



**Kariuki & 3 others v Goodhope Caterers Limited (Cause E046 of 2024)
[2025] KEELRC 2852 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2852 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E046 OF 2024
SC RUTTO, J
OCTOBER 21, 2025**

BETWEEN

**ERICK MWANGI KARIUKI 1ST CLAIMANT
JOSEPH KIBURI NJOROGE 2ND CLAIMANT
EDWARD GATUMU ASUDAH 3RD CLAIMANT
ERASTUS SAVALI MBEVI 4TH CLAIMANT**

AND

GOODHOPE CATERERS LIMITED RESPONDENT

JUDGMENT

1. The Claimants filed a joint Memorandum of Claim on 17th January 2024 through the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA Workers Union). They aver that they were paid-up members of the Union and were employed by the Respondent on various dates and under different terms and conditions of service.
2. It is further averred that the Claimants served the Respondent diligently until their employment was terminated.
3. The Claimants contend that their woes began in October 2021, when the Respondent intimated its intention to cease operations. The 1st Claimant appealed to the Respondent not to proceed with the closure, as it would result in the loss of their source of livelihood. However, the Respondent, in its unwavering decision to close down the business, undertook to comply with the statutory requirements by paying the Claimants their terminal dues.
4. The Claimants further aver that the Respondent verbally informed them that their employment would terminate on 30th November 2021 and that they would collect their terminal dues on 4th December 2021.



5. The Claimants state that come 4th December 2021, they were invited by the Respondent to a cocktail event during which the Respondent presented them with letters of termination and required them to sign the same before receiving their respective terminal benefits.
6. The Claimants declined to comply, citing the intimidating presence of police officers and the casual manner in which the Respondent handled the issue of termination. Consequently, they sought the intervention of their Union for redress.
7. In view of the foregoing, the Claimants seek from the Respondent payment for salary underpayment, unpaid house allowance, severance pay, unpaid salaries for the months of March to October 2021, as well as unpaid leave and public holidays. They further pray for declaratory orders, costs of the suit, and interest thereon.
8. In its Response, the Respondent avers that it operated in good faith throughout its years of business, including in its dealings with staff, until the business was wound up in November 2021.
9. The Respondent states that during the COVID-19 pandemic, the business suffered significant financial losses due to government-imposed restrictions, which made it impossible to meet its financial obligations. Consequently, the decision was made to wind up the company.
10. The Respondent avers that it convened meetings on 4th October 2021 and 9th November 2021 to inform employees of the impending closure of the business.
11. Subsequently, the 1st and 4th Claimants approached the Respondent proposing to lease part of the bar and accommodation facilities owned by the Respondent to continue operating under their own management. The Respondent, however, declined this proposal.
12. The Respondent further avers that on 4th December 2021, the management hosted a farewell gathering attended by staff, suppliers, loyal customers, and national and county officials, both as a gesture of appreciation and to officially mark the closure of the business while disposing of remaining food and beverage stock.
13. Upon closure, the Respondent settled all outstanding dues, including November and December salaries, accrued leave days, and remitted NSSF and NHIF contributions for all employees.
14. The Respondent contends that the Claim discloses no reasonable cause of action against it and consequently, has urged the Court to dismiss it with costs.
15. The matter proceeded for hearing on diverse dates during which both sides called oral evidence.

Claimant's case

16. Joseph Kiburi Njoroge, the 2nd Claimant herein, testified on his own behalf and on behalf of the other Claimants. To this end, he relied on an Authority to Plead dated 10th January 2024. At the outset, Mr. Njoroge sought to adopt his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed on behalf of the Claimants as his exhibits before the Court.
17. Mr. Njoroge testified that he was employed as a Food and Beverages Supervisor and that at the time of his termination, his monthly salary was Kshs. 25,500/=.
18. He further testified that from September 2014 to February 2021, he worked 12-hour day shifts running from 6:00 a.m. to 6:00 p.m. That from March 2021 to November 2021, he worked extended shifts from 7:00 a.m. to 9:00 p.m.



19. Mr. Njoroge testified that in September 2021, the Respondent informed him of an intention to close down the business. Towards the beginning of November 2021, the Respondent instructed him to sell all the remaining stock, explaining that the business licence, set to expire at the end of November, would not be renewed.
20. He further stated that on 30th November 2021, he was informed that his employment had been terminated and was instructed to report on 4th December 2021 to collect his termination letter and cheque.
21. Mr. Njoroge testified that he was invited to a party by the Respondent, where he was served alcohol. While under the influence, the Respondent presented him with a cheque and a termination letter to sign. He declined to sign and opted to seek advice from his Union first.
22. After consulting the Union, the Respondent was summoned to appear at the Union offices, where he presented the same letter and cheque.
23. Mr. Njoroge testified that the cheque only covered his November salary and one month's pay in lieu of notice, without accounting for the rest of his terminal dues. On the Union's advice, he accepted the cheque but only endorsed it on the back.
24. The Union instructed the Respondent to settle the balance of his terminal dues promptly, but the Respondent failed to comply.
25. Mr. Njoroge further stated that he visited the Union's offices twice in an effort to resolve the matter, but no amicable settlement was reached. Consequently, the matter was escalated to the Ministry of Labour and Social Protection, where a conciliator was appointed.
26. He testified that the parties appeared twice before the conciliator, who advised the Respondent to pay the outstanding terminal dues, an instruction the Respondent ignored.

Respondent's Case

27. The Respondent called oral evidence through Robert King'ori who testified as RW1. Mr. King'ori identified himself as the Respondent's former Director and equally, he adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed on behalf of the Respondent, as exhibits before the Court.
28. RW1 testified that following the outbreak of the COVID-19 pandemic in March 2020, the Government imposed restrictions on travel and social gatherings, including the closure of all bars and restaurants.
29. In compliance with the directives by the Ministry of Health, the Respondent was compelled to suspend its operations entirely for approximately eight months.
30. As a result of these restrictions, customer traffic drastically declined, severely affecting the Respondent's revenue generation. Consequently, the Respondent's financial reserves were rapidly depleted as it sought to sustain the business under the prevailing conditions, leading to an inability to meet essential expenses such as rent, supplier payments, and employee salaries.
31. Despite the complete operational shutdown and significant revenue loss, the Respondent prioritized employee welfare by paying full salaries for March and April 2020, and half salaries for May, June, and July 2020, a decision made on humanitarian grounds to support staff during the difficult period.



32. Mr. King'ori averred that to further cushion staff from the effects of unemployment and financial hardship between March and May 2020, the Respondent implemented an internal salary scale based on years of service: employees who had served 10 years or more received 100% of their salary; those with 5–9 years received 75%; and those with 1–4 years received 50%, even as the business remained closed in compliance with government directives.
33. He added that notwithstanding the closure, the Respondent continued to remit all statutory deductions, including PAYE, NSSF, and NHIF.
34. He testified that when partial operations resumed around May 2021, the Respondent faced restrictions on customer numbers and service hours, prompting the introduction of a shift system where employees worked on alternating days (“one day on duty – one day off duty”) and were paid for the days worked.
35. RW1 further testified that on 4th October 2021 and 9th November 2021, the Respondent held meetings, attended by the Claimants, to inform staff of the company’s impending closure.
36. On 4th December 2021, the management invited all staff, suppliers, loyal customers, and both National and County officials to a farewell gathering intended to officially wind up the company and clear remaining food and drink stock.
37. Upon winding up, the Respondent paid employees their dues for November and December 2021, compensation for outstanding leave days, and ensured continued remittance of NHIF and NSSF contributions.
38. Mr. King'ori added that Certificates of Service were also issued to all employees. However, the Claimants declined to collect their cheques despite attending the meeting and did not offer any reason for their refusal.
39. The Respondent subsequently received a letter from KUDHEIHA Workers Union notifying it of a complaint lodged by the Claimants. The Respondent replied to the letter, after which a meeting was convened at the Union offices where the Respondent handed over the cheques to the Union officials. They acknowledged receipt.
40. The Respondent later received a notice of a trade dispute and was invited to a conciliation meeting, which it attended through its representative. A conciliation report was subsequently prepared.
41. However, the Respondent disagreed with the conciliator’s findings, arguing that the report was biased in favour of the Claimants and failed to adequately consider the financial constraints brought about by the COVID-19 pandemic.

Submissions

42. The Claimants urged the Court to find that they are entitled to their terminal dues on account of the unfair and unilateral process of termination by way of redundancy, which was carried out under intimidation and without consultation by the Respondent.
43. The Claimants further submitted that the Respondent’s failure to pay them withheld salaries and refusal to reimburse wrongly deducted wages amounts to a violation of Section 48 of the *Labour Institutions Act*.
44. Relying on the decision in *Kenya Ports Authority v Munyao & 4 others* [2023] KESC 112 (KLR), the Claimants argued that the Respondent’s conduct, which involved subjecting them to unfair labour



practices without compensation and non-payment of terminal dues, constitutes a clear violation of their constitutional rights.

45. On its part, the Respondent submitted that it complied with all procedural requirements under Section 40(1) of the *Employment Act*, having paid the Claimants all their dues, including a month's pay in lieu of notice and all outstanding leave days.
46. The Respondent further contended that it acted lawfully, fairly, and in good faith throughout the course of employment, including during the unprecedented COVID-19 pandemic, which necessitated a temporary shutdown of business operations between March and November 2020 due to Government-imposed restrictions, ultimately resulting in redundancy.
47. The Respondent further argued that it is under no further obligation to pay redundancy dues, having already made full and final payments and issued notices to the Claimants with a month's salary in lieu of notice.

Analysis and Determination

48. Upon evaluating the Statement of Claim, the evidence on record, and the parties' submissions, the key issue that emerges for determination is whether the Claimants are entitled to the reliefs sought.
49. It is noteworthy that although the Claimants submitted on the substantive and procedural fairness of their termination, they did not expressly plead these issues in their Statement of Claim. Indeed, the Claimants specifically identified the issue in dispute as the "failure by the Respondents to pay the Claimants' terminal benefits."
50. Further to the foregoing, the Claimants did not seek any declaration that their termination by way of redundancy was unfair or unlawful, nor did they pursue the reliefs ordinarily attendant to such a finding.
51. In light of the foregoing, the question as to whether the Claimants' termination from employment was fair does not arise for determination in this judgment.
52. With that being said, I now turn to consider whether the Claimants are entitled to the reliefs as pleaded in their Statement of Claim.

House Allowance and Salary Underpayment

53. All the Claimants have sought payment for alleged unpaid house allowance and salary underpayment.
54. It is notable that the Claimants' contracts of employment indicate that their salaries were consolidated. Accordingly, it is presumed that this encompassed all applicable allowances. However, whether the claim for house allowance is sustainable depends on whether the consolidated salary nonetheless fell below the statutory minimum wage. For this reason, both claims will be considered together.
55. The 1st and 4th Claimants claim Kshs. 418,588.20 as salary underpayment for 36 months. While they allege to have served as cashier/barman, their contracts of employment indicate that they were employed as barmen. Notably, the Regulation of Wages (General) (Amendment) Order, 2018, which the Claimants seek to rely on to support this claim, does not prescribe the minimum wage for employees in a comparable category. It is therefore not possible to establish whether the 1st and 4th Claimants were underpaid during the relevant period. For this reason, this claim fails.
56. Under this head, the 2nd Claimant seeks Kshs. 137,700.00 as salary underpayment for 36 months. Equally, Regulation of Wages (General) (Amendment) Order, 2018, which the 2nd Claimant seeks to



rely on to support this claim, does not prescribe the minimum wage payable for employees in the same category as his. Consequently, it cannot be determined whether the 2nd Claimant was indeed underpaid as he alleges. As such, this claim collapses.

57. The 3rd Claimant, on his part, seeks payment of Kshs. 83,700.00 as salary underpayment for a period of 36 months. It is undisputed that he was employed as a Food and Beverage Service (Waiter) and that, at the time of termination, he earned Kshs. 15,500.00.
58. In accordance with the Regulation of Wages (General) (Amendment) Order, 2018, the minimum statutory wage for a waiter with effect from 1st May 2018 was Kshs. 14,658.85, exclusive of house allowance. When the 15% house allowance is factored in, the minimum consolidated salary amounts to Kshs. 16,857.68 (that is, Kshs. 14,658.85 + Kshs. 2,198.83).
59. As the 3rd Claimant earned a consolidated salary of Kshs. 15,500.00, it is evident that he was paid below the minimum consolidated wage. Accordingly, his claim for salary underpayment succeeds to the extent of the proven underpayment.

Leave pay

60. The Claimants have also sought payment of leave for a period of three years. Whereas the evidence on record shows that their terminal dues included an element of leave pay, the Claimants have not alleged or demonstrated that the amount paid fell short of their entitlement.
61. Further to the foregoing, Section 28(4) of the *Employment Act* requires that the uninterrupted portion of annual leave be taken within the first 12 months of service, with any balance to be utilized within 18 months from the end of the leave-earning period.
62. In the circumstances, the Court finds that the claim for leave for three years is without merit and is accordingly dismissed.

Half salary for the month of March 2021 to October 2021

63. The Claimants have sought payment of half salary for the period between March and October 2021. Opposing the claim, the Respondent contends that during this period, it experienced a significant decline in customer flow and a reduction in operating hours, which necessitated the introduction of a shift system under which employees worked on alternate days. The Respondent avers that in this regard, staff were remunerated for the days they were on duty. In support of this position, the Respondent exhibited copies of the muster roll showing that the Claimants reported to duty on an alternating shift schedule.
64. Upon cross-examination, CW1 confirmed that they were indeed working in shifts and that he did not report to work every day.
65. It is therefore evident that the Claimants did not render service throughout the month but worked for approximately half the days. The Court is therefore satisfied that they were paid for the days actually worked.
66. The Court further takes judicial notice that the material period coincided with the outbreak of the COVID-19 global pandemic. It is common knowledge that, in an effort to contain the spread of the COVID-19 virus, the Government implemented stringent control measures, including restrictions on movement and social gatherings, which inevitably disrupted business operations across various sectors.



67. In light of the foregoing, it is more than probable that the Respondent's operations were adversely affected and did not run at full capacity during the period in question. The Court therefore has no reason to doubt that the Respondent was not operating optimally.
68. In the circumstances, it would be unreasonable and unconscionable to compel the Respondent to pay the Claimants half salary for the months claimed, considering that they did not render full service during that period. The claim is therefore declined.

Public holidays

69. The Claimants also seek compensation for three years, alleging that they worked on public holidays without pay. However, they did not produce evidence to demonstrate that they worked on gazetted public holidays during the said period or that they were not compensated accordingly.
70. The Court concurs with the decision in *Rogoli Ole Manadieggi v General Cargo Services Limited* [2016] KEELRC 1607 (KLR), where it was held that the burden of proving work done in excess of the legal maximum rests with the employee, and that such a claim cannot succeed in the absence of specific evidence showing the days worked and the corresponding entitlement.
71. Guided by the foregoing, the Court finds that the Claimants failed to prove this claim to the required standard. The claim for compensation under this head, therefore, collapses.

Severance Pay

72. The claim for severance pay succeeds by virtue of Section 40(1)(g) of the *Employment Act*, which obligates an employer to pay an employee declared redundant severance pay at a rate of not less than fifteen days' pay for each completed year of service. This statutory provision is couched in mandatory terms.
73. It is not in dispute that the termination of the Claimants' employment arose from redundancy.
74. There is no evidence that the Respondent paid the Claimants severance pay upon termination of their employment on account of redundancy.
75. In the circumstances, the Court finds that each Claimant is entitled to severance pay computed at the rate of fifteen days' pay for each completed year of service.

Orders

76. In the final analysis, the Court finds merit in the Claim, and judgment is entered in favour of the Claimants against the Respondent as follows:
- a. The 1st Claimant is awarded severance pay in the sum of Kshs. 142,500.00, computed at the rate of 15 days' pay for each of the 15 years served.
 - b. The 2nd Claimant is awarded severance pay in the sum of Kshs. 89,250.00, computed at the rate of 15 days' pay for each of the 7 years served.
 - c. The 3rd Claimant is awarded severance pay in the sum of Kshs. 101,146.08, computed at the rate of 15 days' pay for each of the 12 years served. The 3rd Claimant is further awarded the sum of Kshs 48,876.48 (Kshs 1,357.68*36 months) being underpayments for 36 months.
 - d. The 4th Claimant is awarded severance pay in the sum of Kshs. 142,500.00, computed at the rate of fifteen days' pay for each of the 12 years served.



77. Taking into account the circumstances under which the separation arose, the Court will be inclined to order that each party bears its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER, 2025.

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STELLA RUTTO
JUDGE

In the presence of:

For the Claimants Mr. Otieno (KUDHEIHA Workers Union)

For the Respondent No appearance

Court assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO
JUDGE

