



Kenya Union of Commercial, Food and Allied Workers v Maliwa Workforce Services Limited (Cause E007 of 2023) [2025] KEELRC 2877 (KLR) (16 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2877 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E007 OF 2023
MA ONYANGO, J
OCTOBER 16, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

MALIWA WORKFORCE SERVICES LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* to represent employees engaged in the commercial sector as more specifically set out in the membership clause of its constitution.
2. The Respondent is a company registered under the laws of Kenya and dealing with supply of labour services to third parties.
3. The suit herein was filed by the Claimant on behalf of its members who were employees of the Respondent namely: Joshua Musungu; Jairus Lumbasi; Collybolton Minyattah; and Chrispinus Mulanda, all herein after referred to as the Grievants.
4. In the Memorandum of Claim dated 2nd June, 2022, the Claimant avers that the Grievants, who were engaged by the Respondent on diverse dates, were deployed to work at Maishamart Supermarket Ltd in Kakamega town. That their employment was terminated on different dates as follows:

Employment History Of The Grievants

i. Joshua Musungu

The grievant was verbally employed by Maliwa Workforce who deployed him at Maishamart Supermarket Ltd in Kakamega in January, 2020 and was based at Mumias.

He was employed in the position of a shop assistant with a starting salary of Kshs.10,000.



He worked as a shop assistant until May, 2021 when he was dismissed by Mr. Maurice Anyanje the manager at Maishamart Supermarket Ltd.

The grievant lost his job one morning when he was found arranging flour and was told he was supposed to be with the Packers instead. He was told to go home and report on Monday of the following week.

When he reported back he was told to go and bring his employer Mr. Vincent Masinde. Mr. Masinde told the Claimant that he (Mr. Masinde) had already made arrangements with the manager of Maishamart Supermarket and hence the Claimant should proceed to work. When he went back he was sent away.

On his way out the manager told him even the union where he belongs cannot make him change his mind and allow him back to work.

His salary was transmitted through Kenya Commercial, Bank, Kakamega branch and never issued with any pay slip. He was terminated on 5th April,2020.

Jairus Lumbasi

Jairus was employed in February, 2019 in the position of a Shop Assistant at a starting salary of Kshs. 10,000.

The grievant went on his normal off day and when he reported back the following day he was told he was not supposed to be on off duty. However, that very day and for that simple reason, he was sent away to bring his employer who refused to accompany him.

The grievant was never issued with a pay slip but the salary was transmitted through Kenya Commercial Bank, Kakamega branch.

He worked for the Respondent up to May, 2020 having not taken any annual leave.

Collybolton Minyattah

Mr. Minyattah was employed in March, 2019 in the position of a shop assistant at a starting salary of Kshs.10,000.00.

He was deployed at the Wholesale department along Mumias Road.

Before his untimely termination, his wife had a premature delivery which led to the death of the baby. He asked for permission to go and bury the baby.

The grievant arranged with the overall manager, Rakel who verbally allowed him to leave immediately as per Exhibit 2 of the Claimant's bundle.

The grievant reported back after two (2) days. When Mr. Maurice found him working the grievant was instructed to remove his dust coat, leave and report back with his employer.

When he went to Maliwa Workforce Offices, he found Mr. Masinde who told him to proceed to work and that he will meet the grievant at work, but he never showed up. He went back to work but he was not allowed back. That marked his last day of work.

The grievant was never issued with pay slip though his salary was transmitted through Kenya Commercial Bank, Kakamega branch.

He never took his annual leave. His last salary at the time of termination in May, 2020 was Kshs. 10,000.00.

Chrispinus Mulanda



The grievant was employed in April, 2019 in the position of General Labourer and later promoted to the position of shop assistant at a starting salary of Kshs.10,000. He was deployed to Maishamart Supermarket. The grievant was assigned work of offloading at the store.

The day the grievant was terminated, one bale of sugar was found with 6 bags of sugar more than others.

The grievant together with the other loaders were called to the Manager and HR's office who had already drawn a conclusion to have them terminated on the basis that they were involved in stealing.

They were all forced to write statements in which they explained what had happened.

The statements they wrote were trashed and they were forced to write apology letters instead.

The grievant was told to bring his employer (director of Maliwa Workforce) whom he called but refused to pick his phone calls or to accompany him.

The grievant went back to work but was denied access until he went with his employer. Thereafter there was no further communication and his employment ended.

The grievant was never issued with pay slip. His salary was remitted through Kenya Commercial Bank, Kakamega branch.

He never went on annual leave as at the time of his untimely unfair/unlawful termination in June, 2020.

5. The Claimant states that upon the Grievants reporting the termination of their employment to its office it wrote to the Respondent with a view to resolving the issue on 29th June, 2020 with a reminder on 9th July, 2020 which elicited no response. It therefore reported a trade dispute to the Minister for Labour as provided under section 62 of the [Labour Relations Act](#).
6. The Minister accepted the dispute and appointed Mr. Mwinami as conciliator. The conciliator invited the parties for a meeting on 12th October, 2020 through a letter dated 30th September, 2020. The Respondent neither wrote a memorandum nor attended the meeting. The conciliator wrote a reminder on 22nd October, 2020 inviting the parties to attend a meeting on 3rd November, 2020 but the Respondent again failed to honour the same. On 10th November, 2020 the conciliator issued a Certificate of Unresolved Dispute to the parties, paving way for the Claimant to move to this court.
7. It is the Claimant's averment that he Grievants worked from 8 am to 8 pm but were never paid for the hours they worked overtime.
8. The Claimant avers that the Grievants were never given an opportunity to be heard before the termination of their employment and were terminated on unfounded grounds.
9. It is the averment of the Claimant that the Grievants were grossly underpaid.
10. The Claimant prays for the following reliefs on behalf of the Grievants:
 - a. That the action taken by the Respondent to terminate the services of the Grievants because of their union membership in unfair and unlawful.
 - b. The Respondent to reinstate the Grievants and restore them back to their original jobs or jobs on the same caliber and treat them as if the terminations meted on them never happened and have them paid their accrued dues since their terminations.
 - c. If prayer (ii) is not tenable the Respondent to pay the Grievants as follows:
Collybolton Minyatta



- i. One Month's notice 18,319.50
Service pay 10,568.94
Leave not taken 18,319.50
Public Holiday – 11 days 19,728.00
Overtime worked – 4 hours daily 192,344.88
Underpayments
March 2019 – May 2020 = 14 months 11,473.00
12 months compensation
for wrongful termination 219,834.00
Total 595,587.82
- b. Chrispinus Mulanda
One Month's notice 18,319.50
Service pay 10,568.94
Leave not taken 18,319.50
Public Holiday – 14 days 19,728.00
Overtime worked – 4 hours daily 192,344.88
Underpayments
April, 2019 – June, 2020 = 14 months 116,473.00
12 months compensation for 219,834.00
Total 595,587.00
- c. Joshua Musungu
One Month's notice 18,319.50
Service pay 10,568.94
Leave not taken 18,319.50
Public Holiday – 13 days 18,319.50
Overtime worked – 4 hours daily 178,504.56
Underpayments
Feb, 2019 – April, 2020, 2020 = 13 108,153.50
12 months compensation for
wrongful termination 219,834.00
Total 572,019.50
- d. Jairus Lumbasi
One Month's notice 18,319.50
Service pay 10,568.94



Leave not taken 18,319.50
Public Holiday – 13 days 19,728.00
Overtime worked – 4 hours daily 219,822.72
12 months compensation for
wrongful termination 219,834.00
Total 638,296.10

- ii. Cost of the suit to the Claimant
 - iii. Certificates of service
 - iv. Any other relief this Honourable Court deems fit and just to grant
11. The Respondent, though properly served, did not file appearance or respond to the Claim.
 12. The suit was therefore certified ready for hearing as an undefended claim.
 13. At the hearing Chrispinus Mulanda Opunga testified as CW1 on behalf of all the Grievants on 4th April, 2025. He informed the court that he was authorized by the other Grievants to testify on their behalf.
 14. CW1 adopted his witness statement dated 12th March, 2024. He testified that the Respondent was his employer together with the other 3 Grievants. He urged the court to direct the Respondent to pay them as prayed in the Claim. CW1 attached a copy of his bank statement from KCB Bank which reflected several payments of salary by Maliwa Enterprise.
 15. After the hearing the Claimant filed written submissions in which it is submitted that the Grievants were not taken through the disciplinary process as set out in section 41 of the *Employment Act*. for emphasis the Claimant relied on the decision in *Walter Ogal Anuro v Teachers Service Commission [2013] eKLR* where the court stated that for termination of employment to pass the fairness test it must be shown that there was not only substantive justification for termination but also procedural fairness.
 16. It was submitted that the termination of the Grievants was defective, substantively unjustified and procedurally unfair. The court was urged to declare the termination unfair labour practice.

Analysis and Determination

17. Having considered the pleadings and evidence on record and having considered the evidence adduced by the Claimant, the issues for determination are the following:
 - a. Whether the Grievants were employees of the Respondent
 - b. Whether the employment of the Grievants was unfairly terminated, and,
 - c. Whether the Grievants are entitled to the prayers sought

Whether the Grievants were employees of the Respondent

18. On the first issue, CW1 testified that he worked with the other Grievants Jairus Lumbasi, in A Joshua Musungu and Collybolton Minyatta. He testified that they were employed verbally and were paid salary through KCB Bank, Kakamega Branch. He produced his Bank statement which reflected and entry of salary payment by Maliwa Enterprise.



19. From the foregoing I am satisfied that there was an employment relationship between the Grievants and the Respondent.

Whether the employment of the Grievants was unfairly terminated

20. The Grievants allege that they were unfairly terminated. According to the witness statement of Chrispinus Mulanda, dated 2nd June, 2022, he was offloading sugar at the store of Maishamart Supermarket where he had been outsourced from the Respondent with 4 other employees when one bale was found to have more sugar than other bales. They were called to the Human Resource Office and accused of stealing sugar. They were forced to write apology letters. He was then asked to call his employer whom he called but did not answer. After that he was not allowed back to work.
21. According to the witness statement of Collybolton Minyatta, he was working at the wholesale department of the supermarket when his wife gave birth to a premature baby who died. He sought permission to attend to the emergency and was allowed by Mr. Raket the overall manager to take 2 days off. When he reported back after the 2 days Mr. Maurice of Maliwa Workforce did not allow him to resume duty.
22. For Jairus Lumbasi, according to his witness statement he went on a normal day off and when he resumed duty the following day he was told that the day he was away was not his off day as he was supposed to be off on the day he resumed duty. He was sent to bring his employer who did not show up and he was never allowed back to work.
23. Joshua Musungu in his witness statement averred that he was found arranging flour and was told that he was supposed to join the packers. He was then sent to go and call his employer, Mr. Vincent Masinde. Masinde told him he had talked with the employer. When the Grievant went back to work he was denied entry and sent away.
24. From the foregoing it is clear that the termination of the Grievants did not comply with the requirements of section 41, 43 and 45(2) of the Employment Act which provide:
41. Notification and hearing before termination on grounds of misconduct
1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.
43. Proof of reason for termination
1. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.



2. The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
45. Unfair termination
2. A termination of employment by an employer is unfair if the employer fails to prove—
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason—
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure
25. For the foregoing reasons I find the termination of the Grievants was both procedurally and substantively unfair.

Whether the Grievants are entitled to the prayers sought

26. Having found the terminations unfair, I have to determine if they are entitled to the prayers sought.
- a. Pay in lieu of notice
Each of the Grievants is entitled to one months' pay in lieu of notice
 - b. Service Pay
Service pay is payable per completed year of service at 15 days provided the employee is not a member of NSSF or other gratuity or pension scheme. The Grievants stated that they were not registered as members of NSSF so they are entitled to service pay.
 - c. Leave not taken
Each of the Grievants is entitled to leave earned but not taken at 21 days per year or 1.75 days per month worked.
 - d. Public holidays
The Grievants are entitled to pay at double rate on public holidays.
 - e. Underpayments
The Grievants aver that they were shop assistants and were therefore underpaid as they were all paid Kshs. 10,000 per month. However, from the evidence on record, the Grievants were general labourers and their correct salary at the material time was Kshs. 12,522.70 with 15% house allowance (1878.40) giving a total of Kshs. 14,401.10. I therefore find that each of the Grievants was underpaid by Kshs. 4,401.10 per month.
 - f. Overtime worked
The Grievants further prayed for overtime worked at 4 hours daily. None of the Grievants made any reference to working overtime in their witness statements and neither did CW1 mention the same in his testimony in court. The prayer is dismissed as having not been proved.
 - g. Compensation



The Grievants prayed for compensation. Taking into account the length of service which was on average one (1) year, I award each of them 2 months' salary as compensation.

27. In conclusion, I find that the termination of the employment of the Grievants was unfair and declare accordingly. Each of them is awarded as follows:

Chrispinus Mulanda

He worked from April, 2019 to May, 2020

- i. Pay in lieu of notice Kshs. 14,401.10
 - ii. Service Pay for 1 year Kshs. 7,201
 - iii. Leave not taken 21 days Kshs. 10,114.50
 - iv. Underpayments (4,401.10x14) Kshs. 61,615.40
 - v. Compensation 2 months gross pay ... Kshs. 28,802.20
- Total Kshs. 122,134.20

Joshua Musungu

Employed in March, 2019 to May, 2020

- i. Pay in lieu of notice Kshs. 14,401.10
 - ii. Service Pay for 1 year Kshs. 7,201
 - iii. Leave not taken 24.5 days Kshs. 11,800.20
 - iv. Underpayments (4,401.10x15) Kshs. 66,016.50
 - v. Compensation 2 months gross pay ... Kshs. 28,802.20
- Total Kshs. 128,221

Jairus Lumbasi

Employed in March, 2019 to May, 2020

- i. Pay in lieu of notice Kshs. 14,401.10
 - ii. Service Pay for 1 year Kshs. 7,201
 - iii. Leave not taken 24.5 days Kshs. 11,800.20
 - iv. Underpayments (4,401.10x15) Kshs. 66,016.50
 - v. Compensation 2 months gross pay ... Kshs. 28,802.20
- Total Kshs. 128,221

Collybolton Minyatta

Employed in March, 2019 to May, 2020

- i. Pay in lieu of notice Kshs. 14,401.10
- ii. Service Pay for 1 year Kshs. 7,201
- iii. Leave not taken 24.5 days Kshs. 11,800.20



- vi. Underpayments (4,401.10x14) Kshs. 66,016.50
- iv. Compensation 2 months gross pay .. Kshs. 28,802.20
- Total Kshs. 128,221

28. The Respondent shall pay Claimant's costs of Kshs 50,000.

29. Interest shall accrue at court rates from date of judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 16TH DAY OF OCTOBER, 2025

MAUREEN ONYANGO

JUDGE

