



**Kenya Concrete, Structural, Ceramic, Tiles, Woodplys and Interior Design
Workers Union v Abyssinia Iron & Steel Limited & another (Cause
E023 of 2024) [2025] KEELRC 3211 (KLR) (13 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3211 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E023 OF 2024
MA ONYANGO, J
NOVEMBER 13, 2025**

BETWEEN

**KENYA CONCRETE, STRUCTURAL, CERAMIC, TILES, WOODPLYS AND
INTERIOR DESIGN WORKERS UNION CLAIMANT**

AND

ABYSSINIA IRON & STEEL LIMITED 1ST RESPONDENT

HERITAGE WORKFORCE LIMITED 2ND RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *akn ke act 2007 14 Labour Relations Act*.
2. The Respondents are limited liability companies duly registered under the *akn ke act 2015 17 Companies Act*.
3. The Claimant filed the instant suit on behalf of its members, hereinafter referred to as the Grievants namely:

Name Date of Employment

- i. Denis Kamenye - February, 2019
- ii. Christopher Anaire - September, 2018
- iii. Clinton Lugalia - February 2021
- iv. Andrew Wangila - January, 2019
- v. Washington Otinga - December, 2021



4. Vide the Statement of Claim dated 11th June, 2024 as amended by the Amended Statement of Claim dated 15th January, 2025, the Claimant avers that the Grievants are former employees of the Respondents and that the Respondents terminated the employment of the Grievants unfairly. The Claimant prays for the following reliefs:
 - a. For declaration to issue that the termination of the grievant's herein was unconstitutional, unlawful, unprocedural, wrongful and unfair hence Null And Void.
 - b. The Grievants herein be paid all their dues including Severance pay, Leave days, Pay in lieu of notice, Unpaid House Allowance, salary underpayment as per the set Minimum wage Guidelines, Overtime, Holiday off days worked, Issuance of Certificate of service, Compensation for unfair dismissal
 - c. The Respondents shall pay 12 months' salary as compensation for unprocedural, wrongful and unfair termination of employment service.
 - d. The Respondents herein pays interest on items 2) and 3) at Court rates from the date of filing suit till payment in full.
 - e. The costs of this suit be met by the Respondents on a full indemnity basis.
 - f. For any other further and better relief that this Honourable Court may deem just fit to grant.
5. The 1st Respondent filed a Response to Statement of Claim dated 12th November, 2024, in which it denies that the Grievants were its employees. The 1st Respondent further denies terminating the employment of the Grievants unfairly or at all or failing to pay their terminal dues.
6. The 2nd Respondent did not enter appearance or file a response to the Statement of Claim.
7. At the hearing the Claimant called Christopher Anaire, the 2nd Grievant who testified that he was employed by Heritage Workforce Limited, the 2nd Respondent, in 2018 but was not issued with a letter of appointment. He testified that he was never issued with any pay slip. He testified that his salary was at the beginning paid by the 2nd Respondent and later by the 1st Respondent. He testified that they were not issued with letters of termination of employment or termination notice.
8. Under cross examination by Mr. Abande for the 1st Respondent CW1 reiterated that he was employed by Heritage Workforce Limited, the 2nd Respondent, that he had a bank account and that he was not issued with a letter of termination of employment. He further testified that the Grievants were paid by Abyssinia Iron & Steel Limited, that he started working there in August, 2018 and that his employment was terminated in May, 2023. CW1 reiterated that they were never issued with pay slips, and that his last salary was paid by Abyssinia, the 1st Respondent.
9. CW1 further testified that the 1st Respondent started paying their salaries after the owner of Heritage died in 2022. He stated that the 1st Respondent paid through Diamond Trust Bank and he had filed his bank statement as proof of the payment by the 1st Respondent.
10. The 1st Respondent called Michael Njuguna who testified as RW1. He adopted his witness statement together with the documents in the 1st Respondent's bundle filed with the witness statement.
11. RW1 testified that the Grievants were employees of the 2nd Respondent who had been engaged by the 1st Respondent to supply it with labour as an independent contractor. RW1 testified that the contract between the 1st Respondent and the 2nd Respondent produced at the Labour Office during conciliation expired in 2017.



12. RW1 testified that the 1st Respondent at some point paid the Grievants directly when the 2nd Respondent requested it to do so on its behalf while it was changing signatories. He insisted that the employees were never employed by the 1st Respondent and remained employees of the 2nd Respondent.
13. Under cross examination RW1 stated that he had worked for the 1st Respondent as Human Resource Manager from 2023. He testified that the first contract between the 1st Respondent and the 2nd Respondent lapsed in 2018 but there were subsequent contracts which were not filed in court.
14. He testified that the bank statements filed by the Claimant reflected that some employees were paid by the 1st Respondent and others by the 2nd Respondent, that the 2nd Respondent requested the 1st Respondent to pay its employees.
15. Under re-examination RW1 stated that after the 1st contract there was no further direct engagement between the 1st Respondent and the 2nd Respondent. He stated that he had filed copies of payroll and pay slips of the 1st Respondent's employees and there were none for the Grievants.

Submissions

16. In the Claimant's submissions dated 5th June, 2025, it submits that the Grievants were outsourced to the 1st Respondent by the 2nd Respondent. That the 2nd Respondent was to supply and manage manpower at the 1st Respondent's premises. That this was pursuant to a contract dated 4th July, 2017 which commenced on 1st July 2017 and expired on 30th June, 2018.
17. According to the Claimant the contract was never renewed and the Respondents did not adduce any evidence to prove that the contract was renewed after 30th June, 2018.
18. It is the Claimant's submission that all the Grievants were employed after the expiry of the contract between the 1st and 2nd Respondents.
19. The Claimant submits that the Grievants who were all engaged as turnboys were verbally asked to cease reporting on duty until further notice. However during conciliation representatives of the Respondents presented letters of temporary cease of employment which were never issued to the Grievants. The Claimant further submits that the Grievants were never called back to work and neither was the duration of the ceasing of work communicated to the Grievants.
20. It is further the submission of the Grievant that the reason for the stoppage of work as stated by the Respondents being lack of raw materials, the termination was a redundancy, yet the Respondents did not comply with the procedure for redundancy under section 40 of the *akn ke act 2007 11 Employment Act*.
21. It is further the submission of the Claimant that from the bank statements produced by the Claimant, the 1st Respondent paid the salary of the Grievants and no documents had been filed to prove that the Grievants were employees of the 2nd Respondent. That the payroll of the 2nd Respondent has not been filed to prove that the Grievants were employees of the 2nd Respondent.
22. On the issue whether the Claimant can sustain a claim against the Respondent the Claimant submitted that it is a registered trade union and has mandate to represent employees who are its members on issues of employment by virtue of Article 22(2)(d) of *akn ke act 2010 constitution the Constitution of Kenya 2010* and the provisions of the *akn ke act 2007 14 Labour Relations Act*.
23. The Claimant further submitted that it does not require to have been recognized by an employer in order to represent its members. That the essence of a recognition agreement is for negotiating a



collective bargaining agreement as provided in section 54(1) of the *Kenya Labour Relations Act, 2007*. It is submitted that the assertions of the 1st Respondent in the Reply to Statement of Claim and in the witness statement of Michael Njuguna that the union cannot sustain a claim on behalf of the employees of the 1st Respondent due to lack of recognition agreement or because the 1st Respondent was not making deductions of union dues from the salaries of the employees are a misapprehension of the law. That under section 52 of the Act an employee is allowed to make payment of union dues directly to the union.

24. On the issue whether the Grievants are members of the Claimant it is submitted that Christopher Anaire confirmed the same in his affidavit dated 12th November, 2024. It is submitted that the Claimant did not present names of its members who were employees of the 1st Respondent for fear of victimization which would scare potential members.
25. On the reliefs sought the Claimant submitted that the Grievants are entitled to:
 - a. Severance pay
 - b. Leave compensation
 - c. Notice
 - d. House allowance
 - e. Underpayments
 - f. Overtime
 - g. Holiday off days worked
 - h. Compensation for unfair termination
 - i. Issuance of certificate of service
 - j. Any other payable legal dues.
26. It is submitted that the Grievants were declared redundant by freezing their employment for reason of lack of raw materials without adhering to the provisions of section 40 of the *Kenya Employment Act, 2007*.
27. It is submitted that under section 45(2) of the *Kenya Employment Act, 2007* termination of employment without compliance with sections 41 and 43 constitute unfair termination of employment. It is submitted that the Grievants are entitled to the reliefs sought because the Respondents failed to comply with sections 41 and 43 of the Act.
28. It is submitted that the Employment and Labour Relations Court has made it clear that an employer must produce records of employment as mandatorily required under section 74 of the *Kenya Employment Act, 2007*. For emphasis the Claimant relies on the decisions in Eldoret ELRC Cause No. 136 of 2018 as consolidated with ELRC Cause No. 137 of 2018: Abigael Jepkosgei Yator and Ann Cheruto v China International Co. Ltd and Kennedy Makhino Wafula v Vandeeep Singh Shop Cause No. 47 of 2018.
29. The Claimant tabulated the terminal claims for each of the Grievants as follows:
 1. Denis Kemenye Asiema
From February,2019 up to June,2023



(basic salary Ksh.18,432.00 =)

- a. Notice been one month's salary =Ksh.21,196.00 =
- b. Payment in lieu of leave =Ksh.51,610.00 =
- c. Severance pay $(18,432.00 \div 2 \times 4 \text{ yrs}) = \text{sh.}36,864.00 =$
- d. Housing allowance =Ksh.143,770.00 =
- e. Compensation for unfair termination =Ksh54,3500
- f. Holidays =Ksh.54,062.00=
- g. Total amount claimed =Ksh.561,854.00 =

2.Christopher Aniare-

From September,2018 up to June,2023

(basic salary Ksh.18,097.00 =)

- a. Notice been one month's salary =Ksh.20,812.00 =
- b. Payment in lieu of leave =Ksh.51,610.00 =
- c. Severance pay =Ksh.36,194.00 =
- d. Housing allowance =Ksh.143,385.00 =
- e. Compensation for unfair termination =Ksh263,832.00 =
- f. Total amount claimed =Ksh.528,061.00 =

2. Clinton Lugalia

From January, 2019 up to June, 2023

(basic salary Ksh.18,118.00 =)

- a. Notice been one month's salary =Ksh.21,686.00 =
- b. Payment in lieu of leave =Ksh.60,622.00 =
- c. Severance pay =sh.38,236.00 =
- d. Housing allowance =Ksh.83,970.00 =
- e. Compensation for unfair termination =Ksh260,268.00 =
- f. Holidays =Ksh.54,062.00=
- g. public Holidays =Ksh. 29,856.00 =
- g. Total amount claimed =Ksh.508,676.00 =

4. Andrew Wangila Nekwe

From February,2019 up to June,2023

(basic salary Ksh.18,432.00 =)

- a. Notice been one month's salary =Ksh.21,196.00 =



- b. Payment in lieu of leave =Ksh.51,610.00 =
- c. Severance pay =sh.36,864.00 =
- d. Housing allowance =Ksh.143,770.00 =
- e. Compensation for unfair termination =Ksh. 263,832 =
- f. Total amount claimed =Ksh.528,061.00 =

30. For the 1st Respondent it is submitted in its submissions dated 20th June, 2025 that the Grievants were not employees of the 1st Respondent as stated by its witness Michael Njuguna, RW1, who also produced the contract between the 1st Respondent and 2nd Respondent.

31. The 1st Respondent submits that its evidence was not controverted by the Claimant. That the only point of divergence was that at some point the 1st Respondent paid salary directly to the Grievants. It is submitted that this was explained by the RW1 to the effect that it did so at the request of the 2nd Respondent.

32. It is submitted that there is nothing on record to show that the 1st Respondent ever terminated the services of the Grievants or that the contract between the Grievants and the 2nd Respondent ever expired.

33. It is submitted that during conciliation the 2nd Respondent admitted that it had a contract with the 1st Respondent which expired on 30th June, 2018 but the 2nd Respondent continued dealing with the 1st Respondent meaning that the contract was renewed by conduct of the parties.

34. It is submitted that courts have held that outsourcing is acceptable was the case in *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] KECA 510 (KLR) where the court stated:

“Outsourcing” as defined by BusinessDictionary.com means,

“The contracting or subcontracting of noncore activities to free up cash, personnel, time, and facilities for activities in which a company holds competitive advantage. Companies having strengths in other areas may contract out data processing, legal, manufacturing, marketing, payroll accounting, or other aspects of their businesses to concentrate on what they do best and thus reduce average unit cost. Outsourcing is often an integral part of downsizing or reengineering. Also called contracting out.” In *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, this Court was satisfied that outsourced services was an accepted business strategy. In the same case, Murgor, J A. observed that; “Outsourced services is one such widely accepted business concept, which enables a company to focus on core business, reduce overheads, increase cost and efficiency savings, and manage cyclical resource demands. It is not designed to deprive Kenyans of their jobs.” In principle therefore, outsourcing of employees is not illegal or untoward, provided it is carried out in accordance with fair labour practices, and the process adopted is not aimed at rendering an employee redundant.”

35. On the issue whether the Claimant can sustain a claim on behalf of employees of the 1st Respondent the 1st Respondent submitted that the Claimant did not have locus standi because it had no recognition agreement with the 1st Respondent.

36. On the remedies sought for the Grievants the 1st Respondent submitted that the Grievants are not entitled to the prayers for reasons that:



- a. The prayers are time barred as they have been brought later than 1 year after the alleged violations.
 - b. No proof of underpayment,
 - c. No proof of working on holidays and off days
 - d. No proof of dismissal
 - e. No proof of employment
 - f. No agreement for payment of severance pay
 - g. Proof tendered by way of payslip that all payments were made. Not specified payment for which month.
37. The 2nd Respondent did not participate in the proceedings.

Analysis and Determination

38. I have considered the pleadings, evidence and submissions by the parties. The issues for determination in my view are whether there was an employment relationship between the 1st Respondent and the Grievants; whether the Claimant has locus standi to represent the employees of the Respondents, whether the Grievants were unfairly terminated or declared redundant and what reliefs should be granted.
39. It is not disputed that the 1st and 2nd Respondents entered into a contract under which the 2nd Respondent was to supply labour to the 1st Respondent. The contract was to run from 1st July, 2017 to 30th June, 2018. The 1st Respondent admits in its pleadings, the evidence of RW1 and the submissions that the contract was never renewed after it expired.
40. The 1st Respondent further admits that at some point it paid wages of the Grievants directly which it stated was at the request of the directors of the 2nd Respondent when there was delay in paying salaries following the death of one of the directors of the 2nd Respondent.
41. No evidence was adduced of this request. No disclosure was made about the directors of the 2nd Respondent. No third-party notice was issued to the 2nd Respondent by the 1st Respondent.
42. It is important to note that the suit herein was originally filed against the 1st Respondent alone and it is the court which directed the joinder of the 2nd Respondent as it had been mentioned in the pleadings before the court.
43. The *Kenya Employment Act 2007* defines an employee to mean “a person employed for wages or a salary and includes an apprentice and indentured learner” while an “employer” is defined to mean “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”.
44. 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 this Act applies”.



45. From these definitions, any person who works for another and is paid by that other person he works for is deemed to be an employee. The relationship can be overt or covert. The law implies the relationship by the circumstances of the same.
46. In this case there was a contract between the 1st and 2nd Respondents for supply of labour. That contract expired and the employees continued to work for the 1st Respondent who later started paying their wages directly on the basis that one of the directors of the 2nd Respondent had died and it had been requested to pay.
47. From the evidence on record, from the time the 1st Respondent started paying salaries of the Grievants directly there was a presumption that it became their employer. As stated by the Claimant which fact was not controverted by the 1st Respondent, all the Grievants were employed after the expiry of the contract between the 1st and 2nd Respondents. If the 1st Respondent had an ongoing contract with the 2nd Respondent nothing would have stopped it from producing records such as records of payments made to the 2nd Respondent and list of employees supplied to the 1st Respondent by the 2nd Respondent including records of reporting to work and deployment of the employees of the 2nd Respondent by the 1st Respondent. The failure of the 1st Respondent to adduce proof of the relationship between it and the 2nd Respondent must be taken to mean that there was no such relationship hence no records.
48. On the locus standi of the Claimant, the 1st Respondent's position was that the Claimant does not have locus standi as the 1st Respondent neither had a recognition agreement with the Claimant nor deducted and remitted union dues to the Claimant. The Claimant on the other hand insisted that it had locus standi by virtue of sections 52 and 54 of the *akn ke act 2007 14 Labour Relations Act* and Article 22(2) (d) of *akn ke act 2010 constitution the Constitution of Kenya*. The Claimant further produced a check-off form signed by the Grievants upon joining its membership.
49. Section 52 of the *akn ke act 2007 14 Labour Relations Act* Provides as follows:
Direct payment of trade union dues.
52. Nothing in this Part prevents a member of a trade union from paying any dues, levies, subscriptions or other payments authorized by *akn ke act 2010 constitution the constitution* of the trade union directly to the trade union
50. Section 54 of the Labour Reslations Act further provides that:
54.
(1) An employer, including an employer in the public sector, shall recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.
51. From these provisions it is clear that a trade union can represent an employee even when the employer does not have a recognition agreement with the trade union and that an employee can become a member of a trade union for purposes of representation by paying union dues directly to the union. This is underscored by the fact that recognition only happens when the union has a simple majority. Before that simple majority is attained the union represents its members without a recognition agreement.
52. I therefore find that the Claimant has locus standi to represent the Grievants having proved that the Grievants were its members.



53. On whether the termination of the employment of the Grievants was unfair, the report from the Labour Officer states that the Grievants were stopped from working because of lack of raw materials without any procedure. That such stoppage of work constituted redundancy and that the Respondents did not comply with the procedure of redundancy. The same is reiterated by the Claimant. The Respondent did not dispute the same.
54. Having not been terminated in the manner provided in sections 40 or 41 and 43 of the Act, the termination of the employment of the Grievants was unfair and I find accordingly.
55. On the remedies, the Claimant prayed for the following for each Grievant; severance pay, leave days, pay in lieu of notice, house allowance, underpayment, holiday off days, Certificate of service and compensation for unfair dismissal.
56. I am not satisfied that the termination of the employment of the Grievants amounted to redundancy. According to the Labour Officer's report, they were asked to temporarily stop work but were never told when to report back. In my view this is a normal termination and not a redundancy. I therefore decline to award severance pay.
57. The Grievants are entitled to leave earned and not paid as the Respondents did not deny that they did not go on leave or adduce records to prove they took leave.
58. The Grievants are also entitled to pay in lieu of notice as provided under section 35 as read with 36 of the *akn ke act 2007 11 Employment Act* having not been given notice before termination. I award them the same.
59. The Grievants are entitled to consolidated pay inclusive of house allowance. The Respondent did not dispute that the Grievants were all drivers. It is not stated what category of drivers they were, whether for cars and light vans, medium sized vehicle or heavy commercial vehicle. The Claimant has used the rate for cars and light vans and that is what the court will adopt. The applicable rate was Kshs. 18,936.85 per month for basic and 15% house allowance making the total Kshs. 21,777.40. The Grievants were paid Kshs. 3770 per week translating to Kshs. 15,080 per month. This means that they were underpaid by Kshs. 6,697.40 per month.
60. No evidence was adduced to support the claim for holidays and off days. The same was therefore not proved.
61. The Grievants are entitled to certificate of service.
62. Having found as above, I make the following orders:
 - a. I find that the Grievants were employees of the 1st Respondent at the time of termination of their employment in May, 2023.
 - b. I award each of them the following for only 12 months as they were earlier employees of the 2nd Respondent who did not participate in the suit and whose existence is in doubt:
 - i. leave days Kshs. 21,777.40
 - ii. pay in lieu of notice Kshs. 21,777.40
 - iii. house allowance – included in underpayments
 - iv. underpayment - Kshs. 697.40x12 = Kshs. 80,368.80
 - c. Certificate of service and



- d. Compensation – I award each of the Grievants one months salary as compensation for the unfair termination of their employment taking into account all circumstances of the case, in the sum of Kshs. 21,777.40
63. In sum, each of the Grievants is awarded Kshs. 145,701.
64. The 1st Respondent shall pay Claimant’s costs of the suit. In view of the fact that the Claimant was represented by an officer of the union, and cannot file a bill of costs under the Advocates Remuneration Order, I assess costs payable to the Claimant at Kshs. 50,000 to cover reasonable expenses attendant to and incidental to prosecution of the case, including reimbursements of court fees and service of documents.
65. Orders accordingly.

DATED, DELIVERED AND SIGNED

THIS 13TH DAY OF NOVEMBER, 2025.

M. ONYANGO

JUDGE

