



**Hakika Transport Services Limited v Juma (Appeal E268 of 2024)
[2025] KEELRC 1954 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1954 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E268 OF 2024
M MBARÚ, J
JUNE 30, 2025**

**BETWEEN
HAKIKA TRANSPORT SERVICES LIMITED APPELLANT
AND
JUMA MOHAMED JUMA RESPONDENT**

*(Being an appeal from the judgment of Hon. Lewis K. Gatheru delivered
on 25 November 2024 in Mombasa CMELRC No.E035 of 2024)*

JUDGMENT

1. The appeal concerns the judgment issued on 25 November 2024 in Mombasa CMELRC No. E035 of 2024. The appellant requests that the judgment be overturned because the trial court failed to consider the response to the claim and to address the issue of unfairness. By shifting the burden of proof onto the appellant, the court erred in law and fact, as this duty lies with the party who alleges. The court provided no reasons for the awards and failed to deduct the statutory dues.
2. The respondent claimed that he was employed by the appellant as a tyre man or mechanic for heavy commercial vehicles in 2015. He worked until 16 January 2024, when he was dismissed without due process or payment of his terminal dues. The claim was that the respondent was required to work intermittently between night and day shifts and to remain on call in case the appellant's vehicles had tyre damage while on transit within Mombasa County. On 1 January 2023, the respondent reported for the night shift, but at 3am, he developed severe stomach pain. There was no supervisor at night, and he informed his colleague that he would go home and then to hospital due to the pain. After leaving his workplace, it was alleged that a colleague stole a tyre, and the appellant accused him of facilitating the crime. On 4 January 2024, the respondent was issued with a notice accusing him of neglect and of facilitating theft by his colleague. He was required to show cause why disciplinary action should not be taken. Despite demonstrating that he was ill and had attended hospital, the respondent was dismissed



for allegedly facilitating theft. He claimed there was no valid reason to justify the termination of his employment or the failure to follow due process. He claimed the following dues,

- a. Notice pay Ksh.30,780,
 - b. Unpaid leave for 3 years Ksh.64,638,
 - c. 12 months compensation Ksh.369,360,
 - d. Service/gratuity for 10 years Ksh.307,800,
 - e. Unpaid overtime of 4 hours for 5 days per week Ksh.123,120,
 - f. Unpaid house allowance for 3 years Ksh.166,212,
 - g. Damages for discrimination on health grounds,
 - h. Certificate of service,
 - i. Costs of the suit.
3. In response, the appellant made a mere denial save to admit that the respondent was employed in 2017. A contract of employment dated 5 May 2017 was attached.
4. In the judgment, the learned magistrate held that there was unfair termination of employment and made the following awards,
- a. Notice pay Ksh.30,780,
 - b. Leave pay Ksh.64,638,
 - c. Compensation Ksh 215,460,
 - d. House allowance Ksh.166,212,
 - e. Costs of the suit.
5. In the appeal, the appellant submitted that the trial court erred in law and fact in finding that there was unfair termination of employment and in making the awards. The respondent, as the claimant, failed to discharge his burden of proof that the employment was unfairly terminated, which would have allowed the appellant to justify the grounds and reasons for such a decision. Firstly, the onus is on the claimant to prove their case. This burden was not discharged.
6. The appellant had valid and genuine reasons leading to the termination of employment. This was under section 43(2) of the *Employment Act* as held in *Reuben Ikatwa & 17 Others v Commanding Officer British Training Unit Kenya & Another* [2017] eKLR. The respondent left his place of work on the night of 31 December 2023 and then reported back on 3 January 2024. The night he left work, a theft occurred within his area of work. His colleague was spotted carting away a tyre from the appellant's premises. The respondent, as the Tyreman, was responsible for the tyres for all vehicles, and the colleague who stole the tyre never showed up at work the following day.
7. The events leading to the tyre theft occurred in the respondents' absence. They claimed he was ill and permitted his colleague to steal. The respondent left his workstation without his supervisor's approval. In response to the show cause letter dated 11 January 2024, the respondents admitted they had made a mistake by leaving their workplace without permission.
8. Upon this admission, the appellant acted reasonably and under the genuine belief that the respondent was involved in theft with his colleague.



9. The appellant argued that the trial court failed to consider the evidence and the circumstances surrounding the termination of employment when assessing the claim. The court calculated the salary paid as Ksh. 30,789, despite there being a contract where the parties agreed to a wage of Ksh. 18,000 per month. The award is unjustified and should be set aside or revised to Ksh. 000.
10. The appellant submitted that the compensation awarded at 12 months is excessive and unjustified. No reasons were provided for the award, as outlined in the case of Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR.

There are no written submissions by the respondent.

Determination

11. This is a first appeal. The court is required to review, reassess, and analyse the record, and then make a conclusion. However, regard must be given to the fact that the trial court had the opportunity to hear the witnesses in court.
12. As noted above, the appellant's response to the claim consisted solely of denials. No substantive points were raised. Similarly, the appeal is general, merely arguing that the trial court shifted the burden of proof to the appellant rather than the respondent, and that the awards were unjustified.
13. Under section 47(5) of the *Employment Act* (the Act), the employee claiming unfair termination of his employment must establish a prima facie case. Once this duty is fulfilled, the employer is required to justify the reasons for the termination.
14. In the case of Peter Otabong Ekisa v County Government of Busia [2017] eKLR, the court held that when the employee has established a prima facie case under Section 47(5) of the *Employment Act*, the employer bears the responsibility of proving the reasons behind the employment termination. In this case, the respondent's claim that his employment was unfairly terminated was based on his leaving his workstation on 31 December 2023 due to illness and his colleague stealing a tyre. In response to the claim, the appellant merely denied it. He offered no evidence except to state that the respondent was under a written contract.
15. The appellant issued the respondent a show cause notice dated 4 January 2024. He was alleged to have been negligent in his duties and allowed the theft of a tyre, and the same night you left your colleague, one Mr. Bakari Kombo ... he was spotted by the security guards pushing a tyre by his bare hands out of the premises without proper documentation. This was noted as neglect of duty and the respondent was required to respond and attend a disciplinary hearing on 11 January 2024.
16. Through the notice dated 16 January 2024, the appellant wrote to the respondent that following the disciplinary meeting held on 11 January 2024, he allegedly fell sick and left his place of work, whereupon his colleague stole a tyre.
17. The respondent admitted that he left his duty station without permission from his supervisor. His case was that he fell sick and attended the hospital.
18. The issue concerned the theft of the tyre. The appellant knew that Bakari Kombo had stolen this tyre. Security guards reported that he was seen pushing it away without proper documentation.
19. Theft at work is a criminal offence and may lead to summary dismissal as outlined in section 44 of the Act. Absence from work without permission is also subject to summary dismissal. However, if an employee is absent due to illness, section 30 of the Act permits them to notify a third party, attend to their illness, and, upon return, provide a medical certificate confirming the illness.



20. The respondent filed his medical notes dated 1 January 2024. This report is not challenged in any material way. The Medical Certificate is equally not challenged.
Absence from duty was for a justified cause.
The appellant knew who had stolen the tyre.
21. Under section 43 of the Act, there were no valid, reasonable, or genuine reasons for terminating employment as held in *Godfrey Anjere v Unique Suppliers Limited* [2015] eKLR.
The learned magistrate's findings in this regard cannot be faulted.
22. On the awards, the appellant contested the application for sewage at Ksh. 30,789 instead of Ksh.18,000 under the contract of employment. This issue was contested during the hearing.
23. The respondent testified that he was earning Ksh.30, 789 and was issued pay slips, which he filed. He was employed in 2015, and the contract filed by the appellant was not issued to him.
24. Again, merely making denials in a response denies the other party a fair chance to challenge it. Filing documents without giving them a foundation in the response removes the probative value.
25. The appellant has not challenged the pay slips filed by the respondent. Indeed, although there was a contract dated 5 May 2017, which was denied, the pay slips filed are correct from that date until 16 January 2024.
26. The trial court used the correct figures captured in the payment statements to tabulate the dues owing to the respondents upon finding that there had been an unfair termination of employment.

Notice pay is due to Ksh. 30,789.

27. On the award of compensation, indeed, as submitted by the appellant, the award of 12 months should only arise in rare cases, and reasons for the highest award must be stated. In this case, the learned magistrate allocated 7 months and not 12 as submitted in the appeal.
28. On the ward of leave pay for 3 years, the right to take annual leave is secured under section 28 of the Act. The employee should not accumulate leave days beyond 18 months unless the employer approves this under section 28(4) of the Act. In this case, the appellant did not file any work records to demonstrate the leave days taken by the respondent. In this regard, he is entitled to 33 leave days only, all at Ksh. 33,867.90.
29. The respondent was employed as a Tyreman on house allowance. The wage paid at Ksh. 30,789 is not regulated under the Wage Orders. Applying the wage based on the general minimum wage due in Mombasa places him above. To claim a house allowance over the generous wage paid is unjust enrichment.
30. A certificate of service should be issued at the end of employment in terms of section 51 of the Act.
31. The claims for overtime and service/gratuity were adequately addressed and declined.
32. On costs, the appeal partially succeeds, and each party should meet its costs.
33. Accordingly, judgment in Mombasa CMELRC No. E035 of 2024 is reviewed in the following terms:
 - a. Notice pay Ksh.30,780,
 - b. Leave pay Ksh.33,867.90,



- c. Compensation Ksh 215,460,
- d. Certificate of service,
- e. Costs of the suit for the trial court,
- f. Each party bears its costs for the appeal.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30 JUNE 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

