



REPUBLIC OF KENYA



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**Ng'asura & 28 others v Karrymart Limited (Cause 903 of 2017)  
[2025] KEELRC 2600 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2600 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 903 OF 2017  
MN NDUMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**NAOMI CHEPKIRUI NG'ASURA ..... 1<sup>ST</sup> CLAIMANT  
ISAAC WARUTERE GITONGA ..... 2<sup>ND</sup> CLAIMANT  
FRIDAH MUTELE MUTHIANI ..... 3<sup>RD</sup> CLAIMANT  
KIPTOO AMOS KIPRUTO ..... 4<sup>TH</sup> CLAIMANT  
JUSTUS MUTUKI MBURU ..... 5<sup>TH</sup> CLAIMANT  
DANIEL MAMATI WEKESA ..... 6<sup>TH</sup> CLAIMANT  
GIDEON KIPYEGON BETT ..... 7<sup>TH</sup> CLAIMANT  
CATHERINE NJOKI NGARI ..... 8<sup>TH</sup> CLAIMANT  
SIMON MWANGANGI KILONZO ..... 9<sup>TH</sup> CLAIMANT  
PHYLIS WANJA ..... 10<sup>TH</sup> CLAIMANT  
FRANCIS KARURU KARIUKI ..... 11<sup>TH</sup> CLAIMANT  
CHRISTOPHER MUINDE MUTHUSI ..... 12<sup>TH</sup> CLAIMANT  
ISPHAN NGUGI MUNGAI ..... 13<sup>TH</sup> CLAIMANT  
SHELMITH WANGECHI GITAHI ..... 14<sup>TH</sup> CLAIMANT  
SAMUEL MACHARIA WAIGURU ..... 15<sup>TH</sup> CLAIMANT  
SIMON K. MUNGUTI ..... 16<sup>TH</sup> CLAIMANT  
DAPHIN WAKUTHII KATHUMBI ..... 17<sup>TH</sup> CLAIMANT  
CATHERINE WAIRIMU KIBERI ..... 18<sup>TH</sup> CLAIMANT  
DAVID GATHOGO MUREITHI ..... 19<sup>TH</sup> CLAIMANT**



|                                |                           |
|--------------------------------|---------------------------|
| JOEL WAMAE KARANJA .....       | 20 <sup>TH</sup> CLAIMANT |
| SAMUEL TOROITICH RUTTO .....   | 21 <sup>ST</sup> CLAIMANT |
| RHODA MAKENA KABURU .....      | 22 <sup>ND</sup> CLAIMANT |
| ESTHER WANJIRU GITUMA .....    | 23 <sup>RD</sup> CLAIMANT |
| JAMES M. NDANI .....           | 24 <sup>TH</sup> CLAIMANT |
| MARY W. WACHIRA .....          | 25 <sup>TH</sup> CLAIMANT |
| IAN KIPLAGAT .....             | 26 <sup>TH</sup> CLAIMANT |
| BENARD ABUYA MOKAYA .....      | 27 <sup>TH</sup> CLAIMANT |
| PETER THIONG'O NJUGIRIA .....  | 28 <sup>TH</sup> CLAIMANT |
| SARAH WANJIRU .....            | 29 <sup>TH</sup> CLAIMANT |
| <b>AND</b>                     |                           |
| <b>KARRYMART LIMITED .....</b> | <b>RESPONDENT</b>         |

### JUDGMENT

1. The Statement of Claim dated 9<sup>th</sup> May 2017 was filed against the Respondent by 29 Claimants. The claim was amended on 21<sup>st</sup> January 2020 and included 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the suit.
2. By a judgment on admission dated 24<sup>th</sup> December 2017, the court awarded the Claimants admitted liability in the sum of Kshs. 3,041,002.00 amount set out in annexure 2 to the Statement of Claim.  
The matter proceeded on matters that remained in dispute.
3. Mr. Daniel Mamati Wekesa the 6<sup>th</sup> Claimant testified on behalf of all the Claimants and adopted a witness statement dated 31<sup>st</sup> May 2024. The Claimant produced exhibits marked '1' to '25' in support of the claim.
4. The Claimants' sought the following reliefs:-
  - a. A declaration that the Respondent has breached contract of employment of the Claimants and has violated provisions of the *Employment Act*, Fair Administrative Actions Act and Articles 41 and 27 of *the Constitution* of Kenya 2010.
  - b. Compensation to each of the Claimant as particularized under paragraph 13 and in the Annexure I attached to the Statement of Claim.
  - c. Damages for wrongful termination equivalent to six (6) months salary for each Claimant.
  - d. Damages for the wrongful reduction of salaries of the Claimants on 17<sup>th</sup> August 2016.
  - e. Certificate of service to each Claimant.
  - f. Costs and interest.
5. CW1 testified that on 13/8/2016, the Respondent arbitrarily reduced the salaries of the Claimants in violation of the letters of appointment. That the salary reductions were with effect from 1<sup>st</sup> August



2016. That the Claimants were told to sign new letters with reduced salaries if they wanted to retain their jobs.
5. That as from December 2016, the Respondent started deducting salary payments to the extent that the Claimants could no longer afford to pay their house rent.
  6. That the Claimants decided to report a complaint with the labour office Nairobi and the Claimants were asked to attend a meeting at the labour office on 24/3/2017 to resolve the matter.
  7. That on 24/3/2017, while the Claimants were at the labour office, the director of the Respondent went there and stated that these Claimants were on strike and that the company had decided to dismiss the Claimants from employment. That the Respondent had prepared a document which he titled “staff on strike” in which he had computed what he thought was the arrear salary and other claims. That this document is annexure 2 to the claim, the basis of which judgment on admission was entered. CW1 stated that the document was correct as regards:-
    - a. Salary arrears from December 2016 to March 2017.
    - b. Refund for NHIF contributions deducted over time and not remitted.
    - c. Part of service gratuity
    - d. Payment of notice pay.
  8. The entries which are in dispute have been computed per annexure 3 to the Statement of Claim.
  9. In the computation above the Respondent had admitted owing Kshs. 3,041,002.00 to the 34 employees which amount is the subject of the judgment on admission.
  10. CW1 prays to the court to award the Claimants prayers in respect of disputed claims set out under annexure 3 as follows:-
    - a. One month’s salary in lieu of notice.
    - b. Salary arrears for December 2016 to March 2017
    - c. Service gratuity calculated at 15 days salary for each completed year of service.
    - d. Overtime worked but underpaid.
    - e. Compensation for unlawful and unfair termination equivalent to 6 months’ salary and
    - f. Damages for unlawful reduction of salary.
  11. All the Claimants signed letter of authority for CW1 to testify on their behalf.
  12. The letter of summary dismissal of the Claimants dated 24/3/2017 was addressed to the Assistant Labour Commissioner, Nairobi and the reason given for the summary dismissal was participation in an illegal strike since 20<sup>th</sup> March 2017 and in so doing refusing to work; blocking of entrance to the business premises and preventing customers from entering the premises and harassing them. The schedule of terminal benefits was attached to the letter produced before court.
  13. Under cross-examination by Mr. Wathuta for the Respondent, CW1 stated that on 23/3/2017, the parties had signed a return-to-work formula. The union had signed on behalf of the grievant. CW1 said that they had not deserted work but were demanding payment of arrear salaries. That the Respondent was informed of the meeting by the labour office. CW1 said they had not written to the employer about the meeting but were called to the meeting by the labour officer. CW1 said they were called collectively



and not individually and went to the labour office at 9 a.m. That the supermarket was at Moi Avenue. CW1 said they only left the manager with Andrew Ndungu and Assistant manager Mr. Macharia and a few employees in the shop.

14. CW1 said he was a shop attendant. CW1 said he got a letter of employment on 1/6/2016 and signed it and his salary was Kshs. 27,000.00 per month.
15. That the Respondent gave the Claimants other letters of appointment with reduced salary. CW1 said his salary had been reduced to Kshs. 20,000.00 per month from 1/8/2016. The employees refused to sign the new letters. CW1 said they were all dismissed summarily while at the labour office. CW1 said he did not know whether the shop still existed. CW1 said the Claimants seek payment of statutory dues deducted and not remitted including NSSF and NHIF.
16. CW1 said overtime was for 7 hours over 27 days and that the Claimants had 21 working days leave.
17. CW1 said his gratuity was Kshs. 20,000.00 and the rest was per the computation filed.
18. CW1 said they were forced to sign the new contracts. CW1 said he had signed it on 13/8/2016. That they worked up to March 2017. The Claimant prays that they be awarded as prayed in the amended Statement of Claim.
19. Upon closure of the Claimants' case Advocate Wathuta told the court that the Respondent had not filed a Statement of Response to the claim and no witness statements had been filed. Counsel wanted to call one Dr. Kariithi as a defence witness in the absence of any defence statement and no witness statement filed. Advocate Akinyi for the Claimant objected to the application by Mr. Wathuta from the bar to call Dr. Kariithi in those circumstances stating that the suit was filed in 2017 and it was unconscionable to permit a defence witness to testify in absence of a statement of defence and after the Claimant have closed their case.
20. The court refused the application from the bar to file a defence and call a witness after the Claimants had closed their case and over seven (7) years since the suit was filed.
21. The Respondents' Advocate, closed the defence case and was granted leave to file final submissions.

### **Determination**

22. The parties filed submissions which the court has considered. The suit remains undefended, the Respondent having failed to file a statement of defence to the suit. There being no evidence in rebuttal to the evidence adduced by CW1 the issue for determination is whether the Claimants have proved on a balance of probability their claim as set out in the amended statement of claim and what reliefs if any are the Claimants' entitled to.
23. The testimony by the Claimant is that they were employed by the Respondent on different dates from the year 2014 to 2016 and particulars of each Claimant are set out in annexures before court. That each of the Claimant's worked for 12 hours a day and were not paid over time. That the Claimants worked diligently despite the unfair condition of work.
24. That by a letter dated 13/8/2016, the Respondent issued all Claimants with new letter of appointment in which the salary of Claimants were reduced substantially. That the Claimants were forced to sign the new letters failing which they would be dismissed from work.
25. That from December 2016, the Respondent started defaulting in payment of salaries. The period January to March 2017, became a crisis as the Claimants went for four (4) months without pay.



26. The Claimants persevered and discussed the matter with the managing Director but promises to settle arrear salaries were not fulfilled.
27. The Claimants decided to report the matter to the labour office. On 24/3/2017, the labour officer called the Claimants to the Nyayo House Labour Office with a view to resolve the dispute with the Respondent. The Claimants went to the labour office as instructed but a director of the Respondent arrived at the meeting with a letter summarily dismissing the Claimants and a document which was titled “staff on strike” in which the Respondent had computed arrear salaries owed to the Claimants and other terminal benefits. This document was filed before court as ‘annex 2’ and it became the basis of a judgment on admission entered by the court in favour of the Claimants.
28. The remaining issue in dispute is whether the summary dismissal of the Claimants was for a valid reason and if the Respondent followed a fair procedure in summarily dismissing the Claimants from employment and what remedies are available to the Claimants over and above the award granted in the judgment of admission.
29. It is not in dispute that the Respondent had failed to pay the salaries of the Claimant from December 2016 up to March 2017, a period of four (4) months. This conduct by the Respondent on its own amounted to fundamental breach of the contract of employment of the Claimants which entitled the Claimants to repudiate the said contracts and claim damages and all terminal dues owed to them.
30. The arbitrary reduction of salaries of the Claimants by issuing new contracts dated 13/8/2016, was an aggravation of the situation.
31. The Claimants were within their rights to stop working and go to the labour office on 24<sup>th</sup> March 2017, where the labour officer had summoned them together with the Respondent with a view to resolve the dispute.
32. It is clear that the Respondent faced financial difficulties at the time which made it difficult for the Respondent to fulfill its contractual obligation to the Claimant. The proper cause of action open to the Respondent was to restructure the organization and declare redundancies in terms of section 40 of the *Employment Act* 2007.
33. The letter of summary dismissal dated 24/3/2017 and addressed to the Assistant Labour Commissioner summarily dismissing the Claimants was unprocedural and in violation of section 36, 41, 43 and 45 of the *Employment Act* 2007.
34. The purported summary dismissal was unlawful and unfair since the Claimants who had not received salaries for four (4) months had a right to attend a lawfully convened meeting to resolve the dispute at the labour office. Clearly, the Respondent had failed to offer a reasonable solution to the crisis that forced the Claimants to go to the labour office to seek relief.
35. Accordingly, the Claimants have proved that the summary dismissal of the Claimants by the Respondent by a letter dated 24/3/2017 was unlawful and unfair.
36. The Claimants were entitled to compensation in terms of section 49(1) (c) and 4 of the *Employment Act*, 2007. In this respect the Claimant had endured a period of 4 months without salary. They were collectively dismissed by the Respondent while attending a conciliation meeting at the labour office. The Claimants had worked for periods ranging from the year 2014 to 2017, period of about 3 years. The Claimants did not contribute to the summary dismissal since their contracts had been grossly breached by the Respondent by failure to pay their salaries for a period of 4 months. Even upon arbitrarily reducing the claimants’ salaries the Respondent did not pay their arrear salaries immediately.



The Claimants were offered and not paid arrear salaries and terminal benefits upon dismissal. Indeed, to date, even after the judgment on admission the Claimants have not been paid their dues.

37. The Claimants have proved that they were entitled to gratuity, overtime arrear salary and payment in lieu of leave and notice pay outstanding over and above the judgment on admission as set out in the statement of claim and annexe I thereof.

38. The court relies on the case of Raustus Ayua Odioko versus China Wu Yi Company Ltd [2021] eKLR in which the court held as follows:

“A fair reason, would mean a reason life with good faith and anchored on genuine facts. By reason of the above premises, one cannot see these in the Respondent’s reason for the termination. This court is unable to find that the Respondent had a fair and valid reason to summarily dismiss the Claimants as it alleged. The dismissal/termination of the Claimants’ employment was therefore bereft of substantive fairness.”

39. Accordingly, judgment is entered in favour of the Claimants against the Respondents jointly and severally as follows:-

- a. Part of the judgment on admission ordered by the court on 24/11/2017 from which the parties reached a consent of Kshs. 2,553,141.00 which has not been paid to date.
- b. One month salary in lieu of notice for all the Claimants as particularized in column 7 of Annexe ‘1’ in the sum of Kshs. 667,000.00.
- c. Compensation equivalent to three months salary in respect of each Claimant for a total sum of Kshs. 2,013,000.00.
- d. Interest at court rates from date of judgment till payment in full.
- e. Costs of the suit
- f. Certificate of service within 30 days of this judgment.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**Mathews Nduma**

**JUDGE**

Appearance:

Ms. Akinyi Advocate for Claimants

Mr. Wakute Advocate for Respondent

Mr. Kemboi – Court Assistant

