



**Kenya Union Domestic Hotels, Educational Institutions & Hospital
Workers v Management Committee Kakamega Sports Club (Cause
E015 of 2024) [2025] KEELRC 2607 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2607 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E015 OF 2024
DN NDERITU, J
SEPTEMBER 26, 2025**

BETWEEN

**KENYA UNION DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS &
HOSPITAL WORKERS CLAIMANT**

AND

**THE MANAGEMENT COMMITTEE KAKAMEGA SPORTS
CLUB RESPONDENT**

JUDGMENT

I. Introduction

1. The claimant (KUDHEIHA), a trade union representing workers in the sector expressed in the name of the union, commenced this cause for and on behalf of their member, Mr. Wilberforce Okunga (the grievant), by way of a memorandum of claim dated 25th April 2024 seeking for the following reliefs –
 1. That Mr. Wilberforce Okunga to be reinstated unconditionally and his salary arrears for the period he was out of work be paid to him or in the alternative
 2. He be paid his terminal benefits as follows: Payment in lieu of notice (3 months) = (16070 x 3) = Kshs48, 210 Service gratuity of 5 years in service = (16070 x 5) = Kshs80,350 Leave days for three days = Kshs1605 Adjusted salary of 12.5% for 8 months = (2121 x 8) = Kshs16968 Total = Kshs147,133
 3. The cost of this suit to be borne by the respondent.
 4. The court to issue an order it deems just and fit.
2. As it is the procedure, the statement of claim is accompanied with a verifying affidavit, a list of documents, and copies of the listed documents.



3. The claimant is represented by Mr. Michael Oyata, an officer of the claimant duly authorised to appear in court as such.
4. Upon service the respondent entered appearance through Nyukuli, Shifwoka & Company Advocates and filed a memorandum of response to the claim dated 17th August 2024. The claim is denied in toto and the court urged to dismiss the same with costs.
5. The response is accompanied with a list of documents and copies thereof, and a list of witnesses. A witness statement by Mr. Isaac Ndinya (RW1) was filed.
6. The matter came up for virtual hearing on 20th February 2025 when the claimant (CW1) testified and closed his case. The defence was heard on 6th March 2025 when RW1 testified and the respondent closed its case.
7. Mr. Oyata for the claimant filed written submissions dated 17th March 2025 and Mr. Shifwoka for the respondent filed written submissions dated 29th March 2025.

II. The Claimant's Case

8. The claimant's case is expressed in the memorandum of claim, the documents filed, and the written submissions by its representative.
9. In the memorandum of claim it is pleaded that the claimant is a duly registered trade union representing the interests of employees working in the sectors depicted in its descriptive name. It is further pleaded that the grievant was an employee of the respondent and a member of the claimant. It is further pleaded that there is a recognition agreement between the claimant and the respondent.
10. It is pleaded that the grievant was employed by the respondent as a general gardener from 1st November 2017 to 31st January 2023 as confirmed in a certificate of service dated 20th March 2023 issued by the respondent to the grievant. It is further pleaded that on 3rd May 2022 the grievant was elected a shop steward by his co-workers.
11. It is pleaded that the grievant had a clean disciplinary record until 16th December 2022 when the manager of the respondent wrote to him demanding an explanation on whereabouts of missing pieces of timber. The grievant responded to the letter on even date and denied being involved in the alleged loss and or theft of timber.
12. On 12th January 2023 the grievant was suspended from duty pending investigation into the loss/theft of the timber. However, while on suspension, the grievant was allegedly issued with a new contract of employment dated 6th December 2022 running from 1st October 2022 to 31st January 2023. Notwithstanding the foregoing, the grievant was terminated vide a letter dated 31st January 2023. Thereafter, the respondent paid some terminal dues to the grievant in the sum of Kshs9,760/=.
13. After efforts to discuss and settle the matter amicably failed, the claimant referred the matter to the Cabinet Secretary for Labour for conciliation but on 28th February 2024 the respondent expressed its unwillingness to engage any further. Thereafter, the conciliator from the labour office issued a certificate of unresolved trade dispute dated 4th March 2024 and the claimant subsequently filed this claim in court.
14. It is the claimant's case that the termination of the grievant was unfair and unlawful both in substance and procedure. It is further pleaded that the actual reason for the termination was that the grievant was an elected shop-steward. It is stated that the termination amounted to unfair labour practice under Article 41 of *the Constitution*.



15. In his testimony in court the grievant stated that he was an employee of the respondent as a gardener from 2017 to 2023. He stated that he was terminated without due process and adopted his witness statement filed in court as his evidence in-chief.
16. In cross-examination the grievant stated that he was employed as a gardener on a two-year contract at a time and not as a casual. He stated that as at the time of termination he had five months left on his running contract.
17. He stated that he was issued with a show-cause letter dated 15th December 2022 to which he responded through his letter of 16th December 2022. He insisted that he gave all the timber in question to the intended carpenter who was to apply it in some construction. He admitted receiving the letter of suspension dated 19th January 2023. He also admitted appearing in a disciplinary hearing alongside union representatives of his choice and signing the minutes of the proceedings of the disciplinary hearing.
18. He admitted having received the letter of termination dated 31st January 2023 that contained the reasons for the termination.
19. He stated that during the disciplinary hearing he asked for forgiveness not because he was in the wrong but because he wanted to keep his job.
20. It is on the basis of the foregoing circumstances and facts that the court is urged to allow the claim and grant the reliefs as sought.

III. The Respondent's Case

21. In the memorandum of response, it is pleaded that the respondent is improperly joined as a party as it has no legal capacity to be sued and it is without legal or juridical personality. It is further pleaded that this court therefore has no jurisdiction to entertain the claim as filed.
22. It is admitted that the grievant was a member of the claimant and that there was at the material time a collective bargaining agreement between the claimant and the respondent. It is further admitted that the grievant was an employee of the respondent as a gardener until he was fairly, procedurally, and lawfully terminated vide a letter dated 31st February 2023 on account of gross misconduct.
23. It is pleaded that the grievant was suspended to pave way for investigation and later on subjected to lawful disciplinary process after his response to the show-cause failed to give adequate and sufficient explanation or defence to the allegations against him. It is denied that the disciplinary action against the grievant had anything to do with his election a shop-steward.
24. Further, it is denied the conciliator found the respondent to be in the wrong but rather it is pleaded that the parties failed to agree on the issues and the conciliator thus recommended that either party was free to move the court on the matter and subsequently the claimant exercised that right and filed this claim in court.
25. It is pleaded that the grievant was validly and lawfully terminated and paid his terminal dues which he accepted and received. It is pleaded that this claim is an afterthought intended to unjustly enrich the grievant.
26. In his testimony in court RW1 adopted his statement dated 17th August 2024 and produced the filed documents as respondent's exhibits 1 to 11. He stated that the grievant did not appeal the termination notwithstanding that he was informed of that right in the letter of termination dated 31st January 2023. He stated that he supervised the grievant. He further stated that the grievant was issued with



- a show-cause letter to which he responded, he was later suspended from duty, and then invited for a disciplinary hearing on 23rd January 2023. He testified that the grievant attended the hearing with two representatives from the claimant union.
27. RW1 stated that the grievant admitted to the allegations and charges against him and even pleaded for forgiveness as per the minutes availed in court. He stated that the grievant and his union representatives alongside all those who attended the disciplinary hearing signed the minutes of the meeting.
 28. However, RW1 went on in his testimony, the respondent decided to terminate the grievant for his gross misconduct and he was issued with a letter of termination dated 31st January 2023, a certificate of service, and he was subsequently paid his terminal dues.
 29. RW1 stated that the grievant stole and or lost the property of the employer that was entrusted to him and in his custody. It was stated that the grievant had a poor disciplinary record with numerous acts of misconduct.
 30. In cross-examination RW1 stated that the grievant was essentially engaged as a gardener but he performed and executed other duties as allocated to him from time to time as per the letter of appointment. He stated that the grievant was neither paid service pay nor gratuity as he was terminated on gross misconduct and the CBA is clear on that issue. However, he was paid other terminal dues as per the letter of termination.
 31. For the foregoing reasons the court is urged to dismiss the claim with costs.

IV. Submissions

32. Mr. Oyata for the claimant isolated two issues for determination –
 1. Whether the respondent should pay the grievants his terminal benefits totalling to Kshs.147,133
 2. Whether the respondent should pay the cost of the suit.
33. On the first issue it is submitted that the termination of the grievant was unfair and unlawful and as such he is entitled to all payable terminal dues.
34. On the second issue it is submitted that the claimant made efforts to resolve the dispute out of court but the respondent was adamant and indifferent to the conciliation process forcing the claimant to file the cause in court. In the circumstances, it is submitted that the respondent should meet the costs of the cause.
35. Mr. Shifwoka for the respondent submitted that the respondent raised several preliminary issues in its response to the claim. It is submitted that on 18th November 2024 the court directed that the preliminary issues be taken alongside the main cause. Counsel submitted that the respondent named in the cause lacks legal capacity to be sued and or to sue. It is submitted that the management committee of Kakamega Sports Club is neither a registered legal entity nor a juridical person and as such this cause shall fail on that account and be struck out.
36. It is further submitted that the claimant failed to name the specific members of the said committee or trustees thereof as to give the cause legal sanctity even after the issue was raised in the response to the claim to which the claimant did not reply.
37. Counsel for the respondent cited several decisions in support of the foregoing argument urging this court to be persuaded by the same. Amongst the decisions cited included Football Kenya Federation V Kenya Premier League Limited & 4 Others (2015) eKLR where the High Court (Aburili J) emphasized



that while Article 22 of the Constitution opens a door for a legal entity or person to sue or be sued for and on behalf of others, it does not allow parties to sue or be sued by parties or entities without legal capacity to act as such. Further counsel cited *Simu Vendors Association V Town Clerk, City Council of Nairobi & Another* (2005) eKLR and *Evans Otiendeh Omolo V School Committee Union Primary School* (2015) eKLR. In the latter decision it was held that where a court finds that the defendant (respondent) does not exist in law the action shall be condemned for being in abuse of court process and the law and fatally defective and the same shall be struck out.

38. Without prejudice to the foregoing preliminary issue, counsel for the respondent identified the following issues for determination by the court –
- i. Whether the termination of the claimant was fair, lawful and justified
 - ii. Whether the dismissal of the claimant was procedural; and
 - iii. Whether any of the remedies sought herein are available in the circumstances
39. Counsel submitted globally on all the issues arguing that the claimant failed to demonstrate and prove that the termination was unfair and or unlawful or contrary to the law as provided in Sections 41, 43, 44(4), & 45 of the Employment Act. It is submitted that it was upon the claimant to prove the unfair and or unlawful termination on a balance of probability. Counsel cited the Court of Appeal in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & Others* (2019) eKLR in support of that proposition. It is emphasized that the claimant did not prove lack of substantive or procedural fairness in the termination and or violation of the law in the entire process.
40. It is submitted that the evidence on record confirms that indeed the grievant was accorded fair hearing both in substance and procedure in the run-up to his termination. It is submitted that in his testimony, and more so in the cross-examination, the grievant admitted that he was issued and served with a show-cause letter, invited for hearing, attended the hearing with union representatives of his choice, was heard and given a chance to defend himself, he admitted and apologized for his misconduct, he was informed of his right to appeal, and, he and his representatives thereafter signed the minutes of the disciplinary hearing as a true record of the proceedings.
41. It is further submitted that thereafter a decision was made to terminate the claimant for his gross misconduct in the loss or theft of the respondent's property and he was paid his terminal dues which he received and signed for. It is submitted that the grievant did not appeal the termination as of right and as such this cause is clearly an afterthought.
42. On the reliefs sought, it is submitted that the termination was fair and lawful, both in substance and procedure and as such the grievant is not entitled to the compensation sought for. It is further submitted that the grievant was registered with the National Social Security Fund (NSSF) and as such he was not entitled to gratuity based on Section 35 of the Employment Act. Further, it is argued that gratuity was not provided for in the CBA or in the letter of employment for the grievant. It is submitted that all that was due to the grievant was paid in the terminal dues and settled as such.
43. It is submitted that the claimant has failed to prove the cause as demanded under Sections 107 & 108 of the Evidence Act and as such the claim should be dismissed.

V. Issues For Determination

44. The court has carefully and dutifully gone through the pleadings filed, oral and documentary evidence tendered from both sides, and the written submissions filed by the representative of the claimant and counsel for the respondent. The issues in contention between the parties are rather straight-forward as



can be discerned from the summaries of pleadings, the evidence, and the submissions in the foregoing parts of this judgment.

45. Simply put, the claimant, a trade union representing the grievant named, argues that the said grievant was unfairly and unlawfully terminated by the respondent. Though not tacitly pleaded, the claimant alleges unfairness both in the substantive and procedural aspects of the process and the termination.
46. On the other hand, the respondent takes the position that the termination was fair and lawful both in substance and procedure and that this cause is an afterthought in total abuse and violation of the process of court.
47. Fundamentally, the respondent raised a preliminary point of law and fact to the effect that the respondent as named and sued lacks the legal capacity to sue and be sued and as such the cause is bad in law and misconceived and for dismissal in le mine. Conspicuously, the claimant did not reply or respond to this preliminary objection. The claimant had the right to respond to this issue by filing a reply to the memorandum of response to the claim and also in the written submissions filed by its representative.
48. Flowing from the foregoing, the following issues commend themselves to the court for determination –
 - a. Whether the respondent as named has legal capacity to be sued. Put differently, is the cause by the claimant as against the named respondent properly before the court?
 - b. If (a) above is in the affirmative, does the cause have merits as to entitle the claimant to the reliefs sought? and,
 - c. Who should bear the costs of the cause?

VI. Merits Of The Cause

49. The dispute between the parties is rather straightforward concerning the legality and or validity or otherwise of the termination of the grievant represented by the claimant. However, as noted above, a fundamental jurisdictional issue was raised by the named respondent on its lack of capacity to be sued. It is a cardinal presumption of law that each party to a cause shall have capacity to be named and act as such. Once that issue was raised, it was upon the claimant to establish that indeed the named respondent was the intended party and that it had capacity to be sued as such.
50. As noted above, the claimant did not respond to that issue either by way of a reply to the response to the claim and or in the written submissions. It is a basic presumption of the law that he who alleges shall prove. It was upon the claimant to demonstrate and prove that indeed the named respondent has the requisite legal capacity to be sued as such. The named respondent is clearly and evidently neither a registered company, society, nor a juridical personality in any shape, form, or capacity. The members of the said committee have neither been named nor disclosed in any part of the pleadings, evidence, or submissions.
51. The court has inspected all the documents filed by both sides and noted that the CBA alluded to by the claimant was entered into between it and the Kakamega Sports Club. The court has also noted that the letter of appointment/contract, the disciplinary proceedings, the minutes of the disciplinary hearing, and the letter of termination were all issued and executed by the Kakamega Sports Club as the employer. No evidence whatsoever has been tendered demonstrating that indeed the committee named as the respondent herein had any role in the issues that the claimant is calling the court to adjudicate upon.



52. The court agrees with the submissions by counsel for the respondent and the decisions cited therein on this issue. While misjoinder of a party does not defeat a cause, the court finds and holds that the only one respondent named in this cause is not only improperly joined in the cause but also lacks capacity in the manner named and sued as it does not exist in law. Even if the claimant had individually named each member of the said committee, there should still have been need to name the capacity in which they act as such. Are they trustees, owners of the sports club, employers of the claimant, or in what capacity are they liable for the claimed wrongs and hence the reliefs sought?
53. This court deals with employment and labour relations matters and it is illustrative that there has to be some existing or prospective employment or labour relationship between the parties who come or are brought before the court. No such relationship has been demonstrated, established, and or proved between the grievant and the named respondent.
54. The court has said enough in demonstrating that this cause is bad in law and misconceived and the same is for striking out on that ground.
55. Even if the court had found and held that the respondent was properly sued, which is however clearly and evidently not the case, the court would still have dismissed this cause for lack of merits. The evidence on record is that the employer lost property that was in the care and custody of the grievant and as such the employer had some basis for taking disciplinary action under Section 43(2) of the [Employment Act](#). The grievant was subjected to disciplinary process which was fair and lawful. He was issued with a show-cause letter that he responded to, he was invited for a disciplinary hearing wherein he attended with two representatives from his union, and they all signed the minutes of the hearing as a true record of the proceedings.
56. During the disciplinary hearing the grievant admitted to his misconduct and even apologized for the same. Subsequently, he was terminated and paid his calculated terminal dues which he received as such. Clearly, this cause is an afterthought and the same cannot withstand the scrutiny of the court.
57. The court finds and holds that the termination was fair and lawful both in substance and procedure.

X.Orders

58. The court makes the following orders in dismissing the claim –
 - a. The cause by the claimant is hereby struck out for the named respondent lacks capacity to be sued as such.
 - b. There is no order as to costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 26TH DAY OF SEPTEMBER, 2025.

DAVID NDERITU

JUDGE

