



REPUBLIC OF KENYA



KENYA LAW
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**Pride Inn Paradise Beach Resort & Spa v Rai & 6 others (Appeal
E183 of 2024) [2025] KEELRC 1100 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1100 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E183 OF 2024**

**M MBARÚ, J
APRIL 3, 2025**

BETWEEN

PRIDE INN PARADISE BEACH RESORT & SPA APPELLANT

AND

**JAMES MBANDI RAI 1ST RESPONDENT
SULEIMAN MTANGA KARANI 2ND RESPONDENT
ERICK MWAGAMBO 3RD RESPONDENT
URBANUS MBIGO CHOKODZA 4TH RESPONDENT
PASCAL KITI LEWA 5TH RESPONDENT
PHILIP MATTAZA SHIDA 6TH RESPONDENT
ABDALLAH SAID KATAMA 7TH RESPONDENT**

*(Being an appeal from the judgment of Hon. M. Nabihya delivered
on 1 August 2024 in Mombasa CMELRC No. 422 of 2019)*

JUDGMENT

1. The appeal arises from the judgment delivered on 1 August 2024 in Mombasa CMELRC No. 422 of 2019. The appellant seeks to set the judgment aside and dismiss the respondents' claim with costs.
2. The background to the appeal is a claim filed by the respondents against the appellant. The claim was that the appellant employed the respondents on various dates.
3. 1st respondent was employed as a room steward from July 2017 to November 2018;
4. The 2nd respondent was employed as a room steward from November 2017 to November 2018;



5. The 3rd and 4th respondents were employed as room stewards from December 2017 to November 2018;
6. The 5th, 6th and 7th respondents were employed as room stewards from 1 April to November 2018.
7. Each respondent was earning Ksh. 21, 150 per month. They claimed that working hours were 8 per day with 21 leave days each year. Parties agreed that before termination of employment, a 30-day notice would be issued or payment for one month in lieu thereof. In November 2018, the appellant terminated employment unfairly, unlawfully, and without paying terminal dues. The respondents claimed that they had no notice or certificate of service. Termination of employment was not justified, and each claimed the following;
 - a. Notice pay;
 - b. Extra hours worked;
 - c. Leave pay;
 - d. Compensation for unfair termination of employment;
 - e. Service charge.
8. In response, the appellant denied the claims and said that the 1st respondent was employed as a casual employee as and when the need arose on 2 August 2017. The 2nd respondent was engaged as a casual employee when work was available from 13 December 2017. The 3rd and 4th respondents were casual employees from December 2017, while the 5th, 6th and 7th respondents were casual employees from March 2018. The 8 respondent was a casual employee from May 2018. The claims made are without merit since the appellant only engaged the respondent on a need basis and paid daily wages, and the claims made should be dismissed with costs.
9. The appellant filed the causal payment records.
10. The trial court heard the parties and, in the judgment delivered on 1 August 2024, held that employment was terminated unfairly and without due process. The court awarded each respondent as pleaded, the only difference being the tabulation of compensation as follows;
 1. 1st respondent
 - a. 5 months' compensation;
 - b. ...
 2. 2nd respondent
 - a. 4 months' compensation;
 - b. ...
 3. 3rd, 4th, 5th, ad 6th respondents;
 - a. 3 months' Compensation
 - b. ...
11. The 8th respondent had served for under a year and hence no award.
12. The respondents were also awarded costs and interests.



13. Aggrieved by the judgment, the appellant filed the appeal on 4 grounds;
 1. The learned magistrate erred in law and fact in holding that the respondents were not casual employees against the weight of the evidence adduced.
 2. The learned magistrate erred in law and fact in finding that the respondent's employment had converted from casual employment to term contracts of service, whereas the respondent did not adduce any evidence in support of the same.
 3. The learned magistrate erred in law and fact in disregarding the evidence adduced by the appellant or not giving it due weight, thereby arriving at a finding that the respondents were permanent employees, which decision is untenable and manifestly unjust against the appellant.
 4. Spent.
14. Both parties attended and agreed to address the appeal through written submissions.
15. The appellant submitted that a casual employee is defined under section 2 of the *Employment Act* as an employee paid a daily wage at the end of the day. In the case of *Rapid Kate Service Limited v John Mutisya & others* [2018] eKLR, the court held that section 37 of the *Employment Act* reveals that before the court can convert a contract of services, a claimant must establish that he was engaged on a casual basis and that he worked for more than a month. In the case of *Peter Maundu Malonza v Frogoken Limited* [2020] eKLR, the court held that casual employment never converted to regular employment. Hence, compensation was not available to the claimant.
16. The respondents were verbally employed and received a daily wage that was paid weekly, as evidenced in their witness statements. The learned magistrate failed to consider the periodic payments and, in error, concluded that the respondents were in full-time employment. In the case of *Josephat Njuguna v High Rise Self Group* [2014] eKLR, the court held that section 37 of the *Employment Act* does not obligate the employer to absorb casual employees into their workforce within 24 hours.
17. No exceptional circumstances apply in this case to justify the trial court's award, which should be set aside with costs.
18. The respondents submitted that the trial court heard the parties and held that the respondents were not casual employees. Employment was between November 2017 to November 2018. This was admitted in evidence, and the witness statements filed were not challenged. The appellant called the human resources manager, Shamim Mwangangi, who confirmed employment from 2017 to November 2018. The casual payment records and casual attendance records corroborate the respondents' evidence.
19. Upon service for over a day, a month and a year, the respondents became protected under Section 37 of the *Employment Act*. Service in the aggregate of 3 months justifies consideration for full-time employment with benefits under the Act. Respondents are entitled to notice pay, rest days, public holidays, and service charges when calculating terminal dues. For lack of due process in termination of employment, compensation is justified as held in *Nanyuk Water and Sewerage Company Limited v Benson Mwiti & Others Civil Appeal No.20 of 2017*.

Determination

20. This is a first appeal. The trial court's findings do not bind the court, which must reassess and review the record and draw conclusions. However, it must be appreciated that the learned magistrate had to see and hear the witnesses testify in court.



21. The basis of the claim is that the appellant employed the respondents for a period longer than a day and, hence, they were not casual employees. The appellant asserts that there was casual engagement through verbal contracts and a daily wage paid weekly or periodically, and therefore, not full-time employment. The respondents were employed as and when work was available.
22. The appellant filed various work records, including casual employees' payment rolls and attendance forms.
23. There is a schedule of work attendance from 9 to 16 January, where the respondents worked for 7 days, The schedule of 12 to 17 February for 7 days, Schedule for 31 January to 2 February for work for 7 days; Similar schedules for 4 to 10 February and 8 to 14 April. The years are not stated.
24. The payment schedules also follow the same pattern. Work for a week and receive payments weekly.
25. In evidence before the trial court, Katana Said testified that he worked for the appellant from May 2017 and was terminated on November 9, 2018. He had no written contract. He worked seven days a week, and the appellant kept the work records.
26. The appellant, called Shamim, Assistant Human Resource Manager, testified that the respondent was paid weekly.
27. Section 2 of the [Employment Act](#) defines a casual employee,

casual employee” means a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time;

Key elements are that the employee is paid at the end of each day and that he is not engaged for a longer period than 24 hours at a time.
28. In *Chemelil Sugar Company v Ebrahim Ochieng Otuon & 2 others* [2015] KECA 202 (KLR), the court held that where an employee works beyond 24 hours on the same job that is not likely to end and is paid accrued wages beyond a day, such an employee is protected under Section 37 of the [Employment Act](#).
29. Section 37 of the [Employment Act](#) provides that:
 - (1) Notwithstanding any provisions of this Act, where a casual employee—
 - (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
 - (b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more
30. These provisions protect and insulate employees who attend to their duties for the same employer continuously and beyond one month. An employee who continues to perform work that is not reasonably expected to be completed within a period or number of working days beyond 3 months, as held in *Oluoch v Sibed Transport Co Limited* [2025] KECA 98 (KLR).



31. In the case of *Marwa & 32 others v County Government of Migori* [2024] KECA 1583 (KLR), the court held that employees were not on casual employment terms, as they were not being paid daily, nor was their salary calculated daily. The employment fell under Section 35(1)(c) of the *Employment Act*, under which they were entitled to service of 28 days' notice before termination of their services. Section 35(1)(c) was already applicable to the employees on the issue of conversion of their terms under Section 37(1) of the *Employment Act*, to employment protected under the Act.
32. In this case, the learned magistrate addressed the facts and the applicable law and arrived at a correct finding. The conversion of employment from casual to employment protected under the *Employment Act* under Section 37 cannot be faulted.
33. The learned magistrate allocated different reasons for awarding compensation, primarily due to time served.
34. Without notice before the termination of employment, the finding that the respondents were entitled to the rights under Section 37 of the *Employment Act*, such is due as awarded.
35. There were no particulars on the award for the claim for working extra hours for the time served. There is no evidence that, apart from the 8 hours of service, the respondents were required to work the extra hours, which are not specified. These claims are not justified.

Leave pay is due based on the basic wage as awarded.

36. Service charge is a special award ordinarily due under a written contract, private treaty or CBA. The respondent did not testify to the special terms in this regard. The service appellants were not on casual employment terms, as they were not being paid daily, nor was their salary calculated daily. The appellants were employed on three-month contracts; their contracts fell under Section 35(1)(c) of the *Employment Act*, under which they were entitled to service of twenty-eight days' notice before termination of their services. Section 35(1)(c) was already applicable to the appellants, on the issue of conversion of their terms under Section 37(1) of the *Employment Act*, to permanent and pensionable did not arise, and their claim in this regard was frivolous. A service charge is not due.
37. Accordingly, the appeal is with merit to the extent that the awards in Mombasa CMELRC No. 422 of 2019 for extra hours and service charge are set aside. The awards;
 - a. Notice pay;
 - b. Leave pay;
 - c. Compensation;
 - d. Costs

Shall remain as awarded by the trial court.

Orders accordingly.

DELIVERED IN OPEN COURT AT MALINDI THIS 3 DAY OF APRIL 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davies Wekesa

