



**Mehta Electricals Limited v Rumbika (Appeal E220 of 2024)  
[2025] KEELRC 1239 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1239 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E220 OF 2024  
M MBARŪ, J  
APRIL 30, 2025**

**BETWEEN**

**MEHTA ELECTRICALS LIMITED ..... APPELLANT**

**AND**

**DELVIS JUMA RUMBIKA ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. Rose Ombata delivered  
on 6 September 2024 in Mombasa CMELRC No. E632 of 2023)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 6 September 2024 in Mombasa CMELRC No. E632 of 2023. The aggrieved appellant is seeking that the judgment be set aside with a declaration that the respondent's employment was lawfully terminated and that costs be awarded.
2. Before the trial court, the respondent filed a claim on the basis that the appellant employed him as a general labourer from February 2018 until 1 September 2023, when his employment was terminated unfairly. He claimed that on 26 August 2023, he was accused of theft while working on a client's site in Nyali and was taken to the Nyali Police Station. The appellant dropped the accusations and then dismissed the respondent from his employment. He was not paid the salary for August 2023, nor were his terminal dues paid. He claimed the following payments:
  - a. 12 months' compensation KS 283,128;
  - b. Salary for August Ksh.23,594;
  - c. Notice pay KS 23,594;
  - d. Service pay for 5 years, KS 58,985;
  - e. Leave pay for 5 years KS. 117,970;



- f. Costs of the suit.
3. In response, the appellant admitted that the respondent was employed as a general labourer in February 2018. He was on terms that were mutually agreed upon. On 26 August 2023, the respondent was apprehended for theft by Texas Alarms Limited, the company responsible for the applicant's site security. In admission of gross misconduct, the respondent named Juma Mohammed as his accomplice. The appellant investigated the theft incident. The theft incident was reported to the police by Texas Alarms Limited. There was no unfair termination of employment as alleged since the respondent refused to be subjected to the disciplinary process initiated by the appellant. He was invited to show cause on 9 September 2023, but opted to desert work. The disciplinary hearing was rescheduled to 9 October 2023 and then 21 October 2023, but he refused to attend. To the appellant, the respondent remains its employee, and there is no basis for the alleged summary dismissal, nor was a notice issued. The claims made are not justified and should be dismissed.
4. The learned magistrate heard the parties and in the judgment held that there was unfair termination of employment and hence ordered as follows;
- a. Notice pay Ksh. 23,594;
  - b. Compensation KS. 94,376;
  - c. 4 ½ years accrued leave Ksh.85,754.30;
  - d. Certificate of service,
  - e. Costs and interests.
5. Aggrieved, the appellant filed the appeal on 14 grounds. The appeal is that the learned magistrate erred in law and fact in finding unfair termination of employment contrary to the evidence presented. There was no evidence regarding termination of employment, and the respondent remains an employee of the appellant. The appellant issued the respondent with notices to show cause and allowed him to attend a disciplinary hearing, but he declined and opted to desert duty. The notices showing cause were still pending when the respondent filed suit.
6. Other grounds of appeal are that the learned magistrate erred in law and fact in finding that there was no investigation report from Texas Alarms Limited. At the same time, in his evidence, the respondent admitted that the security firm apprehended him. The arrest by the police followed the incident reported by the security firm. Despite the appellant initiating the internal disciplinary process, the respondent refused to attend. The internal disciplinary process was unrelated to the police report, but the respondent failed to address it and could not justify the claim for notice pay and compensation. The awards by the trial court were in error and should be set aside.
7. Both parties attended and addressed the appeal by way of written submissions.
8. This being a first appeal, the court can review and reassess the record and make its conclusions. However, the trial court had the opportunity to hear the witnesses give evidence.
9. The appeal is that the respondent was an employee of the appellant until the theft incident that occurred on 26 August 2023. Texas Alarms Limited reported the matter to the police, who apprehended the respondent. The appellant invited the respondent to show cause and attend a disciplinary hearing, but he declined and opted to abscond from duty. He remains an employee, and no notice of termination of employment has been issued.



10. The respondent asserts that he was accused of theft and had his employment verbally terminated. He was arrested at Nyali Police Station, but the charges were withdrawn. He was not paid his terminal dues.
11. The court has affirmed in various cases that the employer has the sole duty to regulate employees while undertaking their duties. Where the employee fails to attend, the employer has the legal duty to terminate the employment relationship to avoid such claims.
12. An employee who abandons employment through desertion, abscondment, or absenteeism commits gross misconduct as defined under section 44 of the *Employment Act* (the Act). Suppose such an employee does not terminate his employment. In that case, the employer must be proactive and issue notice, and where the employee fails to address the matter, issue notice to the Labour Office under Section 18 (5) of the Act.
13. In *Ayub Kombe Ziro v Umoja Rubber Products Limited* [2022] eKLR, the court held that the employer cannot lawfully plead that the employment relationship subsisted upon the duty amendment. The employee's breach of the employment relationship ended the employment relationship.
14. This position is reiterated in the case of *Foremost Limited v Mwakulomba* [2023] KEELRC 1916 (KLR), which holds that an employee who abandons work and the employer leaves them at large has nobody to blame but itself. The employee who abandons employment does not dismiss himself. The decision to formally end the employment relationship should come from the innocent party.
15. The appellant's assertion that the respondent is still an employee does not suffice. From 23 August 2023, when the theft incident was reported, the respondent refused to accept the notices to show cause or attend the disciplinary hearing. He has not been back on the shop floor since. This cannot be termed an ongoing employment relationship. In any event, no salary has been paid since.
16. The respondent's failure to attend an internal disciplinary hearing vested the appellant with the legal duty to end the employment relationship. Notice was imperative to the respondent and the Labour Officer. Leaving the respondent at large was wrongful and has resulted in a claim of alleged unfair termination of employment.  
Notice pay is due, and compensation.
17. In assessing the compensation due, the learned magistrate only referred to section 49 of the Act without giving the rationale for the allocated compensation. In this regard, the respondent does not contest that he was apprehended following a theft incident at a client's site and was taken to Nyali Police Station. It is also not challenged that the respondent was issued several show cause notices to attend a disciplinary hearing, but he declined to accept or attend. From the arrest on 23 August 2023, he only returned to the shop floor on 9 September 2023, and he does not explain who sent him away.
18. Under section 45(5) of the Act, the court must consider the procedures the employer applies before terminating employment. The appellant's various efforts to bring the respondent to account should be considered when awarding compensation. Engaging in theft is an act of gross misconduct.
19. In this regard, the respondents having worked for 5 years without any incident, an award of one (1) month's gross salary in compensation is hereby found appropriate. He was earning KS 23,594, which is due in compensation.

Due to the lack of due process, notice pay is due at KS. 23,594.



20. On the claim for accrued annual leave for 5 years, under Section 28(4) of the Act, annual leave can only accumulate for up to 18 months. The appellant has not submitted evidence that the respondent was allowed yearly leave. He is only entitled to 33 days of annual leave.
21. On the salary paid at KSh. 23,594 for 33 days, the respondent is entitled to KSh. 25,953.40.
22. On the claim for unpaid salary for August 2023, for work done, section 18(4) of the Act requires that the employee be paid. For the 23 days worked, the respondent is entitled to KSh. 18,088.70.
23. On the claim for service pay, such is due under section 35(6) of the Act where the employer fails to pay statutory dues. In response, the appellant admitted that there were deductions and remittances to the NSSF. This is not challenged.
24. On costs, employment claims are regulated under Section 12(4) of the *Employment and Labour Relations Court Act* in assessing costs. These are not automatic and should be awarded on a reasonable basis. In this case, the appeal is analysed as above; each party should meet its costs.
25. Accordingly, judgment in Mombasa CMELRC No. E632 of 2023 is hereby reviewed as follows;
  - a. Employment terminated unfairly;
  - b. Compensation Ksh 23,594;
  - c. Notice pay Ksh. 23,594;
  - d. Leave pay Ksh. 25,953.40;
  - e. Pay for August 2023 Ksh 18,088.70;
  - f. Each party to bear its own appeal and trial court costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 30TH DAY OF APRIL 2025**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

