2026 July | Employment

ANNUAL LEAVE BALANCES MUST BE UTILISED WITHIN 18 MONTHS OF THE LEAVE-EARNING PERIOD

Bins (Nairobi) Services Limited v Hardard Macharia Kariamburi [2025] KECA 1726 (KLR)

1. Background

1.1. The Respondent was employed as the Appellant's General Manager from 1 December 2011 under a three-year renewable contract, earning a gross monthly salary of Kshs.290,250.00. Although the initial contract was not expressly renewed when it lapsed, he continued serving on the same terms until his resignation in October 2020.

1.2. In April 2020, the Appellant unilaterally reduced the Respondent's net salary by 25%, from Kshs.224,337.00 to Kshs.157,848.00. Shortly thereafter, by a letter dated 30 April 2020, the Appellant's director placed him on unpaid leave due to the Covid-19 pandemic.

1.3. After being sent on unpaid leave, the Respondent received no communication on when he would resume duty or on the status of his employment. During this period, the Appellant terminated his medical insurance cover, stopped remitting his statutory dues (PAYE, NSSF and NHIF), and appointed Mr. Aloo Muga in May 2020 to take over his position substantively. The Respondent therefore resigned on 12 October 2020, contending that the resignation was involuntary because the Appellant had left him in a state of limbo regarding the status of his employment and without pay.

1.4. The Respondent also claimed that, due to the nature of his engagement, he was unable to utilise his annual leave days in full during his employment.

2. Trial Court Decision and Appeal

2.1. The Employment and Labour Relations Court held that the parties had an indefinite-term contract of service from 1 December 2014 until 12 October 2020, when the Respondent resigned. It further found that the Appellant's conduct amounted to constructive dismissal and therefore constituted unfair termination.

2.2. The trial court awarded the Respondent salary for the unpaid-leave period, the underpaid April 2020 salary, compensation equivalent to 10 months' gross salary, and one month's pay in lieu of notice. However, it declined to award pay for untaken annual leave, holding that any leave balance not used within 18 months of the relevant leave-earning period was forfeited under section 28(4) of the Employment Act.

2.3. The Appellant appealed against the finding of constructive dismissal and the quantum awarded. The Respondent cross-appealed, challenging, among other issues, the trial court's interpretation of section 28(4) and the application of the 18-month annual leave rule.

3. Court of Appeal's Determination

On the issue of untaken annual leave, the Court of Appeal considered whether the Respondent was entitled to payment for leave days that had not been taken within the statutory 18-month period after the relevant leave-earning period. The Court held as follows:

3.1. The Court noted that it was common ground that the Respondent took part of his annual leave between 23 December and 4 January each year. His annual leave entitlement was 21 days. Section 28(4) of the Employment Act, 2007 therefore applied to the balance of any leave not taken within the relevant leave-earning period.

3.2. Section 28(4) of the Act provides as follows:

"The uninterrupted part of the annual leave with pay referred to in subsection (3) shall be granted and taken during the twelve consecutive months of service referred to in subsection (1)(a) and the remainder of the annual leave with pay shall be taken not later than eighteen months from the end of the leave earning period referred to in subsection (1)(a) being the period in respect of which the leave entitlement arose."

3.3. Although the Respondent argued that the nature of his work prevented him from taking leave, the Court found that he had not produced evidence showing that he had applied for leave within the prescribed 18-month period and that the Appellant had declined the request.

3.4. The Court held that section 28(4) limits the period within which accrued annual leave may be carried forward. In effect, any balance of annual leave must be taken not later than 18 months from the end of the leave-earning period.

3.5. Consequently, the Court found that the learned Judge had not erred in declining to award the Respondent payment for untaken annual leave. The claim for leave days was therefore dismissed on the basis of the 18-month rule.

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