

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT ELDORET

CAUSE NO. E019 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

**KENYA UNION OF COMMERCIAL,
FOOD AND ALLIED WORKERS UNION**
CLAIMANT

VERSUS

HEET SUPPLIES LIMITED 1ST
RESPONDENT

PEMAGE E.A. SERVICES LIMITED 2ND
RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the Labour Relations Act to represent employees engaged in the commercial sector as more specifically set out in the membership clause of its constitution.
2. The Respondents are limited liability companies duly incorporated under the Companies Act.
3. The suit herein was filed by the Claimant on behalf of its members who are alleged to be employees of the

Respondents namely: Moses Juma Wafula, Emmanuel Mukhabi Barasa, Edward Ngige Chenga, William Yagon Ronoh, Dennis Terem Kipchumba, Moses Etyang, Vincent Juma Odhiambo, Jafteregan Otieno Oyola, Nelson Nagasike Nabar, Elkana Awuor Lusi and Mark Kemboi Rotich all herein after referred to as the Grievants.

4. In the Memorandum of Claim dated 23rd May 2024, the Claimant avers that the Grievants were unlawfully and unfairly terminated from employment by the Respondents on account of redundancy.
5. It is the Claimant's case that it recruited 28 out of 36 employees of the 2nd Respondent working at the 1st Respondent's premises into its membership and that the Respondents began victimizing, coercing and threatening employees suspected of belonging to the Claimant.
6. The Claimant avers that the 11 employees were verbally declared redundant by the Respondents without being issued with the notices required by law. Further, that the County Labour Officer Eldoret was not served with the requisite redundancy notices.

7. The Claimant further alleges that when the employees raised concerns regarding their employment conditions, the 1st and 2nd Respondents resorted to using police officers from Naiberi Police Station and Eldoret Central Police Station to arrest the workers on false and trumped-up charges as a means of intimidation.
8. The Claimant contends that the employees will suffer substantial loss and prejudice if this Honourable Court does not intervene to protect their rights.
9. It is further alleged that the purported redundancies were intended to punish union members for their trade union activities and to undermine the employees' fundamental right to belong to a union.
10. The Claimant states that in the absence of redundancy notices, the targeted employees fear that their services may be terminated upon expiry of their contracts with little or no opportunity to negotiate their exit packages.
11. The Claimant therefore urges the Court to:
 - a. Declare the redundancies unfair and unlawful

- b. Order the Respondents to reinstate the affected employees to their previous positions without loss of benefits
- c. Order the Respondents to pay accrued leave days and final dues in accordance with the law on redundancy
- d. Grant any other relief deemed fit and just to meet the ends of justice
- e. Costs of the Claim be awarded to the Claimant

12. The 1st Respondent filed a Response to the Memorandum of Claim dated 9th December 2024, in which it averred that it ought not to be a party to this suit, as no employer-employee relationship exists between it and the Claimant's members who are employees of the 2nd Respondent.
13. The 1st Respondent maintained that since it is not the employer of the alleged members, it cannot be held responsible for violating employee rights, which arise only from an employer-employee relationship that is absent in their case.
14. The 1st Respondent therefore urged the Court to enter judgment in its favour by dismissing the Claimant's suit with costs.

15. The 2nd Respondent filed a Response to the Memorandum of Claim dated 9th October 2024. It averred that it has a total of 67 employees and the suit is a non-starter, as the Claimant has not satisfied the provisions of section 54(1) of the Labour Relations Act on recognition.
16. The 2nd Respondent averred that its employees are engaged on three month contracts and that, prior to filing this suit, the Claimant had not attained the statutory threshold of a simple majority of the 2nd Respondent's unionisable employees on the basis that some names in the Claimant's membership list are not employees of the 2nd Respondent while others are not union members.
17. The 2nd Respondent further averred that the Claimant failed to disclose that its members were employed on three-month contracts that had expired and that the employees were duly paid all outstanding dues as follows: -

Name of Grievant	Contract period	Date of payment of dues
Moses Etyang	24/2/2024-24/5/2024	14 th May 2024
William Yegon Rono	13/2/2024-13/5/2024	14 th May 2024
Dennis Terem Kipchumba	2/2/2024-2/5/2024	14 th May 2024

Moses Juma Wafula	3/2/2024 - 3/5/2024	14 th May 2024
Emmanuel Mukhabi Barasa	23/2/2024 - 23/5/2024	14 th May 2024
Mark Kemboi Rotich	6/4/2024 - 6/7/2024	- - -
Jaftereagan Otieno Oyola	23/2/2024 -23/5/2024	15 th May 2024
Nelson Nagasike Nabar	11/1/2024 - 11/4/2024	13 th May 2024
Vincent Juma Odhiambo	7/2/2024 -7/5/2024	13 th May 2024
Edward Ngige Njenga	7/2/2024 -7/5/2024	14 th May 2024
Ekana Awour Lusi	2/2/2024 - 2/5/2024	14 th May 2024

18. It is the 2nd Respondent’s case that the Claimant’s allegations of redundancy are misplaced as the Claimant’s members were engaged as loaders on specific three-month contracts that ended by effluxion of time. It further averred that, as contract employees, the Grievants were not entitled to leave or notice upon termination and that the claim for accrued leave and redundancy benefits is unjustified and should be dismissed
19. The 2nd Respondent maintained that in the absence of any employment or contractual obligation binding it to the Claimant’s members beyond the expired contracts, the claim is misconceived and unwarranted in law. It prayed that the suit be dismissed with costs.

20. At the hearing, the Claimant called Moses Juma Wafula, who testified as CW1 on his own behalf and on behalf of the other ten Grievants. Moses Juma Wafula testified that he was employed by the 2nd Respondent as a general worker deployed at the 1st Respondent's premises and that he is a member of the Claimant.
21. CW1 testified that he signed a contract with the 2nd Respondent but was only permitted to indicate his name, ID number and signature. He averred that he was not issued with a copy of the contract.
22. He further testified that on 14th May 2024, they reported to work but were summoned by the 1st Respondent's director who instructed them not to report to work the following day.
23. He sought the prayers in the Memorandum of Claim.
24. On cross-examination by counsel Aketch for the 1st Respondent, CW1 stated that his employer was the 2nd Respondent, although he worked at the 1st Respondent's premises. He confirmed that he was paid by the 2nd Respondent but his duties were assigned by the 1st Respondent's director. He also testified that he was unaware of the relationship between the two Respondents

25. Upon cross-examination by counsel Kagunza for the 2nd Respondent, CW1 stated that the total number of employees was 57 and that he signed a three month contract from February to May 2024.
26. On re-examination, CW1 stated that they were supervised by the 1st Respondent's director, who also took action in cases of misconduct.
27. The 2nd Respondent called George Pepella Mafura, its Managing Director, who testified as RW1. He adopted his witness statement recorded on 9th December 2024 as his evidence in chief and relied on the documents filed by the 2nd Respondent in its defence. RW1 testified that the Grievants were engaged on renewable three-month contracts which were not valid at the time of filing suit, as the contracts had expired and were not renewed after the Grievants deserted duty.
28. He maintained that the Grievants had absconded duty and that their contracts had expired.
29. On cross-examination by Mr. Tacko for the Claimant, RW1 stated that the contracts of the Grievants had expired and that CW1 had not worked since 2017. He further testified

that the Grievants had deserted duty and that, where an employee deserts duty, warning letters are ordinarily issued. He stated that no warning letters were filed in court. He also stated that he had more than 80 employees as at May 2024.

30. The 1st Respondent called Bhavya Hitesh Kumar, its Director, who testified as RW2. He adopted his witness statement recorded on 9th December 2024 as his evidence in chief and relied on the documents filed by the 1st Respondent in support of its case.
31. RW2 testified that the 1st Respondent had a contractual arrangement with the 2nd Respondent for the provision of labour services. He further stated that the Claimant had no direct relationship with the 1st Respondent as the 1st Respondent does not have an employment relationship with the 2nd Respondent's employees who are members of the Claimant. RW2 therefore urged the Court to dismiss the Claimant's suit against the 2nd Respondent with costs.
32. On cross-examination by Mr. Tacko, RW2 stated that the 2nd Respondent does not have supervisors stationed at the 1st Respondent's premises and does not directly supervise its employees working there. He further testified that the 2nd

Respondent is responsible for organizing and allocating the work to be undertaken by its employees.

33. At the close of the Respondents case, parties were directed to file written submissions. All the parties filed and exchanged written submissions.

Analysis and Determination

34. I have considered the pleadings, evidence and submissions by the parties. The issues for determination in my view are;-
- i. Whether there was an employment relationship between the 1st Respondent and the Grievants,
 - ii. Whether the Claimant has locus standi to represent the employees of the 2nd Respondent,
 - iii. Whether the Grievants were unfairly declared redundant,
 - iv. What reliefs should be granted

Whether there was an employment relationship between the 1st Respondent and the Grievants

35. 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.
36. The Claimant asserted that the Grievants worked at the 1st Respondent's premises and were supervised by its director, thereby establishing an employment relationship.
37. CW1 in his testimony told the court that the Grievants signed employment contracts with the 2nd Respondent and that they were paid by the 2nd Respondent. He further testified that the 2nd Respondent deducted and remitted statutory dues from their wages. He admitted under cross-examination that his employer was the 2nd Respondent although he worked at the premises of the 1st Respondent.
38. There is no evidence before the Court that the 1st Respondent issued contracts to the Grievants, or paid their wages, or disciplined them, or assumed responsibility for their statutory deductions. The contractual and wage relationship remained with the 2nd Respondent as confirmed by the Claimant's witness.
39. In the circumstances, the Court finds that the Grievants were employees of the 2nd Respondent and that no employer-

employee relationship existed between the Grievants and the 1st Respondent.

Whether the Claimant has locus standi to represent the employees of the 2nd Respondent

40. The 2nd Respondent's position is that the Claimant does not have locus standi to represent the Grievants on the ground that it had not attained the statutory threshold of membership among the 2nd Respondent's employees, as required under section 54(1) of the Labour Relations Act. It further asserted that some of the names on the Claimant's membership list were not employees of the 2nd Respondent and that others were not members of the union.

41. Section 54(1) of the Labour Relations Act 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.

42. From the evidence of CW1, it is clear that the Grievants were members of the Claimant and had authorized it to act on their behalf. In law once the Grievants joined membership of

the Claimant they did not need to give further consent to the Claimant to represent them. There is no material before the Court indicating that the Grievants did not consent to the Claimant representing them.

43. Under Article 41(2)(c) of the Constitution as read with section 4 and 48 of the Labour Relations Act every member of a trade union has a right to be represented by the trade union by virtue of membership. The Claimant did not require recognition by the Respondents to represent the employees as recognition is only necessary for purposes of collective bargaining as provided in section 54 of the Labour Relations Act.
44. I therefore find and hold that that the Claimant had the requisite locus standi to represent the Grievants in the present dispute.

Whether the Grievants were unfairly declared redundant or their contracts ended by effluxion of time

45. The Claimant contends that the Grievants were verbally declared redundant by the 2nd Respondent, in collaboration with the 1st Respondent, on 14th May 2024, without notice or

compliance with the statutory procedures under the Labour Relations Act. It is further alleged that the County Labour Officer, Eldoret, was not served with the requisite redundancy notices.

46. The 2nd Respondent, in its defence averred that the Grievants were engaged on fixed-term contracts of three months, which expired by effluxion of time and that these contracts were not renewed because of an alleged desertion of duty. It asserts that, as contract employees, the Grievants were not entitled to any notice or leave upon termination of their contracts.
47. CW1 in cross examination admitted that he signed a three-month contract from February to May 2024. There is no documentary evidence before the Court to show that the contracts were terminated before their agreed expiry date, except that of Mark Kemboi Rotich which was still active when this suit was filed.
48. It is a well-established principle that a fixed-term contract ordinarily terminates automatically at the end of the agreed period unless there is an express renewal or evidence creating a legitimate expectation of renewal.

49. Termination on account of redundancy requires compliance with statutory procedures, including issuance of notices and involvement of the relevant labour authorities.
50. In the present case, there is no evidence that the contracts were terminated prematurely or that the 2nd Respondent issued any redundancy notice. The undisputed evidence is that the contracts expired at the end of the agreed term.
51. The Court therefore finds that the Grievants' contracts came to an end by effluxion of time and that the Claimant has not established that its members were unfairly declared redundant with the exception of Mark Kemboi Rotich.

What reliefs should be granted?

52. The Claimant sought the following reliefs from the court:
 - a. Declare the redundancies unfair and unlawful
 - b. Order the Respondents to reinstate the affected employees to their previous positions without loss of benefits
 - c. Order the Respondents to pay accrued leave days and final dues in accordance with the law on redundancy

d. Grant any other relief deemed fit and just to meet the ends of justice

e. Costs of the Claim be awarded to the Claimant

53. Having found that the Grievants contracts of employment ended by effluxion of time, it follows that the Claimant is not entitled to prayers (a) and (b) as they were not declared redundant.

54. The Claimants are however entitled to prorated leave for the period worked at the rate of 1.75 days for every month worked as provided in section 28(1)(b) of the Employment Act. The agreements signed by the Grievants do not have any provision for leave and neither is there evidence of payment of the same. I therefore award each Grievant leave for 3 months being 5.25 days. Based on the statutory daily minimum rate of pay for 2024 of 775.39, I award each of the Grievants Kshs. 4071 being pay in lieu of leave.

55. The contract of Mark Kemboi Rotich having not expired, he is awarded 1 months' notice in lieu of notice at (775.39×28) Kshs. 21,710.92.

56. All the other reliefs sought in the Memorandum of Claim are premised on the allegation of unfair redundancy which has not been established. The prayers are accordingly declined.
57. Having been partially successful, I award the Claimant nominal costs of Kshs. 30,000 to be paid by the 2nd Respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THIS 19TH DAY OF FEBRUARY, 2026.**

**M. ONYANGO
JUDGE**