ELRC Memorandum of Appeal Against an Unpleaded Employer Change and Piece Rate Finding

Educational sample 398 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

EMPLOYMENT APPEAL NO [reference]

[APPELLANT] v [RESPONDENT]

MEMORANDUM OF APPEAL

1. The appellant challenges the designated-magistrate judgment dated [date] in Employment Claim [reference]. Identify the actual decree and record. This is an appeal to the ELRC under its applicable procedure, rather than a Small Claims Court appeal confined to section 38 matters of law.

2. The magistrate erred by finding that a transfer to a worksite made the appellant an employee of a separate legal entity when that employer change was not established by the pleadings and evidence. The actual employer admission, instructions, supervision and pay history required evaluation.

3. The magistrate erred by characterising the employment as piece-rate despite the pleaded monthly-payment arrangement and the employer own account of continuing employment. Variable duties and periods when the household owner travelled did not prove the legal character found below.

4. The magistrate failed adequately to resolve the central competing accounts of verbal dismissal and voluntary departure. The record must be examined for consistency, contemporaneous conduct and the admissions and contradictions of the parties, recognising that this Court did not hear the witnesses itself.

5. The magistrate failed to determine the applicable reason and procedural-fairness obligations under the Employment Act. Notice pay and any accrued-entitlement head must be considered distinctly from the discretionary compensation claim, and each head still requires its factual foundation.

6. PRAYERS: set aside the dismissal judgment; enter the employment findings and relief justified by the record; and award lawful interest and costs. The source granted KES 50,000 compensation and KES 10,000 notice pay but rejected the KES 72,000 leave head. Do not claim every pleaded remedy succeeded.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Identify the exact lower-court judgment or ruling, operative decree, parties, concise grounds and requested disposition. Use the procedure for this particular appellate court: an ELRC appeal and a High Court or ELC first appeal are not Court of Appeal proceedings. Check limitation, any necessary leave or extension, record, fees, service and directions. Filing an appeal is not an automatic stay. Verify the ELRC Procedure Rules 2024 and 2025 amendments, or the applicable designated subordinate-court procedure, and current directions. Assess section 90 for each employment claim.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A housekeeper alleged employment from 2012, monthly pay of KES 10,000 and verbal dismissal in March 2021. The employer alleged voluntary departure and poor performance following transfer to another worksite. The trial court dismissed the case and treated the worksite as another employer and the work as piece-rate.

The ELRC allowed the appeal, found continuing indefinite employment and unfair dismissal, and awarded KES 50,000 compensation and KES 10,000 notice pay. The KES 72,000 leave claim failed for lack of factual basis. Interest ran from the lower-court judgment and costs of the suit were awarded.

Check Employment Act sections 36, 41, 43, 45, 47(5), 49 and 90, applicable designated-magistrate procedure and ELRC appeal rules. A worksite transfer is not proof of a change of legal employer. Separate independent accrued-entitlement claims from compensation for unfair termination; nine years asserted service does not by itself prove nine years unpaid leave.

[2025] KEELRC 2477 (KLR) - 18 September 2025. Source decision: https://sheriahub.com/cases/ke/caselaw/magongo-v-sherman-2025-keelrc-2477-klr

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/magongo-v-sherman-2025-keelrc-2477-klr

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.