



**Kenya Union of Commercial Food and Allied Workers v Hypermart Limited (Ramtons)  
(Cause 663 of 2020) [2025] KEELRC 2558 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2558 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 663 OF 2020  
L NDOLO, J  
SEPTEMBER 25, 2025**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**HYPERMART LIMITED (RAMTONS) ..... RESPONDENT**

**JUDGMENT**

**Introductions**

1. This claim is brought by Kenya Union of Commercial Food and Allied Workers Union, alleging un-procedural redundancy affecting fourteen (14) of its members, who were employees of the Respondent. The named employees are:
  - a. Alex Mwangi
  - b. James Mburu
  - c. John Muinde
  - d. Wanyoike Mburu
  - e. Stanlous Mutua
  - f. Mathew Mbaluka
  - g. Thomas Muoki
  - h. Paul Ng'ang'a
  - i. Peter Wahu



- j. Eston Muriithi
  - k. John Kuria
  - l. Joseph Wachira
  - m. Caleb Mung'aru
  - n. Nelson Ngugi
2. The claim is condensed in a Memorandum of Claim dated 15<sup>th</sup> October 2020. The Respondent filed a Memorandum of Response dated 5<sup>th</sup> March 2021. At the trial, the Claimant Union called its National Organising Secretary, Mike Oranga and the Respondent called its Senior Operations Manager, Simon Muia.

### **The Claimant's Case**

- 3. The Claimant states that on 30<sup>th</sup> September 2020, the Respondent issued the 14 targeted employees with letters dated 28<sup>th</sup> September 2020, terminating their employment, with immediate effect, on account of redundancy. The Claimant adds that the Respondent cited the effects of the Covid-19 pandemic and acquisition of its premises by the Government as reasons for this action.
- 4. The Claimant Union wrote to the Respondent instantaneously, expressing dissatisfaction with the procedure applied to declare redundancy and proposed a meeting to be held on 7<sup>th</sup> October 2020, to deliberate on the issue.
- 5. By a return letter dated 6<sup>th</sup> October 2020, the Respondent's Advocates, Kisilu Wandati and Co. Advocates, asserted that the Claimant was a stranger to the Respondent and that no deliberations would take place.
- 6. The Claimant reported a trade dispute to the Cabinet Secretary, Ministry of Labour and Social Protection, on the issue of unlawful/un-procedural redundancy of the 14 employees.
- 7. The Claimant submits that the 14 employees were its members, a fact the Respondent is said to have been aware of. The Claimant therefore asserts its locus standi to institute the claim on behalf of its members.
- 8. The Claimant further submits that there is a recognition dispute pending conciliation, adding that the Respondent ought to have informed it of the redundancy.
- 9. The Claimant Union accuses the Respondent of failing to give redundancy notices to the Union, the Ministry of Labour and the affected employees.
- 10. The Claimant avers that the selection criterion used to identify the employees to be affected by the redundancy, was faulty and discriminatory. According to the Claimant, the affected employees had worked for a period of not less than 4 years, with several of them having worked for a period of 15 years.
- 11. The Claimant further accuses the Respondent of punishing union members and curtailing their freedom of association and the right to join and participate in trade union activities. The Claimant claims that soon after declaring redundancy, the Respondent employed other employees on fixed term contracts.
- 12. The Claimant seeks the following remedies:
  - a. A finding that the Respondent's actions were unlawful, unfair and un-procedural;



- b. An order directing the Respondent to observe the Last In First Out (LIFO) principle as the selection criterion;
- c. A permanent injunction restraining the Respondent from intimidating, victimising, coercing and disciplining employees on account of their trade union activities/membership;
- d. A declaration that it is discriminative and unfair to terminate the services of employees on account of redundancy and at the same time employ others on fixed term contracts;
- e. An order directing the Respondent to reinstate the affected employees or in the alternative; payment of all redundancy and terminal dues to the employees;
- f. 12 months' salary in compensation for unlawful and unfair termination of employment;
- g. Costs of the case.

### **The Respondent's Case**

13. In its Memorandum of Response dated 5<sup>th</sup> March 2021, the Respondent repudiates the particulars of unlawful and unfair redundancy of 14 employees as set out in the Memorandum of Claim.
14. The Respondent denies that the 14 employees referred to were ever targeted for redundancy, adding that the employment of 12, not 14 employees was lawfully and procedurally terminated on account of redundancy.
15. The Respondent further denies the existence of a recognition dispute between the Claimant and itself. In this regard, the Respondent states that the appointed Conciliator had returned a verdict that the Claimant had not recruited a simple majority of unionisable employees within the Respondent's establishment, as most of the employees said to be members of the Claimant, had denied any such membership.
16. Regarding the redundancy, the Respondent states that any notices issued to the affected employees were in accordance with the provisions of Section 40 of the *Employment Act*.
17. The Respondent states that it first issued a notice of intention to declare redundancy dated 18<sup>th</sup> June 2020 to the employees and the District Labour Officer, citing reasons and applicable compensation, after which redundancy letters dated 28<sup>th</sup> October 2020 were issued.
18. Regarding the selection criteria, the Respondent states that LIFO is not cast stone, and is not meant to deny the employer the freedom to depart from it for sufficient and valid reasons.
19. The Respondent contends that the employees were paid all their terminal dues, and no claim subsists on the issue of redundancy.
20. The Respondent defends its decision to declare redundancy, pointing to the COVID-19 pandemic, which led to reduced sales and the acquisition of its premises by the Government of Kenya.
21. The Respondent does not contest the Claimant's locus standi to bring the present claim on behalf of its members. However, the Respondent questions the basis upon which the Claimant has sued on behalf of Nelson Ngugi who is said to have sworn a statement indicating that he has no claim against the Respondent.
22. The Respondent avers that Paul Ng'ang'a, John Kuria and Joseph Wachira had indicated that they did not wish to have union dues deducted from their salaries, thus putting their union membership to



question. The Respondent takes the view that none of the listed employees are properly members of the Claimant Union.

### **Findings and Determination**

23. The first issue for determination in this case is whether the Claimant Union has the locus standi to bring the present claim on behalf of the 14 named persons, who are said to have been employees of the Respondent and members of the Union.
24. It is settled in law that a trade union is clothed with the locus standi to sue on behalf of its members, irrespective of whether or not it has a recognition agreement with the employer.
25. In its decision in *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] KECA 4 (KLR) the Court of Appeal affirmed the distinction between recognition and representation, pointing out that a trade union has the locus standi to institute claims on behalf of its members. The Appellate Court went further to state that whether an employee is a member of a union is a question of fact, adding that where there is contest as to whether an employee is a member of a union, evidence is required to settle that question.
26. According to the Respondent, union membership of the persons on whose behalf the Claimant brought the present claim was doubtful. Nelson Ngugi is said to have sworn a statement indicating that he has no claim against the Respondent, while Paul Ng'ang'a, John Kuria and Joseph Wachira had denounced union membership.
27. Because union membership was contested, the Claimant ought to have adduced documentary evidence to show that the listed 14 persons were its members. Significantly, none of the 14 persons testified before the Court and their union membership, which was contested, was not proved.
28. In the circumstances, I find and hold that the Claimant Union failed to establish the necessary locus standi to bring this claim. The only thing to do is strike out the claim, which I hereby do.
29. In the interest of social justice and industrial harmony, I direct that each party will bear their own costs.
30. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Nyumba (Union Representative) for the Claimant

Mr. Maina h/b for Mr. Wandati for the Respondent

