



**Wambua v Blue Kiki African Transport Limited (Appeal E226 of 2024)
[2025] KEELRC 1228 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1228 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E226 OF 2024**

**M MBARŪ, J
APRIL 30, 2025**

BETWEEN

JOHN MUSEMBI WAMBUA APPELLANT

AND

BLUE KIKI AFRICAN TRANSPORT LIMITED RESPONDENT

*(Being an appeal from the judgment of G. Sogomo delivered
on 11 October 2024 in Mombasa CMELRC No. E696 of 2023)*

JUDGMENT

1. The appeal arises from the judgment delivered on 11 October 2024 in Mombasa CMELRC No. 696 of 2023. The appellant seeks to set aside the judgment and allow his claim with costs.
2. The appellant filed his Memorandum of Claim before the trial court because the respondent employed him as a truck driver from January 2020 to 20 September 2023, at a wage of Ksh.1, 030 per day. Cumulatively, he was paid Ksh.31, 500 per month. There was continuous employment when he reported to work on 20 September 2023 and went to his truck. Still, the secretary, Solomon Kinyanzi, came to him and handed over a phone to talk to David Miano, the manager. The appellant explained his difficulty in reporting to work that day, yet Miano could not hear him. He was directed to hand over the truck keys and to leave the premises. At the time, the appellant had not been paid for 3 days and demanded his dues, and Miano gave him Ksh.3, 150. The appellant was not recalled to work, there was no disciplinary hearing, and no notice was issued. No terminal dues were paid. The wage paid was below the minimum wage. The appellant claimed that there was unfair termination of employment and claimed the following;
3.
 - a. One month's notice Ksh.34,302.75;



- b. 12 months' compensation ksh.411,633;
 - c. Underpayments for 3 years and 8 months Ksh.554,638.50;
 - d. 3 years leave Ksh.104,041.35;
 - e. Certificate of service;
 - f. Costs of the suit.
4. In response, the respondent denied the claims and stated that the appellant was a general worker, not a driver, as alleged. The appellant was paid a consolidated wage of Ksh.31, 500 per month. Work was under 4 separate, periodic, fixed-term contracts. The contracts were for;
- a. Contract dated 3 January 2020 to 3 November 2020;
 - b. Contract dated 9 November 2020 to 19 October 2021;
 - c. 29 October 2021 to 21 October 2022; and
 - d. 1 November 2022 to 20 September 2023.
5. It is incorrect that there was continuous employment from January 2020 to 20 September 2023, as alleged. On 20 September 2023, various events took place. Under the last contract dated 1 November 2022, the appellant reported late for work and worked his shift. At the end, he was issued a Certificate of Service dated 20 September 2023 upon the expiry of the fixed-term contract. The appellant had disciplinary issues and was issued warning letters due to reporting late for duty. It had become habitual to report late. The term contract expired and was not renewed. The respondent was not obligated to issue notice, nor were there any reasons to give the appellant at the end of his fixed-term contract. The appellant was paid a consolidated wage, including 1.75 leave pay. The claims made are without merit and should be dismissed with costs.
6. The learned magistrate heard the parties and dismissed the suit with costs.
7. Aggrieved, the appellant filed the appeal under 11 grounds that the learned magistrate erred in law and fact by finding that the employment was terminated by effluxion of time; hence, it was not lawful. This was in error upon the assumption that the appellant had signed the alleged contracts, yet he had not seen them. The finding was that the appellant was employed as a general worker while he was a truck driver and was underpaid.
8. Both parties attended and agreed to address the appeal by written submissions.
9. The appellant submitted that he was employed as a truck driver, not a general worker, as the respondent alleged. He did not issue or sign the contracts that were suspected to be under a fixed term. The trial court wrongly dismissed his claim, ignoring the evidence on record. The respondent did not see the need to have the appellant sign the filed contract as held in *Tumaz and Tumaz v Ryce East Africa Ltd* Civil Appeal E055 of 2022. This resulted in unfair termination of employment contrary to section 45 of the *Employment Act*.
10. Without any written contract and upon working continuously for over 3 years, the appellant was protected under Section 37 of the *Employment Act* as held in *Rashid Mazrui Ramadhan & 10 others v Doshi & Co. (Hardware) Limited & another* [2018] eKLR. The claims made were justified and should be allowed with costs.



11. The respondent submitted that there were fixed-term contracts renewed for a term. Under the contracts, the appellant was paid a consolidated wage, including 1.75 leave pay. Under such a contract, the respondent had no reason to issue notice or give reasons for termination. The contract lapsed on its terms. During his employment, the appellant did not perform well and was issued with warnings.

Determination

12. This is a first appeal. The court can review the record and make its findings and conclusions. However, the trial court had the opportunity to see and hear the witnesses.
13. The appellant asserted that he was a truck driver without a written contract. The respondent asserts that the appellant was under a fixed-term contract, which last expired on its terms.

The respondent filed 3 letters of appointment.

One dated 3 January 2020 ending on 3 November 2020;

Another dated 9 November 2020 ending on 19 October 2021; and

The last letter, dated 29 October 2021, ended on 21 October 2023.

14. The appellant has not accepted the letters of appointment. No signs signify his acceptance of the terms and conditions of the contract, save the wage paid of Ksh. 31,500, similar to what the appellant asserts was paid, but for a driver.
15. Under Section 10(3) of the *Employment Act*, an employer can issue an employee with a fixed-term contract. The fixed-term contract has a start and end date. The employer is not required to issue notice or reasons for termination as held in the case of *Abdala & 9 others v Zhongmei & another* [2025] KECA 26 (KLR). The general position on the consequences of expiry of a fixed-term contract is that once it ends, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period. See *Tenai v Sidhu & 5 others* [2025] KECA 105 (KLR).
16. On the other hand, an employee who is under a verbal contract, whose wages are paid daily, and remains engaged for periods of over a day is protected under Section 37 of the *Employment Act*. The employee has rights and benefits under the Act. Such an employee is covered under the Minimum Wage Orders, and in this case, without a written contract, the appellant became a general worker. The wage paid at Ksh 1. 050 per day exceeded the minimum wage.
17. Without the appellant's acceptance or signature on the filed contracts, he became an employee protected under Section 37 of the *Employment Act*. The wages paid daily and monthly for a general worker were well compensated.
The provisions of Section 9(4) of the *Employment Act* apply;
(4) Where an employee is illiterate or cannot understand the language in which the contract is written, or the provisions of the contract of service, the employer shall have the contract explained to the employee in a language that the employee understands.
18. The appellant's acceptance of the letter of appointment was imperative. His understanding of the field contexts cannot be assessed without his endorsement.
19. Without a written contract that was accepted by the appellant before his employment was terminated, he was entitled to notice and the reasons for it.
20. The appellant does not deny that on 20 September 2023, he reported to work late and Mr. Miano confronted him about it. Under the mistaken belief that the contract was ending on 21 September



2023, the respondent did not undertake any due process. This resulted in unfair termination of employment, and the appellant is entitled to notice pay at the last wage paid Ksh.31, 500.

21. On compensation, the appellant had a poor work record. It is not denied that he reported late to work and had a warning issued. Under Section 45(5) of the *Employment Act*, taking into account, no compensation is awardable as held in *Kensalt Limited v Mwaruwa* (Appeal E039 of 2023) [2024] KEELRC.
22. On the claim for annual leave pay for 3 years, the wage paid was Ksh. 31,500 per month for a general worker, which was way above the allowed minimum. The evidence that this took into account the leave days is correct.
23. The appeal partially succeeds. On costs, each party should bear its costs.
24. Accordingly, the judgment in Mombasa CMELRC No. E696 of 2023 is reviewed to the extent that the appellant is entitled to notice pay of Ksh. 31, 500. Each party is to bear its costs.

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

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

