



Kenya Engineering Workers Union v Eldo Dieseltune Limited (Employment and Labour Relations Cause E001 of 2025) [2026] KEELRC 356 (KLR) (6 February 2026) (Judgment)

Neutral citation: [2026] KEELRC 356 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E001 OF 2025
MA ONYANGO, J
FEBRUARY 6, 2026**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
ELDO DIESELTUNE LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution to represent employees in the engineering sector.
2. The Respondent is a limited liability company registered under the laws of Kenya.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant's membership and the Claimant is the right union to represent the employees of the Respondent in labour matters.
4. The Claimant and the Respondent do not have a recognition agreement. The present claim is filed on behalf of three Grievants, namely: -Macdonald Lukas Wandemi, Francis Okolla Ouma, and Godwin Sine Lunani who are former employees of the Respondent.
5. Vide the Amended Memorandum of Claim dated 25th January 2025, the Claimant avers that the Respondent locked out the Grievants from employment contrary to sections 76(c) and section 4 of the *Labour Relations Act*.
6. It is further averred that the Grievants were locked out of employment without any explanation, in contravention of section 41 of the *Employment Act*.
7. The Claimant contends that the action of the Respondent of locking out the Grievants amounted to a gross violation of sections 46(c) and 76(c) of the *Employment Act* as well as Article 36 of *the Constitution*.



8. The Claimant therefore seeks for the following reliefs: -
 - i. A declaration that the Respondent's actions were null and void,
 - ii. An order compelling the Respondent to reinstate the Grievants unconditionally and without loss of benefits,
 - iii. In the alternative, an order directing the Respondent to pay the Grievants their terminal dues comprising:
 - a. One month's salary in lieu of notice,
 - b. Salary for August 2024 and days worked in September 2024,
 - c. Accrued but leave not taken,
 - d. Severance pay at the rate of fifteen (15) days' pay for each completed year of service,
 - e. 12 months' salary as compensation for unlawful termination,
 - f. Grievants to be issued with Certificate of Service.
9. The Respondent filed a Response to the Amended Memorandum of Claim dated 20th May 2025, in which it denied locking out the Grievants. The Respondent maintained that business had significantly declined and that the Grievants were aware that there were no clients as they often reported to work only to sit idle.
10. It is the Respondent's case that the Grievants had held several meetings with one of the Respondent's managers (now deceased), during which the deteriorating business situation was explained and the Grievants agreed to leave employment voluntarily with effect from January 2024 but failed to do so, thereby compelling the Respondent to pay their salaries for an additional eight months without any work being undertaken.
11. The Respondent denied the allegation that the employment of the Grievants was terminated due to their membership in the Claimant union. It averred that the Grievants had joined the Claimant union several years earlier and continued working without interference, and that it had no objection whatsoever to their union membership.
12. The Respondent maintained that the Grievants were not unlawfully terminated from employment as alleged by the Claimant.
13. It was further asserted that the only outstanding salary owed to the Grievants was for the month of August 2024.
14. The Respondent urged the Court to dismiss the Claimant's suit with costs.

The Evidence

15. The Grievant, Macdonald Lukas Wandemi, testified on 10th June 2025 as CW1 on his own behalf and on behalf of the other Grievants.
16. CW1 testified that they were verbally terminated from employment by the Respondent without any reason. He stated that he had worked for the Respondent for twenty-eight years, while Francis Okolla Ouma had worked for two years and Godwin Sine Lunani for nine years.



17. CW1 further testified that throughout his twenty-eight years of service as a storekeeper and accounts clerk, he had never been issued with a warning letter. He denied the allegation made by the Respondent that he deserted duty.
18. The Claimant's witness denied the Respondent's assertion that several meetings had been held in relation to the status of their employment and maintained that the only meeting took place on 16th September 2024 during which the mode of payment was discussed between the Grievants, two managers of the Respondent, and a representative of the Claimant.
19. Under cross-examination, CW1 stated that Francis Okolla Ouma and Godwin Sine Lunani worked as mechanics. When referred to warning letters dated 4th January 2022 and 13th February 2023 appearing at pages 17 and 18 of the Respondent's bundle of documents, CW1 stated that he had no knowledge of the said letters.
20. CW1 further testified that the meeting of 16th September 2024 took place after the Grievants had already been terminated from employment, and that despite the deliberations culminating into a consent, they were never paid their terminal dues.
21. CW1 also stated that he wrote a letter dated 30th July 2024 requesting early retirement on medical grounds, having allegedly been assaulted at the workplace and on the advice of his doctor to retire. He testified that he was owed salary arrears of Kshs. 1,800 and Kshs. 28,000 being salary for August 2024.
22. Abdul T. Kana testified for the Respondent as RW1. He adopted his witness statement recorded on 20th May 2025 and relied on the documents filed by the Respondent in its defence.
23. RW1 testified that he delayed payment of the Grievants' salary for four days in September 2024, and that on 5th September 2024, CW1 did not report to duty. He further stated that he had tabulated the Grievants' terminal dues in his witness statement and urged the Court to adopt the same. RW1 also testified that CW1 had been served with warning letters for reporting late to work and for loss of the Respondent's property.
24. On cross-examination, RW1 stated that he instructed the employees not to access the company premises following demands by the bank over an outstanding loan.
25. Mr. Abdul testified that the business was still in operation as he already cleared the bank loan and that he is currently operating the business on his own.
26. At the close of the Respondent's case, the Court directed the parties to file written submissions. The Claimant's submissions are dated 22nd October 2025 while the Respondent's submissions are dated 27th October 2025. In substance, the submissions largely reiterate the respective parties' pleaded positions and there is therefore no need to reproduce them herein.

Analysis and Determination

27. From the pleadings, evidence, and submissions on record, I find that issues following for this court's determination are: -
 - i. Whether the Grievants were locked out or terminated from employment by the Respondent
 - ii. Whether the termination, if any, was fair and lawful
 - iii. What reliefs should issue



Whether the Grievants were locked out or terminated from employment by the Respondent

28. The Claimant's case is that the Grievants were verbally terminated and locked out of the Respondent's premises without explanation. The Respondent on the other hand contended that the Grievants were not terminated but were affected after the Respondent's business went down.
29. RW1 in his testimony under cross-examination admitted that he instructed employees not to access the company premises after the bank demanded payment of an outstanding loan. He further stated that he had advised the Grievants to seek employment elsewhere as he could not afford to pay them.
30. This admission confirms termination of employment of the Grievants. A lockout by an employer denying employees access to the workplace, whether occasioned by financial difficulty or otherwise, constitutes a unilateral act. Such an act brings the employment relationship to an end unless undertaken in compliance with the law.
31. In light of the Respondent's own admission that the Grievants were denied access to the workplace, the Court finds that the Grievants were effectively locked out and their employment thereby terminated by the Respondent.

Whether the termination, if any, was fair and lawful

32. Section 45(2) of the [Employment Act](#) prohibits an employer from termination the contract of an employee except for valid reason and upon compliance with fair procedure.
33. Section 41 of the [Employment Act](#) requires an employer to explain the reasons for termination to an employee and to accord the employee an opportunity to be heard. Further, sections 43 places the burden on the employer to prove valid and fair reasons for termination of an employee's employment.
34. In the present case, the Respondent in its pleadings and through the evidence of RW1 relied on poor business performance in the termination of the Grievants' employment. While financial hardship may constitute a valid reason for termination, the law prescribes a clear procedure for redundancy under section 40 of the [Employment Act](#) which procedure was not followed in this case.
35. If indeed the Respondent was facing financial hardships in its business as alleged, it was obligated to issue redundancy notices to the Grievants and to the labour office, conduct consultations and pay redundancy dues to the Grievants as required by law.
36. In his testimony, the Respondent's witness admitted that it instructed employees not to access the workplace over an outstanding loan the Respondent owed a bank. Such action amounts to an unlawful lockout and termination of employment.
37. In addition, it is clear from the record that no disciplinary process was initiated against the Grievants and as such the allegations of absenteeism and desertion which were raised by the Respondent were not supported by evidence as required under section 41 of the [Employment Act](#).
38. Consequently, the Court finds that the termination of the employment of the Grievants was procedurally and substantively unfair and therefore unlawful within the meaning of section 45 of the [Employment Act](#).

What reliefs should issue

39. Having found that the termination of the Grievants' employment was unlawful and unfair, I now turn to the appropriate reliefs under section 49 of the [Employment Act](#).



40. In its Amended Memorandum of Claim, the Claimant sought a raft of reliefs which I address in separate heads as hereunder: -

i. A declaration that the Respondent's actions were null and void

Having found that the Respondent unlawfully and unfairly terminated the Grievants' employment, I hereby declare that the Respondent's actions were unlawful, unfair, and in violation of the Employment.

ii. An order compelling the Respondent to reinstate the Grievants unconditionally and without loss of benefits

From the evidence on record, the employment relationship between the Respondent and the Grievants has irretrievably broken down due to the financial status of the Respondent and mistrust as has been explained by RW1. In the circumstances, reinstatement would neither be practical nor appropriate and is therefore declined

iii. In the alternative, an order directing the Respondent to pay the Grievants their terminal dues comprising:

a. One month's salary in lieu of notice

The Grievants are entitled to pay in lieu of notice in terms of section 35(1) as read with section 49(1) of the Act. The Court accordingly awards each Grievant one (1) month's salary in lieu of notice in the sum of Kshs 28,372 for Macdonald Luka Wademi, Kshs 20,944 for Francis Ouma Okolla and Kshs 17,680 for Godwin Sine Lunani.

b. Salary for August 2024 and days worked in September 2024

The Respondent admitted that salary for the month of August 2024 was outstanding. The Grievants are therefore entitled to payment of salary for August 2024 together with remuneration for the four days worked in September 2024. From the RW1's computation, Macdonald Luka Wademi is awarded Kshs 32,100.80, Francis Ouma Okolla is awarded Kshs. 23,736.60 and Godwin Sine Lunani is awarded Kshs 20,037.70 under this head.

c. Accrued but leave not taken

In his tabulation, RW1 indicated that each Grievant had accrued 14 leave days. It is stated that Macdonald Luka Wademi is entitled to Kshs 11,348.40, Francis Ouma Okolla Kshs. 9,774.10 and Godwin Sine Lunani is entitled to Kshs 8,250.90. I find this evidence sufficient and accordingly award payment under this head as tabulated by RW1.

d. Severance pay at the rate of fifteen (15) days' pay for each completed year of service

The Claimant sought severance pay for the Grievants at the rate of fifteen (15) days' pay for each completed year of service. However, the evidence indicates that the Grievants were not terminated through a redundancy process as provided under section 40 of the Employment Act, but were terminated unfairly. The prayer therefore fails.

e. 12 months' salary as compensation for unlawful termination

Taking into account the length of service, the grounds for termination and all relevant factors under section 49(4) of the Act, I award each of the Grievant 4 months' salary as compensation. Macdonald Luka Wademi is awarded Kshs 113,488, Francis Ouma



Okolla is awarded Kshs. 83,776 and Godwin Sine Lunani is awarded Kshs 70,720.80 under this head.

f. Grievants to be issued with Certificate of Service

The Respondent is ordered to issue Certificates of service to the Grievants in terms of section 51 of the Employment Act.

41. In conclusion, each Grievant is awarded as follows:

Macdonald Luka Wademi

- i. Salary in lieu of notice Kshs. 28,372
 - ii. Salary for August 2024 and
4 days in September 2024.....Kshs 32,100.80
 - iii. Leave not taken 14 days Kshs. 11,348.40
 - iv. 4 months' salary as compensationKshs. 113,488
- Total Kshs. 185,309.20

Francis Ouma Okolla

- i. Salary in lieu of notice Kshs. 20,944
 - ii. Salary for August 2024 and
4 days in September 2024.....Kshs 23,736.60
 - iii. Leave not taken 14 days Kshs. 9,774.10
 - iv. 4 months' salary as compensation..... Kshs. 83,776
- Total Kshs. 138,230.70

Godwin Sine Lunani

- i. Salary in lieu of notice Kshs. 17,680.20
 - ii. Salary for August 2024 and
4 days in September 2024.....Kshs 20,037.70
 - iii. Leave not taken 14 days Kshs. 8,250.90
 - iv. 4 months' salary as compensation.....Kshs. 70,720.80
- Total Kshs. 116,689.60

42. The Respondent shall pay the Claimant's costs assessed at Kshs. 80,000.

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

44. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 6TH DAY OF FEBRUARY, 2026

MAUREEN ONYANGO

JUDGE

