



**Natures Limited v Makundi (Appeal E216 of 2024)  
[2025] KEELRC 1229 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1229 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E216 OF 2024**

**M MBARŪ, J  
APRIL 30, 2025**

**BETWEEN**

**NATURES LIMITED ..... APPELLANT**

**AND**

**SAMSON KYALO MAKUNDI ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. Noelyne Akee delivered  
on 12 September 2024 in Mombasa CMELRC No. E360 of 2022)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 12 September 2024 in Mombasa CMELRC No. E360 of 2022. The appellant is seeking that the judgment be set aside and the claim dismissed with costs.
2. The background of the appeal is a claim filed by the respondent claiming that he was employed by the appellant as a driver, salesman, debt collector, and depot manager in 2009 at a wage of Ksh.19,503, which was later increased to Ksh.25,000. The claim was that work hours were from 6 am to 6 pm without payment for overtime. On 31 December 2021, while the respondent was at work, the applicant’s manager, Salim Hussein, verbally informed him that his position had become redundant and terminated his employment. There was no notice or reason for the decision to terminate employment. The respondent claimed the following dues;
  - a. Notice pay Ksh. 25,000;
  - b. Underpaid leave for 12 years Ksh. 242,308;
  - c. Severance pay for 10 years Ksh. 207,692;
  - d. Unpaid overtime of 4 hours each day Ksh.2,700,172;



- e. 12 months' compensation Ksh.300,000;
  - f. Certificate of service;
  - g. Costs of the suit.
3. In reply, the appellant denied the claims and that the respondent was employed on a fixed-term contract as a light van driver from 2 January 2021 to 31 December 2021, earning a consolidated salary of Ksh 26,667 per month. The renewal of the contract was at the discretion of the employer. The official reporting time was 8 am to 6 pm with a provision of a one-hour break. The one-year contract expired on 31 December 2021, and he never reported back in January 2022. There was no termination of employment over alleged redundancy. The appellant has no manager named Salim Hussein. At the end of the fixed-term contract, the appellant tried to recall the respondent without success and hence, employment was terminated on the last contract. The claims made are not justified and should be dismissed with costs.
4. The learned magistrate heard the parties and in the judgment held that there was unfair termination of employment and the appellant failed to follow the due process in a redundancy. The trial court awarded the following dues;
- a. Notice pay Ksh. 25,000;
  - b. 12 months' compensation Ksh. 300,000;
  - c. Leave pay for 10 years Ksh.242,308;
  - d. Severance pay Ksh. 207,692;
  - e. costs and interests.
5. Aggrieved by the judgment, the appellant has eight grounds that the learned magistrate erred in law and fact in disregarding the provisions of Section 35(6) and 90 of the *Employment Act* in finding that there was unfair termination of employment on redundancy without a legal foundation. The award of Ksh. 242,308 for leave days was not justified, as was the severance pay of Ksh 207. 692. The basis of compensation was without justification since employment terminated on the term contract, and the appeal should be allowed with costs.
6. Parties attended and agreed to address the appeal by way of written submissions.
7. The appellant submitted that the trial court erred in disregarding the provisions of Section 35(6) of the *Employment Act*, which provides that service pay is not payable where the employee is a member of a provident fund. Section 40 of the Act allows the employer to terminate employment where there is a redundancy. In this case, the respondent claimed for severance pay instead of service pay, which is not due as held in *Hassanath Wanjiku v Vanela House of Coffees* [2018] eKLR.
8. The appellant submitted that the leave days awarded were contrary to the law under Section 90 of the *Employment Act*. The claims for 10 years should have been for 3 years.
9. The award of compensation was excessive without any rationale. The employment contract terminated on the fixed term, and notice pay was not due.
10. The respondent submitted that he was employed under various titles by the appellant, working from 6 a.m. to 6 p.m. each day. His employment was terminated on 31 December 2021 on account of redundancy without notice or any reason being given, and the awards by the trial court were justified.



11. Notice pay is due when the employer fails to issue notice to the employee before termination of employment. There is no proof of payment of leave days, and no work records were filed to support that the respondent took time off. Upon the redundancy, the award of severance pay is justified together with compensation.

### **Determination**

12. This being a first appeal, the court is allowed to review the record, reassess the findings, and make its conclusions. However, the learned magistrate had the opportunity to hear the witnesses' evidence in court.
13. The respondent's claim was premised on the facts that he was employed in various capacities by the appellant from 2009 to 31 December 2021. He attached multiple records, including a contract for the period from 2 January 2021 to 31 December 2021 as a light van driver. The wage paid was Ksh.26, 662 per month.
14. The respondent also filed work records and payment statements dating back to 2015 as a sales representative. The wages paid over time are graduated according to the term of the contract.
15. In return, the appellant's case was that the respondent was employed under a fixed-term contract which ended on its terms, the last ending on 31 December 2021. The respondent did not resume duty in 2022, and the contract was not renewed.

The appellant filed contracts for the period.

2 January to 31 December 2021;

2 January to 31 December 2019; and

2 January to 31 December 2018.

16. The respondent confirms that his employment was terminated on 31 December 2021. His reason is that it was a redundancy. However, the contract of employment was ending on 31 December 2021. It was not renewed.
17. A fixed-term contract is lawful and legitimate. It starts and ends on its terms, as held in *Wambugi v Board of Management Afya Yetu Initiative* [2024] KECA 1557 (KLR). The employer is not obligated to issue notice or give reasons at the end of the fixed-term contract. The end date is embedded in the term contract in *Kenya Power and Lighting Company v Osiro* [2024] KECA 854 (KLR).
18. In this case, based on the term contract ending on 31 December 2021, the claim that there was a redundancy is without merit. The finding that there was a redundancy and that the appellant should have issued notice, paid severance, and compensation is also without merit. These findings were erroneous and are hereby set aside.
19. The appellant asserts that the claims for leave pay for 12 years are time-barred under Section 90 [section 89] of the *Employment Act*. Indeed, under Section 28 of the *Employment Act*, an employee has the right to take annual leave. However, under Section 28(4) of the *Employment Act*, leave days should not accumulate beyond 18 months.
20. The appellant filed the respondent's leave application form for 21 days from 2 to 26 June 2020. The leave application form for 21 days from 1 to 27 August 2019.
21. There is no record for leave days taken under the last contract ending 31 December 2021. The right to annual leave is due at 21 days based on the previous basic wage of Ksh.26, 667



22. The claim for overtime for 4 hours each day is assessed under Section 89 of the Employment Act. This can only accrue under the last fixed-term contract.
23. In the contract, the parties agreed to work 50 hours in a shift of 9 hours a day and 5 hours on Saturday. There is a provision for an off day each week.
24. Section 27 of the Employment Act provides for an off day each week. This was provided.
25. The provision for 50 hours for the 6 days took into account 9 hours for 5 days and 5 hours on Saturday. Cumulatively, these were 50 hours each week.
26. In an ordinary work schedule, an employee should work 8 hours daily, including lunch. The respondent should have worked for 48 hours each week, but he worked 2 extra hours each week, amounting to 104 hours.
27. On the wage of Ksh 26. 667 per month, the extra 104 hours x 112 hour rate = Ksh 11. 555.70.
28. The claim for costs assessed on the findings above, each party should bear its costs.
29. Accordingly, the appeal is with merit to the extent that judgment in Mombasa CMELRC No. E360 of 2022 is reviewed and the awards confirmed for;
  - a. Leave pay Ksh 11,555.70;
  - b. Leave days Ksh 26,667;
  - c. Each party to bear its costs for the appeal and the lower court.

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

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

