



**Mutua v Flexipack Packaging Solutions Limited (Cause E545 of 2024)  
[2026] KEELRC 360 (KLR) (12 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 360 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E545 OF 2024  
BOM MANANI, J  
FEBRUARY 12, 2026**

**BETWEEN**

**SHADRACK MUTUA ..... CLAIMANT**

**AND**

**FLEXIPACK PACKAGING SOLUTIONS LIMITED ..... RESPONDENT**

**JUDGMENT**

**Background**

1. The Claimant instituted the instant suit against the Respondent alleging that the latter was his employer and had unlawfully terminated his services. As such, he claims for reinstatement. In the alternative he prays for compensation for unfair termination of his contract.
2. The Claimant also makes other claims relating to: accrued leave; payment for work done during public holidays; reimbursement of medical expenses; notice pay; general damages for pain and suffering occasioned by the actions of the Respondent; and costs of the suit.
3. The case proceeded as an undefended claim, the Respondent having failed to enter appearance and file a defense. The Claimant testified on 6<sup>th</sup> October 2025 and adopted his witness statement as his testimony in chief. He also produced various exhibits attached to his list and bundle of documents.
4. In the witness statement, the Claimant avers that he began working for the Respondent as a cleaner with effect from 28<sup>th</sup> January 2017. He contends that the Respondent first engaged his services on casual basis before it issued him with several fixed term contracts which were renewed seven times. He avers that although the contract between the parties was initially on casual terms, his employment was converted into a full term engagement after he served for three months in line with section 37 of the *Employment Act*.



5. The Claimant makes other claims relating to the hazardous environment he was allegedly working under and the injuries he suffered whilst at work. He contends that the Respondent did not accord him adequate medical care despite the hazardous work environment.
6. The Claimant avers that the Respondent terminated his services on 18<sup>th</sup> June 2024 without justification and notice. He contends that the decision to sever the employment relationship between the parties contravened the law.
7. He contends that the Respondent subjected him to inhumane and slave-like working conditions. As such, he avers that the Respondent violated his right to fair labour practice, right to privacy and freedom from discrimination.

### **Issues for Determination**

8. After evaluating the pleadings, evidence and submissions on record against the applicable law, the following issues arise for determination:-
  - a. Whether the Claimant has established the presence of an employment relationship with the Respondent at the time he alleges his contract of service was unlawfully terminated.
  - b. Whether the Claimant's employment with the Respondent ceased to be casual after allegedly serving the latter for three months from the date of his appointment.
  - c. Whether the Claimant has made a case for violation of constitutional rights.
  - d. Whether the court is entitled to inquire into claims relating to alleged injury to the Claimant whilst at work.
  - e. Whether the orders sought in the suit should issue.

### **Analysis**

9. As pointed out earlier, the cause proceeded to trial as an undefended suit. What was the Claimant's obligation in respect of proving his claim in the circumstances?
10. The general position in law in relation to the burden of proof is encapsulated in the *Evidence Act*. Sections 107, 108 and 109 of the Act place both the legal and evidential burden of proof of a fact on the basis of which one seeks a decision in his favour on him. As such, the burden of proof in this case lay with the Claimant to provide cogent evidence on the matters he wants the court to decide in his favour.
11. The court is alive to the reverse burden of proof under sections 5, 43 and 45 of the *Employment Act* with regard to matters such as unfair termination of a contract of service and discrimination. However, before a litigant can benefit from these provisions on the burden of proof under the employment law, he bears the burden of establishing the existence of the employment relationship between the parties.
12. The party instituting proceedings has the duty to prove his case. This requirement does not change merely because the suit proceeded as undefended.
13. Affirming this fact in the case of *Mbogo v Settlement Land Trustees* [2025] KECA 561 (KLR), the Court of Appeal observed as follows:-

“It is necessary for parties to know that even in an undefended suit, the burden of proof is not lowered. The only advantage to a party in such a suit is that the evidence remains uncontroverted but it must nevertheless prove that claim as pleaded.”



14. In the instant suit, the Claimant alleged that he was in the Respondent's employment when his contract of service was terminated. However, he did not present credible evidence to establish this fact.
15. In the Memorandum of Claim, the Claimant contends that although he was an employee of the Respondent, the Respondent transferred his services to Ketan Careers Limited on a date he did not disclose. He averred that it is Ketan Careers Limited which issued him with the notice to terminate his contract of service.
16. Although the Claimant alluded to the foregoing in the Memorandum of Claim, he did not address the matter in the witness statement which he adopted as his evidence in chief. However, he tendered in evidence a demand letter which was issued to the Respondent by his lawyers dated 26<sup>th</sup> June 2024 in which the lawyers, in part, stated as follows:-

“In April 2024, you under duress and contrary to reason and logic forced our client and other employees to sign new contract(s) to transfer their services to a Third Party herein being Ketan Careers Limited, a company associated with the Human Resources Manager....As a result of the above, our client's salary for the month of April 2024 was paid through the said Third Party before the same reverting to yourselves.”

17. This extract suggests that although the Claimant was initially an employee of the Respondent, he executed a contract with Ketan Careers Limited in April 2024 through which his services were transferred to the latter company. As such, it suggests that the Claimant's employer from April 2024 was Ketan Careers Limited and not the Respondent.
18. The letter of termination of the Claimant's contract of service dated 18<sup>th</sup> June 2024 was authored by Ketan Careers Ltd and not the Respondent. In the letter, Ketan Careers Ltd describes itself as the Claimant's employer fortifying the contention in the demand letter aforesaid that he (the Claimant) may have entered into a contract with Ketan Careers Ltd through which his services were transferred to this company.
19. Although the letter of termination of the Claimant's services shows that he continued to render services to the Respondent as a machine operator, it is apparent that he was doing so as an employee of Ketan Careers Ltd who had been outsourced to the Respondent. As such, this suggests that he was an employee of Ketan Careers Ltd but working at the Respondent establishment under an outsourcing agreement.
20. In the case of *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] KECA 510 (KLR), the court expressed the view that a person who is serving a client under an outsourcing arrangement is legally an employee of the company which hired him out to the client. He does not become an employee of the client company merely because he is working for it.
21. It is curious that although in the letter dated 26<sup>th</sup> June 2024, the Claimant's lawyers allude to an agreement which was executed by the Claimant to transfer his services to Ketan Careers Ltd, the Claimant avoided to tender a copy of the agreement in evidence to enable the court to study it and determine his employment status. He can only have held back the document because he knew it will be adverse to his case.
22. In view of the foregoing, can it be said that the Claimant has presented persuasive evidence to demonstrate that he was in the Respondent's employment when his contract was terminated? The answer to the question is in the negative.



23. The prima facie evidence which speaks to the Claimant's employment status at the time of his dismissal from employment is in the letter of dismissal itself. The letter was issued by Ketan Careers Ltd which described itself as the Claimant's employer pursuant to a contract between them dated 2<sup>nd</sup> January 2023.
24. The Claimant did not present evidence to controvert the contents of the letter. As such and based on the foregoing, the court finds that the Claimant has not proved that he was in the Respondent's employment at the time his contract was terminated.
25. The next issue for determination is whether the Claimant's alleged employment with the Respondent in 2017 ceased to be casual after he served the latter for three months from the date of his appointment. The Claimant alleges that the Respondent first hired his services in January 2017 but on casual terms. He contends that his contract was thereafter converted into a term contract after the lapse of three months in terms of section 37 of the *Employment Act*.
26. Although the Claimant asserts that he was engaged by the Respondent as a casual in January 2017, he did not provide evidence to back this claim. He neither provided proof of payment of remuneration by the Respondent from January 2017 nor called an independent witness to affirm his claim that he was engaged by the Respondent in January 2017.
27. Further, although he claims that his contract was converted from casual to indefinite term after three months from January 2017, he did not present data to demonstrate that the Respondent engaged his services, if at all, for a continuous period of more than one month from January 2017. Absent this evidence, there is nothing on record which the court can rely on to declare that his contract was converted in terms of section 37 of the *Employment Act*.
28. Importantly, although the Claimant insinuates that his alleged casual engagement with the Respondent in 2017 was converted into an indefinite term contract of service, the evidence he presented shows that the Respondent hired him on fixed term contracts from January 2019 up to 31<sup>st</sup> December 2022. As such, the only available evidence suggests that the parties had a fixed term employment relationship which was anchored on a series of fixed term contracts from January 2019 up to December 2022.
29. This being the case, there is no proof that the Claimant was engaged by the Respondent as a casual in January 2017 and worked continuously for more than one month for his contract to be converted by law in terms of section 37 of the *Employment Act*. As such, the claim that his contract was converted into indefinite term is unfounded.
30. The Claimant has alleged that his constitutional rights were violated. However, he did not provide clear and precise details of the alleged violations to support this claim as suggested in the case of *Kimaru v Inspector General of Police & another; Independent Medico-Legal Unit & another (Interested Parties)* [2025] KEHC 1782 (KLR). He did not state with precision the manner in which the alleged rights were infringed.
31. The other issue for consideration is whether the court is entitled to inquire into claims relating to alleged injuries to the Claimant whilst at work. The answer to this question lies in section 16 of the *Work Injury Benefits Act*. Any claim that relates to injuries and occupational diseases incurred at the workplace are not to be handled by the court in the first instance but by the Director of Occupational Safety and Health Services.



**Determination**

32. The upshot is that the court arrives at the conclusion that the Claimant has failed to present cogent evidence to demonstrate that he was in the Respondent’s employment when his contract of service was allegedly terminated. As such, his claim fails.

**DATED, SIGNED AND DELIVERED ON THE 12<sup>TH</sup> DAY OF FEBRUARY, 2026**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

