



**Phoenix Decorz Limited formerly known as Huzeifa Glass and Hardware v Mwambao
(Appeal E003 of 2025) [2025] KEELRC 1945 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1945 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E003 OF 2025**

**M MBARŪ, J
JUNE 30, 2025**

BETWEEN

**PHOENIX DECORZ LIMITED FORMERLY KNOWN AS HUZEIFA GLASS
AND HARDWARE APPELLANT**

AND

MAURICE C MWAMBAO RESPONDENT

*(Being an appeal from the judgment of Hon. R. N. Akee delivered
on 9 December 2024 in Mombasa CMELRC No. 034 of 2020)*

JUDGMENT

1. The appeal arises from the judgment delivered on 9 December 2024 in Mombasa CMELRC No. 0034 of 2020.
2. The background to the appeal is a claim filed by the respondent against the appellant and Huzeifa Glass And Hardware on the basis that the appellant employed him and Huzeifa Glass And Hardware in September 2009 as a glass specialist. Then, Huzeifa Glass And Hardware employed him as a salesman in July 2019. The appellant noticed a change of the employer from Huzeifa Glass And Hardware to the appellant, yet both continued to share the same address. He worked until 2 May 2020, when his employment was terminated without notice or payment of terminal dues. He claimed the following dues,
 - a. Notice pay Ksh.25,000,
 - b. Accrued leave for 11 years ksh.250,000,
 - c. 12 months' compensation Ksh.300,000,
 - d. Gratuity for 11 years Ksh.137,500,



- e. House allowance Ksh.495,000,
 - f. Unremitted NSSF dues for 5 months Ksh.1,000,
 - g. Certificate of service,
 - h. Costs of the suit.
3. In response, the appellant denied the claim, asserting that they were neither related to nor associated with Huzeifa Glass And Hardware, as alleged. Where there was any employment with a third party, the appellant maintained that they were unrelated and had not changed their name to any other entity, as alleged. Without prejudice, the appellant's position was that the respondent was not diligent in their duties and failed to comply with lawful orders and directions. The appellant paid to NSSF, and the termination of employment was for valid reasons. The claims should be dismissed.
 4. The trial court heard the parties and determined that there was unfair dismissal from employment, with the appellant and Huzeifa Glass And Hardware being jointly and severally liable. Compensation was due for 12 months at £18,750 per month, plus costs and interest from the date of filing the suit.
 5. Aggrieved, the appellant filed the appeal on the grounds that the learned magistrate erred in entering judgment jointly and severally against the appellant and Huzeifa Glass And Hardware. The trial court exceeded its discretion by awarding 12 months' compensation; therefore, the appellant should be discharged. The appeal was allowed with costs.
 6. The appellant asserted that it had no business relationship with Huzeifa Glass And Hardware, as claimed by the respondent. Absent any employment relationship, the trial court's ruling to award 12 months' compensation for unfair termination of employment was erroneous, and the appellant should be absolved of liability. The payment voucher submitted for payment in lieu of notice was issued by Huzeifa Glass And Hardware, not the appellant.
 7. The respondent stated that Huzeifa Glass And Hardware employed him from July 2014 until May 2020, when his employment was terminated due to a change of name to the appellant. Despite the name change, his employment and all other aspects remained intact. During the hearing, the appellant confirmed that they were both relatives and shared the same postal address.
 8. The employment was terminated unfairly and contrary to section 41 of the *Employment Act*, and the appellant and Huzeifa Glass And Hardware are jointly and severally liable.
 9. The Respondent submitted that Huzeifa Glass Hardware Limited engaged him from July 2014 until 2 May 2020, when its name changed to Phoenix Decorz Limited. Despite the name change, the entity remained the same, retaining the same management and physical location, a fact corroborated by the Appellant's witness. Thus, the trial Court was justified in entering judgment jointly and severally.
 10. The Respondent asserts that section 49(1)(c) of the *Employment Act* allows payment of up to twelve months' wages if summary dismissal or termination is unjustified. Furthermore, section 50 of the *Employment Act* guides courts to consider section 49 when determining complaints of wrongful dismissal or unfair termination. The Appellant violated the provisions of section 41(1) of the *Employment Act* in terminating his services. Having worked for the Appellant diligently for six years without any prior disciplinary issues and considering that he was neither given a reason for termination nor subjected to a disciplinary hearing, the termination was unfair. He reiterated that the Appellant's failure to follow this due process led the trial court to rightly conclude that the termination was unjustified, thus warranting maximum compensation.



Determination

11. This is a first appeal. The court must review the evidence and records and draw its conclusions, considering that the trial court had the opportunity to hear the witnesses.
12. In the Amended Memorandum of Claim dated 19 December 2022, the respondent asserts that Huzeifa Glass And Hardware employed him in September 2009 and that the appellant employed him in July 2019 following a name change. However, in his evidence and submissions, he states that he was first employed by the employer in July 2014, who subsequently changed its name to the appellant.
13. The appellant denied the employment relationship and claimed that the respondent was an employee of Huzeifa Glass And Hardware, which issued him notice terminating his employment.
14. In his witness statement for the appellant, Mohammed Mustafa Alibhai testified that the respondent began working for them from July 2019 to April 2020. He provided copies of salary vouchers to support this claim. He further testified that the respondent was paid Ksh. 750 per month, including the house allowance. The appellant, as the employer, remitted NSSF dues for the respondent.
15. Alibhai also testified that the reasons for the termination of employment were the respondent's misconduct and gross misconduct. A warning letter dated 4 January 2020 was presented. Additionally, there is a leave application form in the appellant's name and title.
16. The records produced by the appellant regarding the respondent speak to an employment relationship between the parties. The role of Huzeifa Glass And Hardware seems to have ended in July 2019, when Alibhai avers that the appellant employed the respondent.
17. An employer, as defined under section 2 of the *Employment Act*, controls and regulates the employee in terms of their conditions of employment. In this case, the intricate details provided by the appellant regarding the respondents, including salary payments, allocation of statutory dues to NSSF, and ensuring he took annual leave, directly indicate an employer-employee relationship.
18. In relation to the termination of employment and the award of 12 months, the learned magistrate analysed the facts and determined that there was an unfair termination of employment lacking due process. The appellant contests the award of 12 months' compensation. Apart from allocating the compensation, no reasons are provided for it.
19. Indeed, the jurisprudence of the court and the Court of Appeal indicates that although the compensation award is discretionary, the court should provide reasons and justify the award under section 49 of the *Employment Act*. In the case of *Kenya Broadcasting Corporation v Geoffrey Wakio* [2019] KECA 65 (KLR), the court held that the allocation of the maximum award of 12 months must be given context and rationale. This is because of section 49 of the *Employment Act*. This position is reiterated in *Watuku v Industrial & Commercial Development Corporation* [2025] KECA 768 (KLR), where it is stated that the circumstances necessitating the maximum award of compensation must be specified.
20. Indeed, under section 45(5) of the *Employment Act*, when assessing the compensation due upon finding that there has been an unfair termination of employment, the court is required to examine the employee's work records. In this case, the respondent did not deny that a warning letter dated 4 January 2020 was issued to him. The warning pertained to the respondent going off duty without approval from the appellant.
21. The work record is not considered in the assessment of compensation, as held in *Lele v Mwaura t/a Gongoni Market* [2025] KEELRC 1076 (KLR). In the case of *Kensalt Limited v Mwaruwa* (Appeal



- E039 of 2023) [2024] KEELRC, the records of the employee's absence from work for several days without the employer's approval were not contested.
22. Similarly, in this case, the trial court erred by failing to consider the work records submitted as evidence by the appellant. The discretion to award compensation in this respect can be challenged.
 23. The appellant employed the respondent from July 2019 to April 2020, a period of less than one year, with compensation equivalent to one month's gross wage at Ksh. 750 is appropriate.
 24. The trial court did not address the other claims. It is imperative that each claim, regardless of the reasons for termination of employment, be assessed and rationalised in an employment claim.
 25. Regarding the claim for notice pay, the learned magistrate held that the termination of employment, which followed due process, is unlawful and unfair under section 41 of the *Employment Act*. However, only compensation was awarded, not notice pay, which amounts to Ksh. 750.
 26. On the claim for accrued annual leave, the appellant filed evidence of the respondent taking his annual leave. Under section 28(4) of the *Employment Act*, this cannot have been accumulated for more than 11 years, as alleged.
 27. On the claim for gratuity, it is not due unless there is a written contract conferring the benefit, as held in *Wambugu v Technical University of Kenya* [2024] KEELRC 61 (KLR) and the case of *Nzioka v Lemoc Limited* [2025] KEELRC 501 (KLR). In this instance, this was not deemed a benefit.
 28. On the claim for house allowances for 11 years, the appellant replied to the claim and asserted that the respondent was employed as a messenger and not a salesman. This fact was not contested.
 29. A messenger working in Mombasa in 2020 on a wage of Ksh. 18,750 per month is over and above the minimum the Minister allows under the Wage Orders. To claim a house allowance above such payment is seeking unjust enrichment.
 30. The claim for unremitted NSSF dues is not due to the employee but the statutory body.
 31. Section 51 of the *Employment Act* states that a certificate of service is due at the end of Employment. The employee should get clearance from the appellant and be issued his certificate accordingly.
 32. On costs, the appeal addressed above, each party should bear its costs.
 33. Accordingly, the judgment in Mombasa CMELRC No. 0034 of 2020 is hereby reviewed and the following orders issued;
 - a. Employment terminated unfairly;
 - b. The appellant and Huzeifa Glass And Hardware are jointly and severally liable to pay compensation at Ksh.18,750,
 - c. Notice pay at Ksh.18,750,
 - d. Issue a certificate of service,
 - e. Each party bears its costs.

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

M. MBARŪ

JUDGE

In the presence of:



Court Assistant: Japhet

..... and

