ordered:-

- a. Ground [4] of the Memorandum of Appeal is allowed.
- b. Award of unpaid annual leave to the Respondent, by the Trial Court, at Kshs. 122,500 is set aside.
- c. No order on the costs.
- d. The file shall be marked as closed.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE



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