



**Moyo v Texas Alarms [K] Limited (Appeal E189 of 2024)  
[2025] KEELRC 1780 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1780 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E189 OF 2024**

**K OCHARO, J  
JUNE 12, 2025**

**BETWEEN**

**MBANDA ABDALLAH MOYO ..... APPELLANT**

**AND**

**TEXAS ALARMS [K] LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Through the above-mentioned suit, the Respondent pursued legal action against the Appellant, asserting that, at all relevant times, he was their employee, whose employment they terminated unjustly. Consequently, he sought both declaratory and compensatory relief against the Appellant.
2. The Appellant resisted the claim, contending that the Respondent was not terminated but had deserted duty. As such, he had no cause of action against them and was not entitled to the relief he had sought in his pleadings.
3. After hearing the parties regarding their respective cases, the learned trial Magistrate concluded in his judgment, dated as aforesaid, that the Appellant had unfairly terminated the Respondent's employment and granted various reliefs to the Respondent. The Judgment is the subject matter of this appeal.

**The Respondent's case before the Lower Court.**

4. The Claimant stated that he first joined the Respondent's workforce as an alarm response crew member on 29<sup>th</sup> September 2017 at a monthly basic salary of KShs. 14,000.
5. On 17<sup>th</sup> December, 2021, he fell ill and furnished the Appellant's agents with medical absence forms. On 27<sup>th</sup> December, 2021, he again fell ill and was granted permission by the Appellant's commander, Mr. Ali Tsuma, to seek medical attention.



6. On 9 January 2022, when he reported for duty, the commander refused to assign him any tasks. He was instructed to provide a written statement to one of the Appellant's employees, Miss Janet.
7. After providing the statement, he reported back to the office on January 10, 2022, when the Appellant's Human Resources Manager, Mr. Aduda, informed him that her services were no longer required. The Manager didn't give him any details as to why his employment was being terminated. He obliged the Manager's instructions and went home.
8. He contended that he was not allowed to proceed on leave throughout his tenure. He was not compensated for the leave days earned but not utilised.
9. He asserted that the termination of his employment was unjust, unfair, and illegal.
10. The Claimant asserted that, in light of the circumstances of his case, he is entitled to the following reliefs:
  - I. House allowance..... KShs. 212,100.00
  - II. Overtime pay [121.30 x 1hr x 30 days x 101 days], KShs. 367,539. 00.
  - III. Unpaid leave days..... KShs. 78, 456.00
  - IV. One month's salary in lieu of notice, .....KShs. 14,000.
  - V. Compensation for unlawful termination [14,000 x12] ..... KShs. 168,000.
  - VI. Unpaid NHIF [500X 101 months] .....KShs. 707 000.00.
  - VII. Service pay, [ 14000x 101 months x1/2] .....KShs. 707,000.
  - VIII. Certificate of service.

### **The Appellant's Case before the Lower Court**

11. The Respondent presented a witness, Benard O. Aduda, to testify on its behalf. The witness stated that the Respondent employed the Appellant on 16 January 2016, and he worked for them until 10 January 2022. His gross salary was KShs. 14,900, which included a house allowance.
12. The Respondent formed a habit of being absent from work without authority. On 27<sup>th</sup> December 2021, he absented himself from work without permission, only to report back on 9<sup>th</sup> January 2022. Per the Appellant's practice, their Commander, Mr. Ali, sent him to the Appellant's office for clearance.
13. On 10 January 2022, the Respondent reported to work with medical documents from Ganjoni Hospital, despite not having indicated that he was unwell at any time. He was given the benefit of the doubt and deployed back. However, he did not report to work thereafter. The Commander attempted to call him several times, but to no avail. He [the Commander] wrote a show cause letter dated 15 January 2022 and copied it to the Labour Officer. He called the Respondent several times, but he failed to appear for the meeting scheduled for 20 January 2022.
14. The Appellant did not terminate his employment, so he was not entitled to the reliefs.
15. At all material times, the Appellant was remitting NSSF and NHIF contributions dutifully as and when required.
16. He asserted that the Appellant didn't merit the remedy sought of overtime and house allowance, as the same was paid at all material times, as the pay slips testify.



17. The Respondent's claim lacked merit.

### **The Judgment by the Lower Court.**

18. After hearing the parties and considering their respective cases, the Learned trial Magistrate held that the Respondent's employment had been unfairly terminated and condemned the Appellant to pay the Respondent one month's salary in lieu of notice, compensation for unpaid house allowance, and six months' gross salary as compensation for unfair termination of employment. He directed the Appellant to bear the costs of the suit.

### **The Appeal to this Court.**

19. Aggrieved by the Judgment, the Appellant filed this appeal, anchoring the same on the following grounds;

- a. That with the greatest respect, the learned Magistrate erred in Law and fact and / or applied wrong principles and parameters by finding and holding that the Respondent/Claimant was unfairly and unlawfully terminated from employment whereas the Respondent / Claimant absconded /deserted employment on the 10<sup>th</sup>, January 2022 ●
- b. That the Learned Magistrate failed to consider the Appellant's evidence and / or misapprehended the Law in arriving at a decision that the Respondent/ Claimant was unlawfully and unfairly terminated from employment whereas the Respondent/Claimant deserted /absconded employment.
- c. That with the greatest respect, the Learned Magistrate erred in Law and fact in making a decision that the Respondent / Claimant was unlawfully and unfairly terminated from Employment whereas the Appellant had already proved that the Respondent/Claimant had absconded duty on the 10<sup>th</sup>, January 2022 and that the Appellant also wrote a show cause letter dated the 15<sup>th</sup>, January 2022 and served a copy of the said show cause letter upon the County Labour Office and the same was duly stamped upon receipt.
- d. That with the greatest respect, the Learned Magistrate erred in Law and fact in failing to consider that the Respondent/ Claimant was always on and off duty and had been issued with several warning letters and thus, the Respondent/ Claimant was not performing his duties properly.
- e. That with the greatest respect, the Learned Magistrate erred in Law and fact in awarding the Respondent with Kshs. 14,000/- -one month salary in lieu of Notice, Kshs. 212,000/- Unpaid House Allowance and Kshs. 84,000/- -Maximum Compensation whereas the Respondent/ Claimant had not proved his case as per Section 47 (5) of the Employment Act(Chapter 226 )- Revised Edition 2012.
- f. That with the greatest respect, the Learned Magistrate erred in Law and fact in failing to consider that the Respondent / Claimant had absconded duties for several days before the 10<sup>th</sup>, January 2022 and he reported back to duty on the 10<sup>th</sup>, January 2022, and the Appellant re-deployed him but he did not report back to work after being deployed.
- g. That the Learned trial Magistrate misdirected himself in Law and fact by awarding the Six (6) month's salary in compensation for unfair termination- Kshs. 84,000/-, One (1) month salary in Lieu of Notice-Kshs. 14,000/- since the Respondent/Claimant was not unlawfully terminated and the Respondent is the one who absconded /deserted from employment.



- h. That the Learned Magistrate misdirected himself in Law and fact by awarding House Allowance for 101 months —(15/100 x Kshs. 14,000/- x 101 months )= Kshs. 212,100/- , whereas the Appellant had submitted and proved that the salary was inclusive of House Allowance as indicated in the salary slips which were produced as Exhibits.
- i. That the Learned Magistrate misdirected himself in Law and fact by awarding House Allowance for 101 months —(15/100 x Kshs. 14,000/- x 101 months ) = Kshs. 212,100/ without prove and without considering that House Allowance is a Special Damage Claim which ought to be specifically pleaded and strictly proved. The years awarded were not indicated —from which month and year upto which month and which year etc.
- j. That the Learned Magistrate misdirected himself in Law and fact by contradicting himself by stating in his Judgment while awarding Compensation for unlawful termination for Six (6) months by stating that the Claimant had worked for five years whereas while awarding house allowance, the Honourable Learned Magistrate awarded 101 months —which equals to about Eight (8) years.
- k. That the Learned Magistrate misdirected himself in Law and fact by awarding House Allowance—Kshs. 212, 100/- without prove.
- l. That the learned magistrate misapprehended the evidence and misapplied, misunderstood and / or overlooked the correct legal principals and judicial precedent and the submissions by parties that he made an award that was erroneous and inordinately high.
- m. That the Learned Magistrate wholly and completely disregarded the evidence as led by the Appellant together with the written submissions summarizing the evidence, applicable law and case law, hence arriving at an unjust decision.

### **Analysis and Determination.**

- 20. This Court appreciates its role as the first Appellate Court in this matter, to reconsider and re-analyse the material presented before the trial Court, and to arrive at its own conclusions without necessarily being bound by those of the trial Court. However, in so doing, the Court must warn itself that it neither saw nor heard the parties. Where it diverges from the trial Court’s findings, it must provide clear reasoning for the same. See also- *Musera v Mwechelesi & Another* [2007] KLR.
- 21. Despite the numerous grounds of appeal set out by the Appellant, in my view, their appeal shall succeed or fail on the following broad grounds;
  - I. Did the Learned trial Magistrate err in law and fact when he held that the Respondent’s employment was unfairly terminated?
  - II. Did the Learned trial Magistrate err in law and fact, by awarding the Respondent the reliefs he did?
- 22. The Respondent’s employment ended on 10 January 2022, and there is no dispute. However, there was and is a considerable controversy about how the separation occurred. The Appellant contends that the Respondent deserted duty, while the Respondent asserts that his employment was verbally and unfairly terminated.
- 23. It is now trite law that where the employer asserts that the employee deserted duty, and as such, the employee’s employment came to an end on that account, the employer must go the extra mile to demonstrate that, upon noting that the employee had deserted duty, they made an effort to contact



the employee, inquired why he or she was not reporting to work, and brought to his attention that his continued absence could lead to disciplinary action being taken against him, or that disciplinary action would be undertaken as it was of the view that the absence was unjustified. See also- Richard Maingi v Wells Fargo Limited [2017] eKLR.

24. The Appellant asserted that its Commander, [RW1], tried to contact the Respondent, but they failed. In my view, the assertion, considering the circumstances of the suit, where the Appellant's such efforts were denied, amounted to a bald assertion. The Appellant didn't put forth the mobile number through which the calls were made. No call logs or evidence of any sort were presented, from which it can be discerned that indeed, calls were made, but the Respondent wasn't reached.
25. I note that the alleged show cause letter and the several warning letters were all addressed to a specific postal address belonging to the Respondent. One wonders, then, why not a single letter was sent to the Respondent via the postal address before the purported show cause letter, inquiring why he was not reporting to work and warning him that continued absence could result in disciplinary action being taken against him or require him to report back and present himself for a disciplinary process.
26. The Appellant alleged that it prepared the show cause letter and served a copy on the Labour Officer. However, the evidence about whether the same was served on the Respondent was sketchy. The Appellant was asserting service. It was bound to prove the same. It didn't.
27. In conclusion, I am of the view that the Appellant didn't place sufficient evidence before the Learned trial Magistrate establishing that the Respondent deserted duty. As such, the trial Court didn't err in finding that the Appellant's assertion of desertion was not proved.
28. The impact of the learned trial magistrate's conclusion was that he agreed with the Respondent's version that his employment was terminated at the initiative of the Appellant as the employer.
29. It followed then that he was bound to interrogate whether or not the termination was fair. The Learned trial Magistrate correctly appreciated that such a duty required him to consider and render himself on two statutory aspects, procedural and substantive justification.
30. Section 43 of the *Employment Act* places a duty on the employer to prove the reason for dismissal in disputes concerning the termination of an employee's employment. The Act further imposes a burden of proof under section 45[2] on the employer to demonstrate that the reason was fair and valid. Desertion of duty constitutes a valid ground for summary dismissal under section 44[4] of the *Employment Act*. Having found that the Appellant's version regarding the account on which the separation occurred was unconvincing, I hold, as the learned trial Magistrate did, that the Respondent's employment was verbally and unfairly terminated. The Appellant didn't prove the reason for the termination as required under section 43 of the *Employment Act*, and the reason was valid under section 45[2].
31. Section 41 of the *Employment Act* provides for a mandatory procedure that must be adhered to by an employer contemplating terminating an employee's employment and blurred by the position they took regarding how the separation; the Appellant didn't lay before the trial Court any evidence geared towards establishing the fact that the procedure was followed. The learned trial Magistrate didn't err in finding that the termination was procedurally unfair.
32. According to section 49[1] of the *Employment Act*, the court can award compensatory relief to an employee who proves that their termination was unfair or that their summary dismissal was unjust. It is pertinent to understand that this power is exercised at the court's discretion, depending on the circumstances of each case. I have carefully considered the length of employment by the Respondent and how his employment was terminated, noting that he did not contribute to the termination in any



proven manner. I hold that the compensatory award under section 49[1][c] of the *Employment Act* was merited and not excessively awarded. I decline to disturb the trial Court's award.

33. The Appellant's Counsel submitted that the learned trial Magistrate erred when he awarded the Respondent compensation for unpaid house allowance, contending that through the pay slips that the Appellant presented in evidence, it was demonstrated that house allowance was an item and therefore, was paid at all material times further, that the salary that the Respondent earned was gross salary that included a house allowance.
34. The Appellant pleaded, and evidence was given that the Respondent earned a gross salary of KShs. 14,900 at all material times. None of the pay slips presented has this amount as the gross pay. Analysing the various pay slips reveals that it cannot be concluded that a consistent percentage was applied to arrive at the amounts reflected against the item house allowance. This drives this Court to conclude that the pay slips are doubtful. In the absence of an employment contract tendered in evidence to prove that the Respondent's salary earned included a house allowance, I am persuaded that a house allowance wasn't paid to the Respondent. The learned trial Court didn't err in awarding the same.
35. However, I agree with the Appellant's Counsel that the award was exaggerated. It ignored the fact that the Respondent had only worked for the Appellant for 6 years, not 8 years, as the Respondent pleaded. For this reason, I am inclined to align the award to the years worked by reducing the learned trial Magistrate's award to Kshs. 152,000.
36. In the upshot, the Appellant's appeal hereby succeeds in a limited way. The trial Court's Judgment is hereby disturbed only to the extent that the amount it awarded under the head "unpaid house allowance" is reduced to the abovementioned amount.
37. Each party is to bear its costs of this appeal

**READ, SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**OCHARO KEBIRA**

**JUDGE.**

