



**Bakery Confectionary Food Manufacturing & Allied Workers Union
(K) v Patco Industries Limited & another (Cause E638 of 2022)
[2025] KEELRC 2943 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2943 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E638 OF 2022
B ONGAYA, J
OCTOBER 30, 2025

BETWEEN

**BAKERY CONFECTIONARY FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT**

AND

PATCO INDUSTRIES LIMITED 1ST RESPONDENT

READY CONSULTANCY LIMITED 2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 30th October, 2025)

JUDGMENT

1. The claimant filed a memorandum of claim dated 06.09.2022 through the claimant's General Secretary Danchael Mwangure. The claimant alleged the unlawful termination of employment of Hagga Sifuna Wafula. The claimant pleaded as follows:
 - a. The claimant and the 1st respondent concluded a recognition agreement on 16.02.1988 and negotiated numerous collective agreements the last one being for the period 01.04.2017 to 31.03.2020 duly registered by the Court.
 - b. The grievant a unionisable employee was employed by the 2nd respondent as a casual employee at Kshs.16,978.00 per month. His duties included mixing syrups, colouring, assisting machine operators, packing and loading. The 1st respondent allocated and supervised his work. He worked from 7.30am to 5.00pm for 7 days per week for day shift and 4.30am to 8.00am the following day for night shift. He was not given a letter of appointment per section 10 of the [Employment Act](#), 2007.



- c. The grievant joined the union per right to associate in Articles 36 and 41 (2) (c) of the Constitution of Kenya, 2010. He got injured while at work on 14.12.2018 when he got burned from hot water emanating from one of the production cookers. He was seriously injured and went on sick leave and continued to earn for 3 months but on the 4th month he was not paid.
 - d. After 5 months he had recovered and he resumed work until on 09.09.2019 when he filed an injury claim under the Work Injury Benefits Act, 2007 (WIBA). On 10.09.2019 he reported at work as usual but the 1st respondent's security locked him out thereby terminating his employment without due procedure. On 10.09.2019 the claimant union protested by letter to the 1st respondent and a meeting was convened on 04.10.2019 to deliberate the issues. No agreement was reached and the claimant reported a trade dispute by the letter dated 05.03.2020 and a conciliator was appointed. A certificate of unresolved dispute was issued on 08.02.2021 and the suit was filed.
 - e. It is urged that the outsourcing agreement between the 1st respondent and the 2nd respondent was unlawful and unconstitutional because it set out to circumvent the recognition and collective agreement between the 1st respondent and the claimant. The outsourcing agreement denied the grievant all the employment benefits under the recognition and collective agreement. It is alleged that the grievant's rights under Article 27 on equality and non-discrimination; Article 36 on right to associate; Article 41 on fair labour practices; and section 5 of the Employment Act on non-discrimination, fair treatment and equal opportunity were violated.
 - f. Dismissal for instituting an injury claim cannot constitute a fair reason for dismissal or termination. it was in breach of section 41 and 43 and 45 of the Employment Act, 2007 on fair procedure and fair reasons.
2. The claimant claimed on headings of the grievant's pay in lieu of notice; leave days; overtime; compensation for unfair termination; and compensation for violation of constitutional rights making a sum of Kshs.1, 665, 634.60. the claimant prayed for judgment against the respondents as follows:
- a. A declaration that the placement of the grievant under the outsourcing arrangement between the 1st and 2nd respondent herein was in violation of the recognition and collective agreements, Labour Institutions (Private Employment Agencies) Regulations, the ILO, Private Employment Agencies Convention (No.C18) therefore invalid, unlawful, null and void.
 - b. The declaration that termination of the grievant services was based on invalid reasons, procedurally flawed hence illegal, null and void.
 - c. The declaration that the grievant was unlawfully, wrongfully, and illegally constructively terminated from employment by the joint actions of the respondent's herein.
 - d. A declaration that the grievant's rights were violated as protected under Articles 27, 41 of the Constitution and section 5 of the Employment Act as pleaded and claimed.
 - e. A declaration that the grievant is entitled to compensation for violation of his constitutional rights as claimed.
 - f. Payment of Kshs.1, 665, 634.60 from the date of filing suit till full payment.
 - g. Costs of the suit.



3. The 2nd respondent filed the response to memorandum of claim dated 06.06.2024 through Namada & Company Advocates. The 2nd respondent prayed that the memorandum of claim be dismissed with costs. The 2nd respondent pleaded as follows:
 - a. The union could not sue the 2nd respondent who has no recognition and collective agreement with the union. The grievant herein is not a unionised member of the union.
 - b. The 2nd respondent has not terminated the services of the grievant and his whereabouts are unknown. In any event the 2nd respondent engages employees on a daily basis depending on the needs of the 2nd respondent's clients like the 1st respondent. Payment is on weekly basis for days worked and workers are at liberty to walk away without the 2nd respondent making a follow up.
 - c. The grievant had never worked for the 1st respondent until the 2nd respondent deployed him there. The grievant's daily wage was Kshs.653.00 for day shift and Kshs.1, 571.00 for night shift. Any extra hours worked were paid. He was never paid a monthly salary. having not been terminated and being a casual worker he is not entitled to a month's pay in lieu of notice. No annual leave is due because he did not work continuously but on need basis.
 - d. The claim for overtime is not justified as he did not work continuously and each shift was strictly 8 hours of work.
4. The grievant testified and the respondents called their respective witnesses. Final submissions were filed for the parties. The Court has considered the material on record and makes findings as follows:
 1. There is no dispute that the 1st and 2nd respondents entered an outsourcing agreement under which the 2nd respondent provided workers to the 1st respondent. The evidence is that the grievant had not previously worked for the 1st respondent and was employed by the 2nd respondent and deployed to the 1st respondent's premises. The employment contract, albeit on casual basis, was between the grievant and the 2nd respondent. The grievant testified that he worked only for the days he reported at work and he was a daily or casual employee. The Court returns accordingly.
 2. The suit was by reference to the Court after the conciliation proceedings between the 1st respondent and the claimant collapsed. The 2nd respondent was not a party to the conciliation proceedings and is none-suited in so far as the reference to the Court by way of the instant suit was flowing from the conciliation proceedings. The grievant confirmed that he had no evidence to show that he was a member of the claimant trade union. The case for the 2nd respondent that the claimant lacked standing to sue the 2nd respondent because the grievant was not a member of the union is upheld. It is that membership to a union entitles the union to represent the member irrespective whether there exist a recognition agreement between the union and the employer. Again, a recognition agreement has been found to entitle the union to collectively bargain for the members with respect to the employer being party thereto and a recognition agreement is not a precondition for a union to represent the member such as in legal proceedings. In the instant case there is no evidence that the grievant was a member of the claimant trade union at all material times and the Court returns that the union lacked standing as urged for the 2nd respondent.
 3. By own pleadings, the claimant confirmed that the grievant was dismissed by the 1st respondent and the Court finds that the pleading is binding and a case for termination on account of filing an injury claim is found unsustainable against the 2nd respondent. Similarly, the evidence was



that the 1st respondent was not the employer and the claims are not sustainable against the 1st respondent, accordingly.

4. The Court finds that in view that the 1st respondent had not previously employed the grievant, the allegations of violation of rights and freedoms as urged for the claimant will collapse. It could be that the claimant was dissatisfied with the outsourcing arrangements as being adverse to the prevailing recognition and collective agreements between the 1st respondent and the claimant union. The claimant appears to urge for interventions in view of outsourcing and its impact on such prevailing recognition and collective agreements. It might be that a legislative intervention would be appropriate or a specific judicial determination in a proper case in that regard may be appropriate. In the meantime, the claimant to serve this judgment upon the Cabinet Secretary for Labour and Social Protection, as may, for appropriate consideration of policy and legislative interventions about the outsourcing and trade unionism and particularly the impact of outsourcing agreements on prevailing recognition and collective agreements.
5. While the suit will fail in view of the findings by the Court, the claimant will serve the judgment upon the Cabinet Secretary for Labour and Social Protection for appropriate considerations about outsourcing and trade unionism. In that consideration there will be no orders on costs.

In conclusion the suit is hereby determined and dismissed with orders:

1. The claimant to serve this judgment upon the Cabinet Secretary for Labour and Social Protection, as may, within seven (7) days from today, for appropriate consideration of policy and legislative interventions about outsourcing and trade unionism and particularly the impact of outsourcing agreements on prevailing recognition and collective agreements.
2. No orders on costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 30TH OCTOBER, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

