



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kaikai v Ufanisi Freighters (K) Limited (Appeal E056 of 2025)  
[2025] KEELRC 2313 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2313 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E056 OF 2025**

**M MBARŪ, J  
JULY 31, 2025**

**BETWEEN**

**JOEL NYONGESA KAIKAI ..... APPELLANT**

**AND**

**UFANISI FREIGHTERS (K) LIMITED ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. G. Sogomo  
delivered on 14 March 2025 in Mombasa Case No. 343 of 2022)*

**JUDGMENT**

1. The appeal arises from the judgment delivered on 14 March 2025 in Mombasa CMLRC No. 343 of 2022. The appellant is seeking that the judgment be set aside and the claim be allowed with costs.
2. The appeal is that the learned magistrate erred in law and fact in finding that the dismissal of the appellant from his employment was justified, whereas there was no notice to show cause issued before the dismissal. The failure to award notice pay and compensation was contrary to the law and failed to take into account the evidence.
3. The appellant's case was based on the facts that he was employed by the respondent on 25 October 2020 as a heavy commercial driver at a wage of Ksh. 33,544 per month. He worked until 28 April 2022, when his employment was unfairly terminated without due process. The respondent alleged that he had carried a paying passenger in his assigned motor vehicle. He claimed the following:
  - a. Unpaid salary for April 2022 Ksh.35, 221.
  - b. Notice pay Ksh.35, 221.
  - c. 12 months compensation Ksh. 422,652.
  - d. Underpayments in 2022 Ksh.25,217



- e. Underpayments in 2019 to 2020 Ksh.18,447
  - f. 22 Public holidays ksh.59,604,
  - g. Unpaid leave for 49 days Ksh.66, 378.
  - h. 44 Sundays worked
  - i. Overtime of 4 hours each day.
4. In response, the respondent denied the claims and stated that the appellant was employed as a long-distance driver who worked until 13 April 2022, when he was caught transporting an unauthorised passenger in motor vehicle No. KDE 145 h. The appellant was loading cargo bound for Kampala, Uganda. Carrying unauthorised passengers was against company regulations, as outlined in an internal memo dated 25 August 2021, which clearly stated that no driver was permitted to carry unauthorised passengers. On the way to Kampala, the appellant had been dispatched to deliver fuel to the managing director, who was in Bungoma on official duties and was due to return to Nairobi. The managing director was stranded in Bungoma due to a fuel shortage affecting the country at the time. The appellant was instructed to deliver the fuel before proceeding to Kampala. He was found with a female passenger in the vehicle and, upon questioning, claimed she was his wife. After returning to Mombasa on 21 April 2022, the appellant was issued a notice to show cause, and in his reply on 23 April 2022, he admitted the facts. He was subsequently invited to the disciplinary hearing on 27 April 2022 and was issued with a notice of summary dismissal for gross misconduct on 9 May 2022. He was paid his terminal dues, including:
- a. Salary until 28 April 2022 Ksh.31,307
  - b. 36 accrued leave days Ksh.39,307
  - c. Certificate of service.
5. The claims made are not justified. Notice pay and compensation are not payable in cases of summary dismissal. All drivers observed public holidays, and all Sundays were designated as days off. There was no overtime work, and payment was made for accrued leave days.
6. In the judgment, the learned magistrate held that the summary dismissal was justified because the appellant was guilty of gross misconduct. The claims made were not justified, and therefore the suit was dismissed with costs.
7. Both parties filed written submissions, which were analyzed. The grounds of appeal challenge the findings that the summary dismissal was justified, which was in error, and hence there should be an award of notice pay and compensation.
8. Under section 44 of the *Employment Act*, an employer is allowed the sanction of summary dismissal on condition the employee is allowed to attend and make his representations as held in *Pius Machafu Isindu V Lavington Security Guards Ltd* (2017) eKLR that emphasized that for a termination or summary dismissal to be fair, there must be substantive justification and a fair procedure.
9. In *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR, the court outlined four elements for procedural fairness: explaining termination grounds in an understandable language, stating the reason for potential termination, allowing the employee a chosen representative, and hearing and considering representations from both the employee and their chosen representative.



10. In this case, the appellant testified on 3 July 2023 and admitted that he had carried a passenger in the allocated motor vehicle. He explained that it was his wife, who was not an employee of the respondent.
11. The respondent has issued a memo dated 25 August 2021, cautioning drivers not to carry any unauthorized passengers.
12. The appellant replied to the notice to show cause on 23 April 2022 and admitted that he was driving the allocated motor vehicle KDE 145H, and on board was his wife, who was going to visit her son. He asked to be pardoned, and this would not be repeated.
13. The appellant was aware that his actions were prohibited. Carrying unauthorized passengers could lead to disciplinary measures. Despite his admission, he was still invited to attend a disciplinary hearing.
14. The sanction of summary dismissal was justified and warranted under the admission of liability by the appellant. The remedy of compensation and notice pay is not due.
15. On the other claims, the learned magistrate analyzed the accrued leave days and held that the respondent filed the work records and paid for 36 leave days.
16. On the claim for rest days, these were analysed, and there were rest logs and facilities to cater for overtime and rest days. The respondent filed payment vouchers, duty logs, and clocking records to demonstrate that the appellant was accorded the facilities in lieu of payment.
17. On the claim for underpayments from July 2020 to April 2022 for 21 months, the appellant claimed that he was paid his wage of Ksh.33, 544 instead of Ksh.35, 221.
18. That from July 2019 to June 2020 he was paid a wage of Ksh.33, 544 instead of Ksh.35, 211.
19. The respondent filed work records. There is evidence that the appellant was paid a wage of Ksh. 33,544 under his contract dated 28 July 2018. This was indicated under clause 5 of the contract to be a consolidated wage.
20. Under the Wage Orders applicable from 2019 to April 2022, the minimum wage for a heavy commercial driver was Ksh. 30,627.45 per month. A house allowance due for the position is Ksh. 4,594.20 and the total due is Ksh 35, 221.50.
21. The contractual terms to pay below the minimum are unlawful and not justified. There was an underpayment of Ksh. 1,677.50 for the period of the contract dated 28 July 2018 to April 2022, a period of 44 months, all at Ksh. 73,812.97.
22. However, under the principle now established under section 90 of the *Employment Act*, where an employment benefit accrues monthly, weekly or daily, such should be claimed within 12 months from the date of cessation. See *Kenya Railways Corporation v Ododa & 216 others* [2024] KECA 1620 (KLR).
23. In this case, the appellant exercised his rights from 2018 until his separation from employment. He can only claim for 12 months, which is Ksh. 1,677.50 x 12, all Ksh. 20,130.
24. The appeal analysed as above, save for the award of underpayments at Ksh. 20,130. Each party shall meet its costs, and the judgment in Mombasa CMELRC No. 343 of 2022 is thus reviewed.

Orders accordingly.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 31ST DAY OF JULY 2025**

**M. MBARŪ**



**JUDGE**

In the presence of:

Court Assistant: Japhet

