



**Kenya Engineering Workers Union v Khetshi Dharamshi & Company Limited (Employment and Labour Relations Cause E771 of 2021) [2026] KEELRC 137 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 137 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E771 OF 2021  
DKN MARETE, J  
JANUARY 28, 2026**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
KHETSHI DHARAMSHI & COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter came about by way of Memorandum of Claim dated 26th July, 2021. The issue in dispute is therein cited as;  
  
Refusal by the Respondent to pay the grievant herein their dues (that is Mr. Bryan Mwangi and Dominic Nzomo)
2. The Respondent in a Memorandum of Response dated 26th August, 2025 denies the claim the prays that it be dismissed with costs.
3. The Claimant's case is that it is a duly registered trade union within the meaning of the *Labour Relations Act*, 2007 to cater for unionizable employees within the Engineering Sector. In the meantime, the parties have a duly signed and valid Recognition Agreement and registered a CBA.
4. The Claimant's further case is that the grievants were employed by the Respondent of various dates with Bryan Mwangi being engaged on 1st August, 2009 at a salary of Ksh.11,446.00 and house allowance of Kshs.450.00. At the time of his termination of employment, he had Kshs.26,475.00. Dominic Nzomo was engaged on 2nd January, 2002 as a welder fitter at a salary of Ksh.1,600.00 plus 17% and at the time of his termination from employment he earned Kshs.43,653.00 plus house allowance.
5. The Claimant's other case comes out as follows;



- i. That on 15th February, 2015 both grievants were to deliver twenty-four (24) pieces of plates to Kenya Steel Fabricators Limited for cutting require sizes and they made two trips one being trips of plates.
  - ii. That the Respondent only received twenty (20) pieces through motor vehicle registration number KAL257 E.
  - iii. That the loading of the plates was done by the forklift driver who overloaded the pick-up which would not sustain the weight.
  - iv. That the workshop manager, a Mr. Lotay Singh instructed the forklift driver to offload some of the plates because the tyres were coming down due to the overloading.
  - v. That the overloaded goods were counted by the workshop manager who also confirmed the same.
  - vi. The offloaded materials were thereafter delivered to the Respondent.
  - vii. That the grievant went back for the offloaded materials which were loaded without counting on the instructions of the workshop manager.
  - viii. These were delivered to Kenya Steel Fabricators who confirmed that they were twelve (12) in number.
  - ix. That Bryan Nzomo informed the workshop manager that he had taken away twelve pieces of plates but the manager insisted these were twenty-four.
  - x. That the twelve pieces taken to Kenya Steel Fabricators were brought back with receipt including the costs of cutting the plates.
  - xi. That Dominic Nzomo lost his brother on the date he brought back the receipts and was awarded four days permission by the workshop manager and was to report back on duty on 21st February, 2017.
  - xii. On return, he went about his normal duties until 1100 hours when he was called to the office where he found the management staff sited in the conference room and was interrogated about the four (4) pieces of plates that were not delivered to Kenya Steel Fabricators. He explained what had transpired besides a verbal explanation which he did on 21<sup>st</sup> February, instant.
  - xiii. The matter was reported to the Cabinet Secretary as a trade dispute.
  - xiv. The matter ended up in an unlawful and unprocedural termination of the grievant's employment contrary to sections 41 (1) and 43 of the *Employment Act*, 2007 besides Article 47 of *the Constitution* of Kenya, 2010 on fair administrative action.
6. She prays as follows;
- a. That the Honourable Court to deem fit to find out the action of the respondent NULL AND VOID.
  - b. That the Respondent herein to be ordered to compensate the grievant (12) twelve months salary for wrongful dismissal, as the Respondent herein ignored Sections 43 of *Employment Act*, 2007 party's C.B.A.
  - c. That the Respondent herein to be ordered to pay the grievant herein their services as per the C.B.A clause.



- d. That the grievants to be reinstated back to work and be paid the time they have been out to date or also be cleared as per the requirement of the law on Redundancy.
  - e. That the grievants to be paid House allowance not paid contrary to the provisions of the law and parties C.A
7. The Respondent's case is a denial of the claim. In such denial, the Respondent avers and asserts thus;
- i. On 15/02/2017 the claimants reported to work and were assigned to deliver 24 pieces of mild steel plates of dimension 8ft x 4ft x3.00mm to Kenya Steel Fabricators Limited for cutting to the required size.
  - ii. That out of the total mild steel plates, only twenty (20) pieces were duly delivered to the intended destination, thereby leaving a shortfall of four (4) pieces which could not be accounted for and whose whereabouts remain unexplained by the claimants.
  - iii. That in light of the claimants' inability to account for the four (4) pieces of the mild steel plates, they were duly required to furnish a written explanation detailing the circumstances leading to the said shortfall, which explanation they subsequently provided.
  - iv. That upon consideration of the written explanation tendered by the claimants, the Respondent found the same to be unsatisfactory and consequently, proceeded to summarily dismiss the claimants from their employment vide the letter dated 23/02/2017.
  - v. That upon their summary dismissal, the claimants were duly paid their terminal dues and entitlements, which payment was made in full and final settlement of all claims arising from or connected with their employment.
8. Further, the Respondent posits as follows;
- i. That the Respondent duly engaged a shop-floor representative and at no time disregarded or excluded their participation and is therefore not in breach of nor in contravention with the provisions of section 41 of the [Employment Act](#).
  - ii. That the Respondent duly established and proved the culpability of the claimants in accordance with and as required under the provisions of Section 43 of the [Employment Act](#).
  - iii. That the Respondent undertook and conducted a proper and comprehensive investigation into the disappearance of the four (4) pieces of the mild steel plates and exercise carried out in strict adherence to due process and in conformity with the principles of fair labour practices as envisaged under the law.
  - iv. That the Respondent bore the obligation to conduct its own internal investigations into the disappearance of the four (4) missing pieces of the mild steel plates and in so doing it acted strictly within the scope of its mandate as an employer without in any way purporting to assume or exercise the functions of police officers or any other law enforcement authority.
9. This in toto justified a case for dismissal of the claim with costs.
- The issues in disputes therefore come out as follows;
1. Whether this suit is time barred?
  2. Whether the termination of employment of the grievants by the Respondent was wrongful, unfair and unlawful.



3. Whether the Claimant is entitled to the relief sought.
4. Who bears the costs of this cause?
10. The 1st issue for determination is whether this suit is time barred. The Respondent submits that this suit is time barred having been filed in 2021 against a cause of action that arose on 16th December, 2011. It is notable however, that this issue and submission only comes out at the point of written submission by the Respondent. It was not raised as a defence or preliminary objection at the appropriate time and space during these proceedings. The Respondent merely answered the claim without alerting the claimant of any intent at objection on grounds of law.
11. The essence of a preliminary objection is to alert the other party, usually the Claimant of the intent to object to the claim and proceedings from day one. This is usually and of necessity on grounds of law. The other party then sets out to defend the alleged defect or anomaly pronto and on priority for determination by court. Parties cannot be permitted to hide around and come up with preliminary objection at leisure or worse still, at the close of the proceedings. This objection is dismissed for want of form.
12. The 2nd issue for determination is whether the termination of employment of the grievants by the Respondent was wrongful, unfair and unlawful. The Claimant avers and submits that the Respondent has not tendered in evidence any documentary evidence confirming the quantity of twenty-four pieces of plates received from their stores for delivery to Kenya Fabricators Limited or even a document sent by the Respondent customers confirming a receipt of only twenty pieces. Further, the Claimant submits that an investigation of theft by servant would involve police with a view to a thorough investigation into the issues complained of by the said police.
13. The Claimant submits that in the absence of evidence of loss of the four plates set for delivery by the grievants and also in absence of the Respondent refusing to adopt the appropriate procedure of reporting this matter to the police for investigations to ascertain the loss, the Respondent's case for loss of the four plates backfires.
14. The Respondent submits that the grievants were heard and did not satisfactorily explain the loss of four plates not delivered to Kenya Steel Fabricators for cutting to right side. He cites various authorities in support of compliance with section 41 of the *Employment Act, 2007* but did not adduce any evidence in support of a case of theft by the grievants. The grievants case is that the process of loading/offloading and accountability for goods for delivery was not necessary that of the drivers and was not effectively accounting. It is therefore not possible to lay the blame of loss, if at all, on them.
15. This is a bungled case. There is no clarity on the procedures for dealing with the plates the subject matter of this case. The Respondent had not put in place strict accounting procedures on the delivery process for these plates. She cannot therefore blame the grievants for errors that may or may not have been there. I therefore find a case of unlawful termination of employment and hold as such.
16. The 3rd issue for determination is whether the claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she become entitled to the relief sought.
17. I am therefore inclined to allow the claim and award relief as follows;
  1. Bryan Mwangi
    - i. One months salary in lieu of notice.....Kshs.26,475.00



- ii. Service pay; Kshs.  $26,475/26 = 1,018$  x 17 days per year...Kshs.17,306 x 7yrs.....Kshs.121,142.00
  - iii. Six (6) months compensation for unlawful termination of employment = Kshs.26,475.00 x 6 months.....Kshs158,820.00
- Total of claim/award.....Kshs.306,437.00

2. Dominic Nzomo

- i. One months salary in lieu of notice .....Kshs.40,643.00
  - ii. Service pay Kshs.  $40,643.00/26 = 1,563$  per day x 17 days...Kshs.26,571... Kshs.26,571 x 14.....Kshs.371,994.00
  - iii. Six (6) months compensation for unlawful termination of employment ...40,643.00 x 6 months .....Kshs.243,495.00
- Total of claim/award .....Kshs.656,495.00

3. The costs of this cause shall be borne by the Respondent.

4. Interest at court rates from the date of this judgment of court till payment in full.

**DELIVERED, DATED AND SIGNED THIS 28<sup>TH</sup> DAY OF JANUARY 2026.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Araka for the Claimant union.

Miss Akong'a instructed by Macharia - Mwangi & Njeru Advocates for the Respondent.

