



Kenya Union of Domestic Hotels Educational Institutions Hospitals and Allied Workers v Sucham Investment Limited t/a Amani Tiwi Beach Resort (Cause E032 of 2023) [2026] KEELRC 213 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 213 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E032 OF 2023
M MBARŪ, J
JANUARY 29, 2026**

BETWEEN

**KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS
HOSPITALS AND ALLIED WORKERS CLAIMANT**

AND

**SUCHAM INVESTMENT LIMITED T/A AMANI TIWI BEACH
RESORT RESPONDENT**

JUDGMENT

1. The background to the judgment is a partial consent agreement of 17 June 2025.
2. The parties consented that:
The sum of Ksh. The amount of 33,242,946.08 is to be paid to the claimant within 14 days. The balance of Ksh. 32,872,024.32 to be addressed by the parties in written submissions.
3. The consent order was adopted as follows:
 - a. The respondent is to pay the undisputed sum of Ksh. 33,343,946.08 within 30 days.
 - b. On the balance, the parties to file written submissions with the respondent filing within 14 days.
 - c. The claimant is to file within 14 days upon service.
 - d. In default of (a) above, the payment of the undisputed sum, execution to issue.
4. The respondent did not pay as agreed. Execution proceedings have since taken effect.



5. To assist the court, the County Labour Officer, Kwale, has filed a report dated 24 May 2024 in the matter. This report includes the tabulations of the terminal due to the claimant members, the grievants. Each grievant's dues are assessed, with the total dues being Ksh. 66,314,973.

Claim

6. The claimant is a registered trade union, and the respondent is a registered business providing hospitality, hotel, and catering services.
7. The claimant represents unionised employees within the respondent, the grievants. The respondent maintained membership of the Kenya Association of Hotelkeepers and Caterers (KAHC)
8. The claimant entered into a collective agreement (CBA) with KAHC, under which the respondent is covered and bound. The CBA contained terms and conditions of service for employees in various departments, including food production, housekeeping, laundry attendants, maintenance, room stewards, and waitpersons.
9. In 2020, after the COVID pandemic, the respondent terminated the grievants' employment without adhering to the procedures set out in the CBA. They were issued an infinite number of notices to be away from work and only learned later that their employment had been terminated.
10. The claim is that the respondent officer, the general manager, the human resources manager, and the financial controller promised to pay terminal dues without specifying an effective date. The claimant issued demand notices without success, leading to the dispute being reported to the Minister without resolution. The claimant filed suit seeking orders that:
 - a. Judgment be entered against the respondent for unlawful and unfair termination of employment of the grievants in contravention of section 43 of the *Employment Act*.
 - b. Judgment be entered against the respondent for unlawful and unfair declaration of redundancy.
 - c. The court to order the respondent to pay terminal dues, including the following:
 - i. Service charge;
 - ii. Salary deductions
 - iii. Certificate of service
 - d. Order that the respondent violates section 88 of the *Employment Act*.
 - e. An order of reinstatement and payment of back wages and dues.
 - f. Costs of the suit.
11. The claimant attached the list of the 133 grievants subject to the claim. The terminal dues owed were tabulated for each grievant.
12. The dues tabulated include the following:
 - a. Notice pay,
 - b. Severance pay;
 - c. Unpaid service charge; and



- d. 12 months' compensation.
13. In reply, the respondent denied the claim and stated that it was not in control of events in 2020 related to the COVID pandemic. Following the pandemic outbreak, all due procedures were adhered to, including issuing notices to all employees.
 14. The grievants, through the claimant, unfairly refused to accept a payment plan that was manageable in the prevailing circumstances amid the pandemic. The claim members have absconded from duty and, to date, have refused the return-to-work formula, opting to sue the respondent.
 15. The respondent denied being a party to the subject CBA referred to by the claimant. And hence its claim should be dismissed with costs.
 16. The written submissions are analysed, and the issues for determination are whether there was unlawful and unfair termination of employment, whether there is a case of redundancy and whether the terminal dues claims for the 133 grievances are justified.

Determination

17. The context above, with the background of partial consent and payment of the terminal dues, is essential.
18. The circumstances leading to the termination of the grievants' employment are not contested. The fact of the covid pandemic is also not challenged.
19. However, the claim is that there is no due process in declaring redundancy, leading to the unfair termination of the employment of the 133 grievants.
20. In response, the respondent asserts that the grievants absconded from duty, refused the return-to-work form, and rejected the offer to pay their terminal dues in instalments.
21. The employment fact is not challenged. As the employer, the respondent had control under sections 35, 41, and 44 of the *Employment Act* when the grievants refused to attend work or deserted their work stations without justification. Where the employer, due to the pandemic or any other cause, fails to address it as an operational matter, it cannot turn around and blame the employee. The essence of section 40 of the Act is to secure the employer who is faced with a situation such as the one the respondent was in 2020 due to the pandemic. Due to the obvious operational challenges, declare a redundancy, pay the dues and allow the employee to leave.
22. In the case of *Angela Shikuru Kondonga v Airtel Kenya Limited* [2016] eKLR and the case of *Al-Barakat Agency Limited v Bweta* (Appeal E134 of 2025) [2025] KEELRC 3460 (KLR). The courts have emphasised that, despite operational matters such as the COVID pandemic, the employer is well protected under Section 40 of the CT.
23. In this regard, the court takes judicial notice of the fact that, following the COVID pandemic, the Minister and the Social Partners in relations took action and published a moratorium. In this case, the court also directed the County Labour Officer to go to the shop floor, retrieve the work records from the parties, and tabulate the lawful dues and the entitlements to the grievants.
24. Under sections 40, 43, and 45 of the Act, where the employer fails to comply with due process of law in laying off employees for operational reasons, the redundancy becomes unlawful. Despite having a justification for the covid pandemic, the due process requirements of sections 40 and 43 of the Act apply.



25. In this case, there was an unlawful declaration of redundancy, leading to the unfair termination of employment for the 133 grievants and claimant members.
26. The report of the County Labour Officer, Kwale, dated 24 May 2024, is imperative to apply in assessing the terminal dues owed to the grievants for the following:
 - a. Notice pay based on the number of years worked per the CBA,
 - b. Severance pay for years worked,
 - c. Pay for the accrued leave days,
 - d. Unpaid salaries,
 - e. Service charges under the CBA terms,
27. The following dues are awarded:



No.	Name	Total (Kshs)
1	James Kenga Charo	399,194
2	Fredrick Kasala Otieno	461,259
3	Karoli Muga Omolo	406,637
4	Mdoe Bemwaka Kadi	336,053
5	Said Rashid	666,767
6	Hamisi Rashid Mwayuya (Deceased)	532,351
7	William Dzombo	460,865
8.	Ali Hussein Mkalla	370,303
9	Mwacharo Alawe Mwacharo	359,029
10.	Mwanamkuu Ali Dzivwa	573,370
11	Nassir Said Mwakauli	550,905
12	Abbas Abdalla Juma	373,186
13.	Camlus Ochieng Baraza	514,725
14	Rebecca Khayumbi Wasike	399,194
15.	Mwanajuma Juma Ndeka	413,635
16.	Amina Salim Mwazondo	538,795
17.	Mwanajuma Omar Mwero	429,409
18.	Albanus Kioko Kieti	808,957
19	Saddick Rimba Charo	819,118
20	Mohammed Nyanje	727,878
21.	Mribe Mwambega	959,918
22	Salim Juma Mgala	673,190
23	Naomi Sholo Wawasi	471,400



23	Rashid Mohammed Saria	861,917
24.	Mwinyi Nassoro Mwasurutani	245,935
25.	Kisali Nickson	329,431
26.	Mwalimu Salim Mwishee	392,776
27	Rajab Mselem Katengezi	335,514
28	Brian Kibet Mengwa	581,598
29.	Sila Mulinge	443,514
30.	Nyiro Mweru	443,514
31	Pendo Tuva Mgandi	786,828
32.	Nickson Liova	509,702
33.	Mwanaidi Rashidi Matuh	463,718
34	Musee Yusuf Makiti	477,015
35	Mebakari Bakari Matamu	405,862
36	Hidaya Juma Kulembwa	486,808
37	Mwahui Mbui	307,801
38	Mohamed Ali Jaffa	231,778
39.	Athman Rashid Chidzuga	278,643
40.	Salim Mohammed Mwasema	509,634
	Fredrick Mwangolo Mwatua	547,878
	Kadiri Ali Kijito	955,070
	Kevin Muleli Kavagi	337,638
	Stephen Muoki Musyoka	343,299
	Mohammed Ismat	660,041
	Swaleh Suleiman Masemo	442,514
	Hamisi Hassan Tabalu	301,257



Kennedy Ochieng Obar	485,922
Robert C. Munga	415,164
Juma Shaban Juhudi	296,177
Benstone Malika Wasidia	974,532
Govi Dzila Govi	443,552
Victor Ndunda Kieke	1,077,797
Abdallah Bakari Sheria	312,070
Salama Mwinyi Mwakodi	509,032
James Onkui Ongeta	308,000
Abdallah Mohamed Mwaisha	460,388
Samuel Muli	502,215
Hamisi Salim Lwambi	636,280
Bakari Salimu Chivwato	93,117
Ali Mrisa Kabi	699,163
Jonathan Mengele	725,964
Juma Mohammed	514,736
Mejumaa Juma	575,671
Fanel Yida Lusava	610,798
Twalib Ali Mwaricha	571,471
Mohammed Guya	822,662
Salama Masoud	573,386
Joy Ambia Sigar	379,625
Hussein Salim Mwatumwa	399,194
Kennedy Abusa	651,978
Franklin Gona	539,625



Salim Abdallah Chikoso	507,612
Karisa Ngumbao	364,055
Rashid Mwaisa	583,622
Simon Munga	643,641
Sammy K. Munyithya	779,565
Ali Kizungu Kijoto	752,764
Salim Mohammed Abeid	702,310
Jumaa S. Mwacheo	702,310
Stephen Ruwa	509,664
Hamisi Mwaliganza	733,670
Hassan Ali Kkoyo	477,669
Halima Hassan	521,962
John Karanja	710,528
Juma Salim Masito	475,600
Joseph Kahindi Charo	345,494
Peter Otieno	568,135
Fatuma Mohammed Mwajora	399,194
Halima Abdalla	537,189
Irene Kauchi Farrah	510,624
Sharon Mbeyu Mwangombe	670,949
Hamisi Foro	217,089
Hemedi Hamisi	452,001
Abdallah Mwashobo	480,224
Abdallah Salim Mataza	810,917
Evans Onyisa	399,515



Sifa Peter	284,680
Idd Hamisi Mwakuchengwa	398,703
Benard Tsaka Chokweh	690,614
Suleiman Omar	434,192
Domnic Owino	325,576
Thoma Onsare Mbonga	434,192
Charles Lando	778,472
Silas Mwawasi	719,519
John Kitali (Deceased)	396,711
Robert Maganga	770,498
Chrispin Ngoma	364,056
Enock Orina	420,981
Suleiman Ramadhani Mwachinazo	429,078
Christine Chiro Karisa	444,471
Alice Adhiambo	384,752
Isaac Nyangali	684,774
Hamadi Ali Mwanditi	477,669
Benson Mwendwa	596,357
Mwasambu Lewa Zomolo	577,801
Shaban Fadhili	583,427
Muriki Peter Nderitu	497,130
Samuel Charo	532,227
Josess Muthini	527,550
Mazoe Mohamed	471,113
Shaban Ndurya	318,869



Edward Kyalo Jackson	579,122
Nasir Shaban	429,271
Charles Ouko Ogutu	397,164
Doreen Ziro	332,408
Erick Gumba Miruka	576,861
Grand Total	66,218,883

46. The claimant has since been partially paid upon execution of the partial consent. Such shall be offset from the total balance due. Each party to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 29TH DAY OF JANUARY 2026.

M. MBARŪ

JUDGE

