



**Todor Services Limited v Deri (Appeal E270 of 2024)  
[2025] KEELRC 1948 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1948 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E270 OF 2024**

**M MBARÚ, J  
JUNE 30, 2025**

**BETWEEN**

**TODOR SERVICES LIMITED ..... APPELLANT**

**AND**

**DIDA KATAMA DERI ..... RESPONDENT**

*(Being an appeal from the judgment of the Hon. M. Nabibya delivered  
on 5 December 2024 in Mombasa EMELRC No. E680 of 2021)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 5 December 2024 in Mombasa CMELRC No. E680 of 2021. The appeal is based on the trial court's erroneous conclusion that there was unfair employment termination and the notice pay award. In contrast, the respondent was on a fixed-term contract, which ended the employment relationship. The salary award for March 2019 was erroneous, as the appellant provided evidence of payment.
2. Other grounds of appeal are that the trial court erred in awarding alleged underpayments from March 2016 to March 2019, despite the lack of evidence. All leave days were utilised by 31 March 2019, and the award constituted a double payment. The justification for the 12-month compensation was absent, given that employment was terminated by the extension of time.
3. The appeal is that the trial court's judgment should be set aside.
4. The respondent filed a claim before the trial court on the basis that he was employed as a cleaner on 1 April 2007, at a wage of Ksh. 6,000 per month. In 2008, the appellant issued the respondent a written contract and promoted him to a loader, with an increased salary of Ksh. 23,652 per month. The claim states that he worked for 12 years and, on 4 June 2019, upon reporting to work, he was denied access because there was no work available. He contacted the manager, who informed him that he had sued



the company alongside another employee; therefore, he was no longer considered an employee and was instructed to hand over his duties. The respondent had not filed a suit against the appellant, as alleged.

5. The respondent claimed that during his employment, he was underpaid and claimed as follows;
  1. In 2007, he was paid Ksh.6,000 as a cleaner instead of Ksh.9,952.56,
  2. In 2008, he was paid Ksh.6,000 instead of Ksh.9,952.56,
  3. In 2009, he was paid Ksh.6,000 instead of Ksh.9,952.56,
  4. In 2010, he was paid Ksh.6,000 instead of Ksh.9,952.56,
  5. In 2011, he was paid Ksh.6,000 instead of Ksh.9,952.56,
  6. In 2012, he was paid Ksh.6,000 instead of Ksh.9,952.56,
  7. In 2013, he was paid Ksh.6,000 instead of Ksh.11,248,
  8. In 2014, he was paid Ksh.6,000 instead of Ksh.11,248,
  9. In 2015, he was paid Ksh.6,000 instead of Ksh.12,597.90,
  10. In 2016, he was paid Ksh.6,000 instead of Ksh.12,597.90,
  11. In 2017, there was an underpayment of Ksh.5,865.50 per month
  12. In 2018 there was an underpayment of KSH.2,350.80 per month,
  13. In 2019, there was an underpayment of Ksh.28, 209.60.
6. The respondent also claimed the wage due in March 2019, notice pay, leave pay and compensation.
7. The appellant argued that the respondent was a fuel loader, earning a consolidated wage of Ksh 14,857. At the time of separation, he was earning Ksh 23,562 per month. Employment was terminated upon the expiry of the term contract between 1 May 2017 and 30 April 2018. The contract was extended to August 2018 and renewed for another three months. A one-month notice was issued before the termination of employment. Term contracts governed employment. The claims alleging underpayments are time-barred under section 90 of the *Employment Act*. The claimant was paid the minimum wage, and the claims are unjustified.
8. The learned magistrate heard the parties and held that there was unfair termination of employment and awarded the following;
  - a. 12 months' compensation Ksh.283,824,
  - b. Notice pay Ksh.23,653,
  - c. Unpaid March 2019 salary Ksh.23,653,
  - d. Underpayments for 3 years Ksh.102,682,
  - e. Leave for 3 years Ksh.11,826,
  - f. Certificate of service,
  - g. Costs and interests.
9. The appellant submitted that the trial magistrate erred in finding that the Respondent's employment was terminated by them and argued that while the burden of proving justified termination rests with



the employer, in this case, the Respondent's employment ended due to the effluxion of time, as he was on a fixed-term contract as held in *The Registered Trustees of The Presbyterian Church of East Africa & Another v Ruth Gathoni Ngotho Kariuki* (2017) eKLR. A fixed-term contract carries no rights, obligations, or expectations beyond its expiry date. Therefore, claims for wrongful termination cannot be maintained when a contract ends by effluxion of time.

10. The Appellant submitted that a one-month notice was issued on 28 February 2019 for the contract ending 31 March 2019. In *Stephen M. Kitheka v Kevita International Limited* (2018) eKLR, the court held that a claimant on a fixed-term contract with an ascertained expiry date is not entitled to notice of termination.
11. On the salary award for March 2019, the Appellant submitted that this was paid on 30 March 2019, and provided a signed salary voucher as proof.
12. On the award for underpayment, the Appellant stated that the Respondent signed a discharge voucher on 31 August 2019, acknowledging receipt of all dues and affirming no further claims. In any event, the claim for underpayment is time-barred under section 90 of the *Employment Act*. A discharge voucher is a binding contract as held in *Coastal Bottlers Limited v Kimathi Mithika* (2018) eKLR.
13. The claim for unpaid leave is time-barred by Section 90 of the *Employment Act*. The Respondent submitted evidence, including payslips, leave application forms, and leave schedules, to show that he utilized all his leave days.
14. On compensation for unfair termination, the Appellant reiterated that fixed-term contracts carry no rights or expectations beyond their expiry date. Claims for wrongful termination cannot be maintained when a contract ends by effluxion of time, as held in *The Registered Trustees of The Presbyterian Church of East Africa & Another v Ruth Gathoni Ngotho Kariuki* (2017) eKLR. The trial magistrate did not exercise discretion judiciously and failed to provide reasons for this award. The trial magistrate erred by failing to consider their evidence and submissions, specifically the documentary evidence and case law concerning fixed-term contracts. In *Keen Kleeners Limited -Vs- Kenya Plantation and Agricultural Workers Union (Civil Appeal 101 of 2019)* (2021) KECA 352(KLR), where the Court of Appeal held that;
15. Once a fixed term contract ends, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period.
16. The Respondent submitted that he was first employed on 1 April 2007 and later became a fuel loader in 2017. His last signed contract was from 1 May 2017 to 30 April 2018. The Respondent argued that after this previous contract lapsed, he continued to work without signing any new contract until his termination in March 2019; thus, his employment converted to permanent employment by Section 37 of the *Employment Act*. The Respondent disputed receiving letters of extension and emphasised that no contracts were signed after the 2018 contract expired. He cited Section 9(2) of the *Employment Act*, which mandates employers to provide written contracts stating employment particulars and requiring employee consent, arguing that the Appellant failed to comply with this mandatory provision.
17. The Respondent submitted that once his services were converted to permanent terms after the lapse of the April 2018 contract, the Appellant should have adhered to Sections 41 and 43 of the *Employment Act* before terminating his services. He relied on *Anthony Mkala Chitavi v Malindi Waters & Sewage Company Limited* [2013] eKLR. The trial court's award of 12 months' compensation was a proper exercise of discretion given his nearly 12 years of service.
18. The Respondent submitted that since his services were converted to permanent employee status under Section 37, one month's notice or salary in lieu thereof was legally required, making the award proper.



19. The Respondent disputed the leave forms provided by the Appellant, particularly the signatures. He also noted a lack of a form for 2016-2017 and unutilized leave days for 2017-2018. He stated that he worked from 2018 to 2019 and was not paid for leave, thus validating the trial court's analysis and award.
20. On the underpayments, the Respondent asserted that Section 48 of the *Labour Institutions Act 2007* mandates employers to pay at least the statutory minimum wage. However, the court's findings were correct since the Appellant did not challenge this claim.
21. The Respondent denied receiving his March 2019 salary, disputing the payment voucher provided by the Appellant and stating that the payslips he filed were the proper ones. He contended that it was the employer's duty to prove that the money was received.

## Determination

22. Under section 10(3) of the *Employment Act*, an employer can convert an oral service contract into a written one. This provision allows the employee to have clearly defined terms and conditions of employment. The appellant submitted the letter of appointment dated 11 April 2008 for the cleaner position, with a monthly salary of Ksh. 6,000.
23. The appellant promoted the respondent to a file loader at a salary of Ksh. 652 per month. The agreements were term contracts with renewals, the last of which ended in March 2019. A memo dated 31 March 2019 notified the respondent of the non-renewal of the contract. The respondent contended that he was not served with the memo terminating his employment effective 31 March 2019.
24. A term contract is lawful and valid under section 10(3) of the *Employment Act*. The employer has the prerogative to issue a written contract specifying the start and end dates. Upon termination, there is no obligation to provide notice or reasons for non-renewal. The term contract concludes according to its stipulations.
25. The Court of Appeal in *Transparency International - Kenya v Omondi* [2023] KECA 174 (KLR) held that employers are not under any obligation to provide employees with reasons for the non-renewal of fixed-term contracts, unless such an obligation is created in the expiring contract. In *Keen Kleeners Limited v Kenya Plantation and Agricultural Workers' Union* [2021] KECA 352 (KLR), the court ruled that the several renewals or extensions over time, without any discussions regarding the reasons for renewal, alongside the fact that the last renewal occurred following a plea from the worker and allowed the worker to continue working for another seven days after the contract's expiry, created a reasonable expectation that the contract would be renewed.
26. In this case, the contract ended in March 2019, and there was notice of non-renewal. Although this is contested, the fact of an expiring term contract is not challenged.
27. In this regard, the trial court erred by failing to consider these facts correctly. A term contract that concludes as stipulated is lawful. No notice or reasons are required. The award of notice pay and compensation lacks merit.
28. Regarding claims for underpayments dating back to 2007, where there is an underpayment, this accrues monthly, weekly, or daily. Such a claim constitutes a continuing injury and should be addressed within the provisions of Section 89 of the *Employment Act*. In the case of *Juma & 5 others v Mada Holdings t/a Baobab Sea Lodge Kilifi Limited* [2025] KECA 817 (KLR), a continuing injury must be addressed within 12 months.



29. With the contract renewals over time, each established a distinct and separate employment relationship. Any accruing underpayment should have been addressed as a continuing injury.
30. The respondent worked until 31 March 2019. He was employed as a fuel loader at a wage of Ksh. 23,652 per month.
31. Under the Wage Orders, the position of a fuel loader is not defined. The respondent asserted that he was a cleaner with a minimum wage of Ksh. 572.90 plus a house allowance, resulting in a gross pay of Ksh. 608.85. The wage is paid at Ksh. 652 was above the general minimum wage.
32. There was no underpayment.
33. Regarding the claim for wages due in March 2019, the respondent admitted in evidence that this was paid. A voucher confirms the payment.
34. The learned magistrate evaluated the claim for accrued leave days and determined that 15 leave days were outstanding at Ksh. 11,826. This amount is due.
35. Accordingly, the appeal is with merit. Save for the award for leave days at Ksh 11,826 the judgment in Mombasa CMELRC No. E680 of 2021 is thus reviewed. There are no orders on costs.

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

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

