Sukari Industries Limited & 3 others v Ongoro & 3 others (Cause E067 of 2024) [2025] KEELRC 2872 (KLR) (23 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2872 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE E067 OF 2024

JK GAKERI, J

OCTOBER 23, 2025

BETWEEN

SUKARI INDUSTRIES LIMITED ..... 1ST CLAIMANT

PLATINUM OUT SOURCING LOGISTICS ..... 2ND CLAIMANT

CONSOLIDATED HR SOLUTIONS ..... 3RD CLAIMANT

VOLT MANAGEMENT SOLUTIONS ..... 4TH CLAIMANT

AND

PHILO OTIENO ONGORO ..... 1ST RESPONDENT

DALMAS OCHIENG AOKO ..... 2ND RESPONDENT

MICHAEL ODHIAMBO GWADA ..... 3RD RESPONDENT

WYCLIFFE OCHIENG OYUGI ..... 4TH RESPONDENT

JUDGMENT

1. The claimants commenced this suit vide a statement of claim dated 19th August, 2024 and filed on 21st August, 2024 alleging that the respondents instigated an unprotected strike on 19th August, 2024 on issues that has not been raised with the claimants previously and the reasons were flimsy.

2. The claimant avers that the illegal strike led to losses due to closure of the factory and customers were inconvenienced as they could not access the factory.

3. That the claimants defaulted in performing several contracts with 3rd parties.

   The claimants prays for:

   a. A declaration that the strike commenced on 19th August, 2024 by the respondents was illegal unprotected under the law.

b. A declaration that there shall be no strike by the respondents either by themselves, agents or other employees of the claimants working at the claimants without due process.

c. A prohibition against the respondents by themselves, agents and/or other employees of the claimants working at Sukari Industries from taking party, calling for instigation and/or inciting to take part in an unprotected strike.

d. A prohibition restraining the respondent, by themselves, agents and/or other employees of the claimants working at Sukari Industries Ltd from holding impromptu meeting on the 1st claimants premises during working hours and/or holding meetings which were not been legally called within 500 meters of the claimants factory premises.

e. The claimants are at liberty to take the necessary action against the respondents and all employees working at Sukari Industries Ltd as provided for by law.

f. Any other relief and Order that the court may deem fit and just to make or grant.

g. Costs of the claim.

Respondents response and counter-claim

4. By a response dated 6th February, 2025, the 1st to 4th respondents denied that there was a strike at the 1st claimant's premises or that there was closure or any disruption.

Counter claim

5. The 3rd respondent averred that he was employed by the respondent on 29th August, 2018 as a driver at Kshs.18,000 per month and worked until 29th August, 2024 when he was summarily dismissed by the 1st and 3rd claimants for no valid reason and was working from 4:00pm to 12:00am and was not paid overtime.

   The 3rd respondent prayed for:

   i. Compensation for unlawful termination of employment Kshs.216,000.00

   ii. Salary in lieu of notice (3 months) Kshs.54,000.00

   iii. Prorated leave Kshs.3,937.00

   iv. Overtime (13824 hours) Kshs.1,285,632.00

   Total Kshs.1,559,569.00

6. The 4th respondent averred that he was employed in January 2021 at Kshs.22,000 per month and worked until 29th August, 2024 when he was suspended by the 1st and 3rd claimants, returned on 12th September, 2024 and was told to stay away.

7. The 4th respondent further averred that he worked from 4:00am to 12:00am, (13 hours overtime per day) which was not paid.

   The 4th respondent prayed for:

   i. Compensation for unlawful termination Kshs.264,000.00

   ii. Salary in lieu of notice (3 months) Kshs.66,000.00

   iii. Unpaid leave Kshs.66,000.00

iv. Overtime (13728 hours) Kshs.1,564,992.00

Total Kshs.1,960,992.00

Claimant's evidence

8. In his Supporting Affidavit sworn on 19th August, 2024, Mr. Collins Aluku, the Human Resource Manager of the 1st claimant deposed that on the morning of 19th August, 2024, without any notice or proper notice, under the leadership and guidance of the respondents employees went on strike and go-slow, shutting down operations of the factory destroyed, property and threatened the security of customers, farmers and senior managers.

9. The affiant deposed that the respondents had not raised any complaint prior to the strike or accorded the claimants an opportunity to dialogue and the reasons for the strike were flimsy and untenable as they sought the dismissal of the 1st claimants General Manager on allegations that he intended to close the factory for some time as it had allegedly crashed enough sugar, information the employee's allegedly learnt from a local member of the County Assembly and as such the strike was influenced by external politics from competitors and the 1st claimant had no intention of closing the factory.

10. The affiant deposed that it was not within the mandate of employees to hire and/or dismiss the 1st claimant's managers and their call had no basis and the strike by the employees was illegal and occasioned the 1st claimant losses running into millions of shillings due to closure of the factory.

11. That the strike had disrupted the 1st claimant's factory, sugar collection from farmers and the same was drying up resulting in loss to farmers and the 1st claimant and the respondents were not capable of compensating the 1st claimant for the loss.

12. The affiant further deposed that the 1st claimant's customers and farmers could not access the factory to buy sugar.

13. That the 1st claimant had defaulted in performing several contracts with 3rd parties which could precipitate law suits for damages for breach of contract.

Respondents evidence

14. RWI Mr. Philo Otieno Onguro confirmed that on 19th August, 2024, there was a go slow by employees not a strike but the employees continued working. That there was stoppage of work by employees and he politely told them not to destroy the employer's property or do anything wrong.

15. The witness admitted that police were called to maintain law and order and employees were shouting but could not confirm whether Michael Odhiambo and Oching Oyugi were there too.

16. Further, the witness confirmed that employees had challenges which had been presented to the 1st claimant earlier on but no documentation had been filed and no notice of the go-slow had been given and that it was not right for employees to do so. He admitted that the 1st claimant could take action against those on go-slow.

17. The witness admitted that there was an outsourcing contract between the 1st claimant and the 2nd claimant.

18. On re-examination, the witness testified that he worked for Sukari Industries Ltd and on 19th August, 2024, there was a go-slow.

19. RWII, Mr. Dalmas Ochieng confirmed on cross-examination that he worked for Sukari Industries Ltd and resigned from employment and cleared with the employer.

20. RWIII, Mr. Michael Odhiambo, Gwada confirmed that he worked for Sukari Industries Ltd seconded there by the outsourcing company and was in the general shift from 4pm to 12:00am.

21. Strangely, the witness then changed and testified that he worked from 8:00am to 5pm contradicting his witness statement. He admitted that he did not disclose the extra hours worked.

22. The witness admitted having been taken through a disciplinary process by both companies and his demand letter was signed by one, Mr. Njagi of consolidated Human Resource Solutions, who admitted having conducted a hearing and the respondents summary dismissal from employment and did not appeal the dismissal.

23. The witness admitted that he had not provided documents in support of his count-claim or a basis of the figures given.

24. On re-examination, RWIII testified that he clocked in at 4:00pm and exited at 11:00pm in the evening and had no contract of employment.

25. RWIV, Mr. Wycliffe Ochieng Ogugi confirmed that he was employed by two (2) persons and but a contract with consolidated Human Resource Solutions and none with the 1st claimant and worked from 4:00am to 12:00 mid-night daily.

26. That he was unaware of the go-slow on 19th August, 2023 as he worked in the field and fleet would be dispatched from the office throughout the day depending on the number of slips to farmers and by 4:34am, he had dispatched all of them (25), as all drivers came early and no emergency arose and left at night.

27. RWIV further confirmed that the supervisor was in-charge of the tractors and had only one (1) contract and disciplinary hearing was conducted on 6th September, 2024 but did not receive the letter of termination or any other communication.

28. The witness admitted that his witness statement was silent on the disciplinary process, which he admitted having attended and served for only three (3) months.

29. The witness admitted that he had not availed documents to substantiate his claims or specified when he earned overtime.

30. On re-examination, the witness testified that he did not proceed on leave for 2 years and was not paid.

31. The claimant's submissions were filed on 4th September 2025 long after expiry of the duration given by the court.

Respondents submissions

32. As to whether the respondents participated in an unprotected strike, counsel submitted that the claimant's witness failed to adduce evidence to demonstrate the role played by any of the respondents in the strike and the evidence adduced by the witness was hearsay as he was not at the workplace on 19th August, 2024.

33. Equally, the claimant's witness tendered no documentary evidence of the alleged strike or letter to the labour office.

34. Concerning incitement, counsel submitted that the claimant failed to prove that the respondents incited other employees to participate in a strike.

35. As regards the prayers sought, counsel for the respondents submitted that having failed to prove that there was a strike at the factory and the respondents participated, there was no basis to grant the prayers sought.

36. As regards the counter-claim, counsel cited the sentiments of the court in Wrigley Company (EA) Ltd V Attorney General & 2 others and another [2013] eKLR on the principles of outsourcing.

37. Counsel submitted that no evidence had been placed before the court to show that labour had been outsourced and the claimant had raised the issue to avoid liability as held in Kenya Engineering Workers Union V Abyssnia Iron and Steel Ltd ELRC No. 74 of 2013.

38. That the claimants did not furnish evidence of any disciplinary proceedings having been conducted and in any event there was no valid reason for summary dismissal.

39. Reliance was placed on the decision in Walter Ogal Anuro V Teachers Service Commission [2013] eKLR to urge that termination of the respondent's employment was unfair.

40. According to counsel, the claimants did not rebut the respondent's evidence and the 4th respondent was never recalled after suspension.

41. Reliance was placed on Kenya Magistrates and Judges Association V Judicial Service Commission & 2 Others [2020] eKLR and Joseph Ndungu Mastermind Tobacco (K) Ltd [2014] eKLR to urge that termination of employment of the 3rd and 4th respondents was unlawful.

42. As regards the reliefs sought, counsel submitted that the 3rd respondent was entitled to Kshs.216,000.00 being 12 months compensation, pay in lieu of notice, prorate leave, overtime and certificate of service.

43. That the 4th respondent was entitled to Kshs.264,000.00 as compensation for unlawful termination of employment, salary in lieu of notice, prorate leave, overtime, certificate of service and costs of the counter claim to the respondents.

44. The claimant's submissions were filed long after the duration granted by the court.

Analysis and determination

45. The instant suit was filed on 21st August 2024 together with a Notice of Motion dated 19th August, 2024 which sought injunctive Orders among others.

46. The court dismissed the application vide its ruling delivered on 27th January, 2025 for want of proof.

47. In that application, the claimants filed no shred of evidence to substantiate their allegations.

48. The inordinate delay concluding this case was occasioned by the absence of the parties on 1st October, 2024. Relatedly, after delivery of the Ruling, the claimants did not attend a mention on 19th February, 2025, taken by consent and hearing was slated for 25th March, 2025 when counsel for the claimants appeared in court late and did not have his file and sought an adjournment which the court granted as the last and stated as much. Hearing was then slated for 15th May, 2025 by consent on which the claimants' counsel was present at 9:19am for hearing.

49. Counsel representing the claimants sought an adjournment on the premise that Mr. Oledo was indisposed and had been rushed to hospital.

50. The court granted an adjournment and marked it as the lasat and a new hearing date taken by consent on 24th June, 2025, when counsel for the claimants sought an adjournment on the premises that documents had not been filed and counsel did not disclose that he had filed a response to the counter-claim on 23rd June, 2025 without leave of court as well as the witness statement and list of documents on 24th June, 2025 at 9:58am and 11:12am after the court had commenced its sitting.

51. All documents filed without leave of the court are expunged from the record.

52. The court has, however, considered the claimants' Supporting Affidavit dated 19th August, 2024 sworn by Mr. Collins Aluku.

53. Noteworthy, that the claimants filed the statement of claim on 21st August, 2024, without any annexures. However, the Replying Affidavit had several annexures.

54. The 1st to 4th respondents response and counter-claims by the 3rd and 4th respondents were filed on 11th February, 2025 and the claimants' counsel appeared in court on 25th March, 2025 and had sufficient time to file the outstanding documents by 15th May, 2025, a duration of more than 11/2 months, and counsel holding brief never sought the court's leave to file the documents on 15th May, 2025.

55. Ambushing the respondents and the court with documents on 23rd June, 2025 at 1743hours and 24th June, 2025 after the court had commenced sitting was unacceptable to the court.

56. Documents filed by the claimants reveal that as early as 11th February, 2024 employees had raised not less than 18 grievances with the 1st claimant, including, salary review, racism, discrimination, payment of salary to be via Bank not Mpesa, poor quality PPE's by the outsourcing companies, non-remission of statutory deductions, staff be allowed to join a trade union, employees be placed on the payroll of the 1st claimant, gratuity/service pay among others.

57. The list availed by the 1st claimant contradict Mr. Collins Aluku's deposition that the reasons for the alleged strike were flimsy and only related to the General Manager.

58. A handwritten two (2) page document further reveals that there had been stoppage of work from 8th February 2024 to 11th February, 2024 and a return to work formula was agreed upon and signed on the same date in the presence of service providers and witnessed by the Labour Officer, Homa Bay County.

59. Minutes of a meeting held on 26th February, 2024 reveal that there were 3 broad categories of grievances relating to salaries and wages, health and safety and employee welfare and each was assigned a champion Mr. Mungata/Collins Aluku, David Maganga and Collins Aluku respectively. Salaries were to be revised effective 1st March, 2024. Health and Safety was slated for closure at the end of April, 2024 as was welfare. Employees would follow due process and consult before grievances or issues escalated among other resolutions.

60. Puzzlingly, Mr. Collling Aluku's Supporting Affidavit made no reference to the history of the matter or whether all the grievances raised had indeed been resolved.

61. It is discernible that the events of August 19th 2024 were interconnected with the earlier strike.

The issues for determination are:

i. Whether the respondents were employees of the 1st claimant.

ii. Whether there was a strike or go slow on 19th August, 2024.

iii. Whether the 1st, 3rd and 4th respondents' employment was terminated by the 1st claimant unfairly.

iv. Whether the claimants are entitled to the reliefs sought.

v. Whether the 3rd and 4th respondents counter-claims are merited.

62. On the 1st issue, it is trite law that for an employment relationship to exist there must be a contract of service between the parties.

63. Under Section 2 of the *Employment Act* employee means a person employed for wages or a salary and includes an apprentice and indentured learner.

64. Equally, an employer is defined as any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company.

65. A contract of service is defined as an agreement whether oral or in writing and whether expressed or implied, to employ or to serve as an employee for a period of time and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of the Act applies.

66. Under Section 9 of the *Employment Act*, a contract of service for a period or number of days amounting in the aggregate to 3 months or more must be in writing.

67. Although all the respondents stated that they were employees of the 1st and 3rd claimant's, none of them availed any verifiable evidence to prove the allegation. The court is at a loss why an employee of one company or body can also claim to be an employee of another as well with no shred of evidence to substantiate the allegation.

68. Even in the absence of a written contract it is effortlessly demonstrable that a contractual relationship existed between parties.

69. The respondents' allegation that because they worked at the 1st claimant's factory they were employees of the 1st claimant is not conclusive evidence having acknowledged that there was an outsourcing arrangement between the two companies, the absence of a formal agreement on record notwithstanding.

70. RWIV admitted on cross-examination that the 1st claimant was not his employer as he had no written or oral contract with it.

71. Equally, RWII did not testify that the 1st claimant took him through a disciplinary process, the fact that it was represented on the committee notwithstanding.

72. RWI admitted that there was a labour outsourcing contract between the 1st claimant and the rest.

73. Finally, RWII admitted on cross-examination that he had been seconded to the 1st claimant by the outsourcing company and equally admitted that he was taken through a disciplinary process conducted by both companies but his demand letter was responded to by a Mr. Njagi of Consolidated Human Resource Solutions. He admitted having been dismissed summarily and did not appeal and on re-examination confirmed that he had no contract of employment.

74. Outsourcing of labour is a legitimate cost cutting process which organizations, including government bodies enter into for certain duties such as cleaning and human resource among others. The

outsourcing company employs those who qualify and places them at places where it has been engaged to provide labour.

75. The contract provides for the rights and duties of the parties including the duration and terms of employment are typically dependent on the outsourcing contract.

76. The parameters for a labour outsourcing contract were addressed in Wringley Company (East Africa) Ltd V Attorney General & 2 others & another [2013] eKLR.

77. In a labour outsourcing contract, the outsourcing company is an independent contract and the employment relationship is between the individual employee and the outsourcing company.

78. Instructively, none of the respondents availed evidence of termination of the employment by the 1st claimant or alleged that its officers told them anything regarding termination of employment.

79. Having failed to implicate the 1st claimant in their employment through verifiable evidence such as letter of appointment or termination, payment of salary or anything else concerning the 1st claimant and having further implicated the outsourcing companies, it is discernible that the respondents were employees of the outsourcing companies as opposed to the company which owned the factory where they worked.

80. As to whether there was a strike or go slow on 19th August, 2022, while the claimants asserted that there was a strike, the 1st respondent admitted that there was a go slow which lasted for about 3 hours and employees were shouting and returned to work when talked to by Mr. Boaz Omoke, Mr. Patrick Ombuti and Wycliffe Ochieng Oyugi.

81. In his Supporting Affidavit, Mr. Collins Aluku merely stated that there was a strike but availed no verifiable or credible evidence as to how the strike started, progressed and for what duration.

82. The affiant did not indicate that he saw any of the respondents calling, instigating or participating in the strike or destruction of the 1st claimant's property or disrupting customers or farmers.

83. In fact, Mr. Collins Aluku availed no scintilla of evidence as to when the strike started, who took part where the employees gathered or anything that transpired save for the unsupported allegations that the factory was closed, millions were lost, farmers were threatened, customers could not access the factory and contracts with 3rd parties were breached.

84. The Supporting Affidavit was silent on how the alleged strike ended and what transpired thereafter.

85. A perusal of the affidavit creates the impression that Mr. Collins Aluku was not present on that day and was not privy to what happened on 19th August, 2024 or any other day thereafter.

His averments remained unsubstantiated.

86. Evidence of how much the 1st claimant lost or pictures of the damaged or destroyed property or an affidavit of a customer or Senior Manager who was threatened or harassed, what the police did such as arrest, use of tear gas and so forth would have infused some credibility to Mr. Collins Aluku's averments.

87. Strangely, Mr. Collins Aluku's affidavit was silent as to how the claimants identified the four (4) respondents as the instigators of the stoppage of work on 19th August, 2025 or the role each of them played.

88. Mr. Colllins Aluku did not mention any of the respondents or any other person by name or what their contribution to the alleged strike was.

89. As found in the ruling delivered on 27th January, 2025, the respondents' account of the events of 19th August, 2024 were more detailed and undoubtedly more convincing and in particular the depositions and evidence of Mr. Philo Otieno Ongoro who was present and witnessed as the day unfolded.

90. From the evidence on record, it is discernible that there was stoppage of work by employees on 19th August 2024 at the 1st claimant's factory.

91. The 1st respondent's account of events on that day, on the court's view sounded truthful and he maintained the same in his Replying Affidavit and witness statement and in curt and even admitted it was not right for employees to do so.

Under Section 2 of the *Labour Relations Act*, 2007, strike means

92. The cessation of work by employees acting in combination or a concerted refusal or a refusal under a common understanding of employees to continue to work for the purpose of compelling their employer or an employer's organization of which their employer is a member to accede to any demand unrespect of a trade dispute.

93. Evidently, the employees in question were involved in a strike by cessation of work and as deposed by RWI, he found the night shift staff on site yet they ought to have gone home and the group was shouting. There was no evidence to show they were violent, threatened or intimated any person or destroyed or damage the 1st claimant's property.

94. Although the right to go on strike is now constitutional, the provisions of the *Labour Relations Act* distinguish between protected and unprotected strikes and lockouts.

Under Section 76

A person may participate in a strike or lock-out if—

a. the trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment or the recognition of a trade union;

b. the trade dispute is unresolved after conciliation—

   i. under this Act; or

   ii. as specified in a registered collective agreement that provides for the private conciliation of disputes; and

c. seven days written notice of the strike or lock-out has been given to the other parties and to the Cabinet Secretary by the authorised representative of—

   i. the trade union, in the case of a strike;

   ii. the employer, group of employers of employers' organisation, in the case of a lock-out.

95. Granted that the employees herein instigated and participated in stoppage of work and had not complied with the provisions of part ten of the *Labour Relations Act*, the stoppage of work was illegal and as RWI testified on cross-examination, it was not right for the employees to do so and the employer was entitled to take disciplinary action against those who participated.

96. Concerning termination of employment of the 1st, 3rd and 4th respondents, it is trite that termination of employment is unfair where the employer fails to demonstrate the compliance with the provisions of Section 41, 43, 44, 45 and 47(5) of the *Employment Act*.

97. Under Section 47(5) of the Act, the employee is required to establish on a prima facie basis that termination of his or her employment by the employer was unfair.

98. Put in the alternative, the employee must adduce evidence to show the facts leading to averment that termination of employment was unfair. See H. Young & Company (EA) Ltd V Ng'eno [2022] KEELRC 14654 (KLR). The employer on the other had is required to prove that it had a valid and fair reason to terminate the employee's employment (substantive justification) and conducted the termination in accordance with a fair procedure (procedural fairness) as was held in Naima Khamis V Oxford University Press (EA) Ltd [2017] eKLR and Walter Ogal Anuro V Teachers Service Commission supra. These decisions show that a termination of employment may be substantively or procedurally unfair or both substantively and procedurally unfair.

99. In this case, neither the 3rd nor the 4th respondent has evidentiary demonstrated what the 1st claimant did not do or did to constitute an unlawful termination of employment.

100. RWIII, for instance, admitted on cross-examination that he was taken through a disciplinary process by both companies but did not implicate the 1st claimant in the actual termination letter which he admitted had a reason for termination and did not appeal. He also admitted that the outsourcing company seconded him to the 1st claimant but had no evidence of the alleged secondment.

101. Similarly, RWIV admitted on cross-examination that Sukari Industries Ltd was not his employer. The witness testified that he neither received the letter of termination of employment nor any other communication. He however did not explain how and when he and the employer separated.

102. In a nutshell, neither of the respondents established that their employment was unfairly terminated by the 1st claimant or any other claimant.

103. As to whether the claimants are entitled to the reliefs sought, the court proceeds as follows

Declaration

104. Having found that there was a strike at the 1st claimant's factory and production was stopped for some time, and the employees had not given prior notice to the employer and the minister, the strike was illegal and prohibited.

105. The declaration that there shall be not strike by the respondents at the 1st claimant's factory without due process is not merited as it is already provided for by Section 76 of the *Labour Relations Act*. Similarly, the respondents are not working for the 1st claimant and more importantly, it was shown that the respondents called, instigated, incited other employees or participated in the strike.

The foregoing applies to prayer (c).

The two declarations are declined.

106. Similarly, the prohibition sought lacks any justifications it was not alleged that the respondents held unauthorised meetings at the 1st claimant's premises or encouraged or persuaded other employees to attend or convene an impromptu meeting during working hours.

The prayer is dismissed.

107. The prohibition Order sought to prevent the respondents from calling, instigating, taking part or inciting others to take part in an unprotected strike is anticipatory and no evidence was adduced to show that such an occurrence was imminent. The workplace is dynamic and court orders are least suited to address such dynamism. The prohibition sought is declined.

108. The prayer sought as number (E) is unclear as the respondents are not working for any of the claimants and in any event the claimants are bound to act in consonance with the law. The prayer is declined.

109. In sum, the claimants' case against the respondents is only partly successful to the extent that there was an unprotected strike at the 1st claimant's factory on 19th August, 2024.

110. Concerning the 3rd and 4th respondents counter-claims the court proceeds as follows:

111. Notably, neither the 3rd nor the 4th respondent testified about their counter-claims in their written witness statement save for the time of entry and exit and in the case of the 3rd respondent his evidence on entry and exit was jumbled up and contradictory and thus unreliable. He even disowned part of the counter-claim.

112. Instructively, both the 3rd and 4th respondents were in agreement that they did not provide documentary evidence or particulars in support of their claims.

113. Having found that neither the 3rd nor the 4th respondent adduced sufficient evidence to establish a prima facie case of an unfair termination of employment, the claims for salary in lieu of notice and compensation for unfair termination of employment are patently unsustainable.

114. The 3rd respondents claim for prorata leave is unsustainable as his written witness statement lacked any particulars as to when he did not proceed on leave and how many days were outstanding without such evidence there was nothing for the respondent to rebut.

The claim is declined.

115. Concerning overtime, the entry and exit times of an employee do not establish that overtime was earned.

116. The employee must prove the claim by availment of evidence to show that he not only worked to extra hours but that overtime was earned. A notice to the claimants' to produce attendance records for the specified duration would have elicited the claimant's response by availing the clock-in and clock-out times and the number of hours worked.

117. As presented the claim lacks any verifiable evidence and particulars for the court to rely on.

The claim is unproven and it is dismissed.

118. The 4th respondent testified that he did not proceed on leave and had only served for 3 months but both his witness statement and evidence were silent on particulars of the untaken leave. How many days for instance were outstanding and from which date?

119. On overtime, the 4th respondent stated that he worked 13 extra hours per day and his shift started from 4:00am to 12:00am none stop which the court finds unconvincing.

120. The claim lacks a time frame, including the claimant's policy on overtime and the relevant supportive evidence.

121. Significantly, the 4th respondent admitted on cross-examination that he had no documentation to substantiate his claim, including when he earned the alleged overtime.

The claims are declined.

122. The upshot of the foregoing is that while the claimants' case is only partly successful, specifically, the declaration that the strike by employees on 19th August, 2024 was illegal and prohibited by law. The 3rd and 4th respondents counter-claim were unsubstantiated and are accordingly dismissed.

Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 23RD DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

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 has 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.