



Bakery Confectionery Food Manufacturing and Allied Workers Union (K) v Devkan Enterprises Limited (Cause E198 of 2023) [2025] KEELRC 2895 (KLR) (24 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2895 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E198 OF 2023
AK NZEI, J
OCTOBER 24, 2025**

BETWEEN
**BAKERY CONFECTIONERY FOOD MANUFACTURING AND ALLIED
WORKERS UNION (K) CLAIMANT**
AND
DEVKAN ENTERPRISES LIMITED RESPONDENT

JUDGMENT

1. The grievants herein, Francis Mburu Kamau, Richard Omoke Onserio, James Njenga Chege and Simon Ng'ang'a, sued the Respondent herein vide a Memorandum of Claim dated 8th March, 2023 and pleaded as follows:-
 - a. that the Claimant and the Respondent have in place a recognition agreement governing industrial relations within its enterprise, and have a duly executed Collective Agreement dated 19th March, 2019 for the period 1st April, 2018 to 31st March, 2020.
 - b. that the grievants are members of the Claimant, and were employed by the Respondent on diverse dates as drivers/salesmen as follows:-
 - i. that James Mburu Kamau was employed as a salesman/driver on 23rd August, 2018, and was earning a monthly basic salary of Kshs.22,335/= and a house allowance of Kshs.4,244/=.
 - ii. that Richard Omoke Onserio was employed as a salesman on 1st April, 2018, earning a monthly salary of Kshs.27,655/= and a house allowance of Kshs.5,254/=.
 - iii. that James Njenga Chege was employed as a salesman/driver in March 2017, earning a monthly salary of Kshs.22,335/= and a house allowance of Kshs.4,244/=.



- iv. that Simon Ng'ang'a was employed in February 2017 as a driver/salesman, earning a monthly salary of Kshs.22,335/= and a house allowance of Kshs.4,244/=.

2. The Claimant further pleaded:-

- a. that on 23rd September, 2021, the grievants reported on duty and demanded for payment of their August 2021 salaries which had not been paid, upon which the Respondent accused them of illegal work stoppage leading to losses, and directed the grievants to execute vouchers authorising deduction of Kshs.5,000/= from their respective salaries to cover the alleged losses.
- b. that vide a letter dated 23rd October, 2021 and addressed to the Claimant, the Respondent alleged that the grievants had engaged in an unlawful strike and had refused to be surcharged for the losses suffered on that day; and that on that account, the grievants' employment stood terminated effective immediately.
- c. that on 25th October, 2021, the Respondent purported to initiate a disciplinary process against the grievants post their termination by issuing them with backdated show cause letters dated 22nd October, 2021, despite their services having been terminated on 22nd October, 2021, requiring them to respond within 12 hours.
- d. that in view of the grievants' termination, there was no subsisting employment relationship on the basis of which the grievants could respond to the post termination show cause letters, and that the Claimant therefore notified the Respondent of a trade dispute having been lodged.
- e. that the grievants were dismissed from employment without payment of their terminal benefits.
- f. that the grievants were not granted an opportunity to respond to the allegations levelled against them before termination, and that the procedure as set out in Section 41 of the [Employment Act](#) was not adhered to in terminating the grievants' employment.

3. The remedies sought are as follows:-

- a. Notice pay in accordance with the length of an employee's period of service as set out in the collective agreement.
- b. Unpaid salaries for the month of September 2021 and 22 days worked in October 2021.
- c. Pending leave days as per Clause 14 of the Collective Agreement.
- d. Leave travelling allowance for years worked at the rate of Kshs.3,500/= per year as per Clause 15 of the Collective Agreement.
- e. Unpaid off days.
- f. Unpaid overtime.
- g. Unremitted pension pursuant to Clause 4(c)(ix) of the Collective Agreement (of 5% of basic salary with the employer matching it with a similar amount). That the employer never remitted the deducted sums to the pension scheme, and never matched the same.
- h. Equivalent of twelve months' salary being compensation for unfair termination of employment.

4. The grievants' individual claims were set out in the Claimant's pleadings (Memorandum of Claim) as follows:-



- a. Francis Mburu Kamau
- (i) Notice pay Kshs.26,579/=.
 - (ii) Unpaid salary for September 2021 and 22 days in October 2021 ... Kshs.46,070/=.
 - (iii) Unpaid leave days Kshs.63,789.60/=.
 - (iv) Leave travelling allowance (Kshs.3,500 x 3) Kshs.10,500/=.
 - (v) Unpaid off days Kshs.63,789.60/=.
 - (vi) Unremitted pension from February 2020 (33 months x 2,233.5) Kshs.73,705.50/=.
 - (vii) Overtime hours worked for 3 years Kshs.1,863,085.70/=.
 - (viii) Unlawful deduction from salary Kshs.5,000/=.
 - (ix) Maximum compensation Kshs.318,948/=.
- b. Richard Omoke Onserio
- (i) Notice pay Kshs.32,909/=.
 - (ii) Unpaid salary ... Kshs.57,042/=.
 - (iii) Unpaid leave days Kshs.78,981.60/=.
 - (iv) Leave travelling allowance (Kshs.3,500 x 3) Kshs.10,500/=.
 - (v) Unpaid off days Kshs.32,909/=.
 - (vi) Unremitted pension from February 2020 (33 months x 2,765.5) Kshs.91,261.50/=.
 - (vii) Overtime hours worked for 3 years Kshs.2,306,847.60/=.
 - (viii) Unlawful salary deduction Kshs.5,000/=.
 - (ix) Maximum compensation Kshs.394,908/=.
- c. James Njenga Chege
- (i) Notice pay Kshs.26,579/=.
 - (ii) Unpaid salary Kshs.46,070/=.
 - (iii) Unpaid leave days Kshs.85,052/=.
 - (iv) Leave travelling allowance (Kshs.3,500 x 4)Kshs.14,000/=.
 - (v) Unpaid off days Kshs.73,705.50/=.
 - (vi) Unremitted pension from February 2020 (33 months x 2,233.5)Kshs.73,705.50/=.
 - (vii) Overtime hours worked Kshs.1,863,085.70/=.
 - (viii) Unlawful salary deduction Kshs.5,000/=.



- (ix) Maximum compensation Kshs.318,948/=.
- d. Simon Ng'ang'a
- (i) Notice pay Kshs.26,579/=.
 - (ii) Unpaid salary Kshs.46,070/=.
 - (iii) Unpaid leave days Kshs.85,052.80/=.
 - (iv) Leave travelling allowance for 4 years (Kshs.3,500 x 4 years) Kshs.14,000/=.
 - (v) Unpaid off daysKshs.132,895/=.
 - (vi) Unremitted pension from 2020 (33 months x 2,233.5) Kshs.73,705.50/=.
 - (vii) Overtime worked for 3 years ... Kshs.1,863,085.70/=.
 - (viii) Maximum compensation Kshs.318,948/=.
5. Documents filed alongside the Claimant's Memorandum of Claim included an affidavit in verification of the claim, a written authority by the grievants authorising one of them (Francis Kamau) to testify on their behalf and to sign/execute pleadings as may be necessary, a witness statement of Francis Mburu Kamau dated 8th March, 2023 and an evenly dated list of documents, listing 16 documents.
 6. The Respondent entered appearance on 9th May, 2023 and subsequently filed a Statement of Response and a list of witnesses, both dated 23rd May, 2023. The Claimant filed a Reply to Defence, dated 4th September, 2023.
 7. The Respondent is not shown to have filed any witness statement or evidential documents.
 8. When the matter came up for hearing before me on 3rd April, 2025, both parties were represented by Counsel, and I allocated time for hearing of the suit. Surprisingly, when the matter was later called out for hearing, neither the Respondent nor its Advocate who had earlier that day addressed the Court appeared. Hearing of the suit proceeded, nevertheless. The Claimant's witness adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraph 5 of this Judgment.
 9. The Claimant closed its case, and the Court closed the Respondent's case and directed that written submissions be filed.
 10. In view of the Respondent's failure to call evidence, the evidence presented by the Claimant's witness stands uncontroverted, and the Respondent's filed pleadings/documents remain mere unsubstantiated statements of fact. This does not, however diminish the Claimant's obligation to establish its claim on a balance of probabilities as by law required.
 11. In the case of Janet Kaphiphe Ouma & Another – vs – Marie Stopes International Kenya, the High Court (in Kisumu HCCC No. 68 of 2007), citing the decision in Edward Muriga (Through Stanely Muriga – vs – Nathaniel D. Schulter (Civil Appeal No. 23 of 1997) stated as follows:-

“In this matter, a part from filing its statement of defence, the defendant did not adduce any evidence in support of assertions made therein. The evidence of the 1st Plaintiff and that of the witness remain uncontroverted, and the statements in the defence therefore remain mere allegations . . . Sections 107 and 108 of the *Evidence Act* are clear that he who asserts or pleads must support the same by way of evidence.”



12. In the case of *Interchemie EA Limited – vs – Nakuru Veterinary Centre Limited (Milimani HCCC No. 165B of 2000)*, the Court stated as follows:-

“Where no witness is called on behalf of the defendant, the evidence tendered on behalf of the Plaintiff stands uncontroverted.”
13. Similarly, it was stated as follows in *Drappery Empire – vs – The Attorney General (Nairobi HCCC No. 2666 of 1996)*:-

“Where the circumstances leading to the deliveries of goods are not challenged and stand uncontroverted due to the failure by the defendant to adduce evidence, the standard of proof in civil cases (on the balance of probabilities) has been attained by the plaintiff.”
14. The afore-cited three cases were cited (referred to) by the Court in *Chrispine Otieno Caleb – vs – Attorney General [2014] KEHC 8485 (KLR)*.
15. In my view, issues that fall for determination are as follows:-
 - a. Whether termination of the grievants’ employment by the Respondent was unfair.
 - b. Whether the grievants are entitled to the reliefs sought.
16. On the 1st issue, it is clear from the evidence presented that the grievants were employed by the Respondent as copies of payslips, NSSF statements and show cause letters issued to the grievants by the Respondent in October 2021 (allegedly after termination), among other documents, confirm that fact.
17. The Claimant pleaded that termination of the grievants’ employment violated the mandatory procedure set out in Section 41 of the *Employment Act*, and that the allegations made against the grievants by the Respondent, and which led to their termination, were untrue. The Respondent did not demonstrate otherwise, as it did not present any evidence.
18. Under Section 45(2)(a) of the *Employment Act*, termination of an employee’s employment is unfair if the employer fails to prove that the reason for the termination was valid.
19. As stated in the case of *Walter Ogal Anuro – vs – Teachers Service Commission [2013] eKLR*, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness. There must be a genuine reason for termination. In the present case, the mandatory procedure set out in Section 41 of the *Employment Act* is not shown to have been adhered to by the Respondent before termination; and the reason for the termination was not shown to have been valid, as the Respondent never gave any evidence in Court. I find and hold that termination of the grievants’ employment by the Respondent was unfair and unlawful, and I so declare.
20. On the second issue, and having made a finding that termination of the grievants’ employment was substantively and procedurally unfair, I award each of the grievants the equivalent of six (6) months’ salary being compensation for unfair termination of employment.
21. I allow the claims for notice pay, unpaid salary, unpaid leave days and unpaid leave travelling allowance.
22. The claims for overtime payment, unpaid off days, unremitted pension and unlawful salary deduction were not proved, and are declined. Where there is a claim for unpaid overtime payment or unpaid off days, the Claimant must always give particulars of the dates when extra hours were put in, and the rate



at which those extra hours were to be compensated at particular times. Minimum wage guidelines are given periodically under the relevant statute. A party cannot make a blanket claim.

23. On the alleged unremitted pension, the grievants did not exhibit statements from the pension scheme (administrator) to demonstrate non-remittance of the deducted pension contribution and non-matching of those contributions by the employer/the Respondent. Likewise, the alleged unlawful salary deduction was not proved on a balance of probabilities.

24. In the upshot, and having considered written submissions by the Claimant, Judgment is hereby entered for the Claimant/grievants against the Respondent as follows:-

a. Francis Mburu Kamau

- (i) Notice pay Kshs.26,579/=
 - (ii) Unpaid salary Kshs.46,070/=
 - (iii) Unpaid leave days Kshs.63,789/=
 - (iv) Leave travelling allowance Kshs.10,500/=
 - (v) Compensation for unfair termination of employment (Kshs.26,579 x 6) Kshs. 159,474/=
- Total= Kshs.306,412/=.

b. Richard Omoke Onserio

- (i) Notice pay ... Kshs.32,909/=
 - (ii) Unpaid salary Kshs.57,042.30/=
 - (iii) Unpaid leave days Kshs.78,981.60/=
 - (iv) Leave travelling allowance Kshs.10,500/=
 - (v) Compensation for unfair termination of employment (Kshs.32,909 x 6) Kshs.197,454/=
- Total = Kshs.376,886.90

c. James Njenga Chege

- (i) Notice pay ... Kshs.26,579/=
 - (ii) Unpaid salary Kshs.46,070/=
 - (iii) Unpaid leave daysKshs.85,052.80/=
 - (iv) Leave travelling allowance Kshs.14,000/=
 - (v) Compensation for unfair termination of employment (Kshs.26,579 x 6) Kshs.159,474/=
- Total = Kshs.331,175.80/=.

d. Simon Ng'ang'a

- (i) Notice pay Kshs.26,579/=
- (ii) Unpaid salary Kshs.46,070/=



- (iii) Unpaid leave days Kshs.85,052.80/=
 - (iv) Leave travelling allowance Kshs.14,000/=
 - (v) Compensation for unfair termination of employment (Kshs.26,579 x 6)
..... Kshs.159,474/=
- Total = Kshs.331,175.80/=

- 25. The awarded sums shall be subject to statutory deductions as applied to the grievants at the time of termination; pursuant to Section 49(2) of the Employment Act.
- 26. The Claimant Trade Union is awarded Kshs.120,000/= pursuant to Rule 70(4) of the Employment and Labour Relations Court (Procedure) Rules 2024, being a reasonable reimbursement of money spent in the course of litigation.
- 27. The grievants are awarded interest on the sums awarded to them, to be calculated at Court rates from the date of this Judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Amalemba for the Claimant

No appearance for the Respondent

