

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

**CAUSE NO. E009 OF 2024**

*Before Hon. Lady Justice Maureen Onyango*

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

**VERSUS**

**PAVAN AUTO HARDWARE LIMITED .....**  
**RESPONDENT**

**JUDGMENT**

1. The Claimant is a trade union registered under the Labour Relations Act and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company registered company under the laws of Kenya and engages in hardware retail shop within Uasin Gishu and Nandi Counties within the Republic of Kenya.
3. By virtue of the Claimant's Constitution, the employees of the Respondent fall within the purview of the Claimant's membership and as such, the Claimant is the right union to

represent the employees of the Respondent in labour matters.

4. As at the time of filing the suit herein the parties did not have a recognition agreement, but the Claimant had filed suit in Eldoret ELRC Cause No. E022 of 2023 seeking recognition.
5. Vide a Memorandum of Claim dated 26<sup>th</sup> march, 2024 the Claimant avers that the Respondent, acting in bad faith and in contravention of court orders of 17<sup>th</sup> November, 2023, had terminated the employment of Mr. Harrison Okundu and Tonny Kiplagat, herein after referred to as the Grievants.
6. It is alleged that Mr. Harrison Okundu was issued with a letter dated 1<sup>st</sup> March, 2024 while Tonny Kiplagat's letter is dated 3<sup>th</sup> March, 2024. The Claimant avers that the Respondent's claim that business was low was but a pretext. The Claimant avers that the redundancy is targeted at punishing union members because of their trade union activities and to subvert the fundamental right of employees to belong to a trade union of their choice.
7. It is averred that the Respondent's Managing Director, Mr. Jalpesh Patel had vowed to the employees that by the time

judgment was delivered in September, he would have “cleared and dealt firmly” with those who are union members.

8. The Claimant avers that the Respondent did not serve requisite notices to the County Labour Officer, Eldoret and to the Claimant.
9. It is the Claimant’s averment that after receiving the Claimant’s check-off forms dated 19<sup>th</sup> September, 2023 and court order dated 17<sup>th</sup> November, 2023 the Respondent started victimizing the Claimant’s members. That Moses Kiptoo, Emmanuel Kipkoech, Peter Kipchirchir, Nicholas Kipkurui, Evans Kipkorir and Ruben Kipkoech Kosgei were victimized and lost their jobs because of being members of the Claimant.
10. The Claimant seeks the following reliefs:
  - a) THAT this application be certified urgent, service thereof be dispensed with and the same be heard ex parte in the first instance.
  - b) THAT pending hearing and determination of this matter, this Honourable Court be pleased to issue an

order restraining the Respondent from declaring Mr. Harrison Okundu and Mr. Tonny Kiplagat redundant.

- c) THAT pending hearing and determination of this application, the Honourable court be pleased to restrain the Respondent from any acts of victimization or intimidation of the two employees and other unionizable employees during the pendency of this suit.
- d) THAT this Honourable Court to order the Respondent to reinstate the affected employees without loss of any benefits.
- e) THAT the Honourable court be pleased to set down this Application for inter-partes hearing on priority basis.
- f) THAT this Honourable court be pleased to grant costs of this application in favour of the Applicant.

11. The Respondent filed a brief 7 paragraph Response to Memorandum of Claim dated 10<sup>th</sup> February, 2025 in which it denies the averments in the Memorandum of Claim.

## **Evidence**

12. At the hearing the Claimant called two Grievants Harrison Okundu and Tonny Kiplagat who testified as CW1 and CW2 respectively on 5<sup>th</sup> May, 2025. The Respondent called Victor Kipkoech Sum who testified as RW1 on 30<sup>th</sup> September, 2025.
13. Upon close of hearing the parties filed and exchanged written submissions.
14. CW1 adopted his witness statement dated 26<sup>th</sup> March, 2024 and testified that he was employed as a general labourer loading and off-loading, that he was not issued with a letter of appointment. He testified that he was paid in cash daily and signed on a piece of paper for attendance, but not for payment. He testified that on 18<sup>th</sup> March, 2024 he was called and issued with a letter stating that work had reduced. He testified that he took the letter to the union. He prayed for remedies as set out in the Memorandum of Claim.
15. Under cross examination by Mr. Aloo, counsel for the Respondent, CW1 stated that he had not produced any evidence that he joined the union. He testified that he joined the union on 10<sup>th</sup> August, 2023.

16. CW2 also adopted his witness statement dated 26<sup>th</sup> March, 2024 and testified that he was engaged by the Respondent on labourer loading and off-loading. He testified that he was paid weekly Kshs. 1900. He testified that on 23<sup>rd</sup> March 2024 he received a letter that work had reduced and was told not to report to work the following day. He testified that he was not paid terminal dues. He prayed for remedies as set out in the Memorandum of Claim.
17. Under cross examination by Mr. Aloo CW2 stated that a letter dated 6<sup>th</sup> March, 2023 was issued to him on 23<sup>rd</sup> March, 2023. He stated that he had no proof that his employment was terminated because he had joined the union.
18. For the Respondent Victor Kipkoech Sum testified as RW1. He stated that he is an accountant by profession and is in charge of administration and finance for the Respondent. He testified that Harrison, CW1 was an employee of the Respondent but was released from employment after working for about 6 months when business was low. That he was given one month's notice. That CW1 was paid about Kshs. 4032 on weekly basis through payment vouchers filed in court.

19. RW1 testified that the employment of Tonny Kiplagat, CW2 was terminated due to his conduct after being given a warning. That CW2 had also worked for the Respondent for about 6 or 7 months.
20. RW1 denied that the Grievants were terminated on account of joining union membership. He stated the Respondent was not aware that the Grievants had joined union membership.
21. RW1 adopted his witness statement and relied on the documents filed on behalf of the Respondent as part of his evidence.
22. Upon cross-examination by Mr. Tacko for the Claimant, RW1 stated that he was in charge of Human Resource and was an accountant. He stated he was registered as an accountant and not human resource practitioner.
23. RW1 stated the Harrison was terminated due to redundancy as he was the newest employee and business was low. He testified that the Respondent's letter dated 23<sup>rd</sup> December, 2023 is addressed to 4 people but only Harrison signed it. That the letter was issued to all employees working with Harrison. He stated that paragraph 3 of the letter is not a warning and that the termination of Harrison was not the

issue in the letter. He stated the termination of Harrison was not based on his conduct but was a redundancy. He stated that Harrison was paid one month's notice though his wages was paid weekly. He stated the Respondent was not considering the employees as casuals or permanent.

24. RW1 stated that Tonny refused to sign all warning letters. He stated Tonny was not issued with a show cause letter, was not invited for a hearing and was not given one month's notice before termination. That Tonny was given notice because the company did not want to work with him.
25. RW1 stated that the one month's notice issued to Tonny is dated 6<sup>th</sup> March, 2024 but was issued on 23<sup>rd</sup> March, 2024. He stated it was not proper to backdate a termination letter.
26. On re-examination by Mr. Aloo RW1 stated that the payments due to CW1 and CW2 were paid.

### **Analysis and Determination**

27. I have considered the pleadings and evidence on record. I have also considered the submissions of the parties. The issues arising for determination are:
  - a. The nature of engagement of the Grievants,

- b. Whether or not the Grievants were unfairly terminated,  
and
- c. What remedies are due, if any.

*The nature of engagement of the Grievants,*

28. The Respondent in its submissions has stated that Harrison Okundu was employed on 10<sup>th</sup> August 2023 as a general worker and left employment on 1<sup>st</sup> March, 2024 after working for 8 months while Tonny Kiplagat was employed on 21<sup>st</sup> May, 2023 and terminated on 23<sup>rd</sup> March, 2024 after working for 9 months. The two were therefore not casual workers, having worked continuously for more than one month. They were regular term employees.

*Whether or not the Grievants were unfairly terminated*

29. RW1 testified that Harrison was terminated due to redundancy. Harrison was issued with a notice of termination which gave reasons for the termination to be that business had gone down hence the Respondent was reducing its work force. He was thus declared redundant.

30. The redundancy however did not comply with procedure under section 40(1) of the Employment Act and was therefore unlawful.
31. Tonny Kiplagat also testified that on 23<sup>rd</sup> March, 2024 he received a letter that work had reduced and he was being declared redundant. The Respondent did not comply with the procedure under section 40(1) of the Employment Act rendering his redundancy unlawful.
32. I therefore find that the termination of both Grievants was unlawful for non-compliance with the provisions of section 40 of the Employment Act.
33. Although the Respondent's termination notices indicated that the reason for the termination of their employment was staff reduction due to reduction in work, the Grievants had previously been issued with warning letters on misconduct. In the case of Tonny RW1 testified that the reason for termination of his employment was that he had refused to accept and sign for warning letters and therefore the Respondent did not want to work with him.

34. From the foregoing both terminations were unfair whether considered as redundancies or as termination on account of misconduct.

*What remedies are due, if any.*

35. Having found that the termination of both Grievants was unfair, I will now consider if they are entitled to the remedies sought on their behalf by the Claimant.

36. The Claimant for accrued leave and final benefits as per law on redundancy.

37. Each of the Claimants is entitled to pay in lieu of notice the Respondent's witness having admitted that although the redundancy notices were dated 6<sup>th</sup> March, 2024 they were issued on 23<sup>rd</sup> March, 2024. I award each of the Grievants one months' salary in lieu of notice.

38. The Grievants having been declared redundant without the one-month notification to either them directly or their union and to the Labour Officer as provided in section 40(1) (a) and (b) of the Employment Act, I award each of them one months salary in lieu of the notification of redundancy notice.

39. The Respondent's witness testified that the Grievants were not entitled to leave because they had not worked for one year. According to section 28 of the Employment Act any employee who has worked for a minimum of 2 months is entitled to pro-rata leave at the rate of 1.75 day per month. The Grievants having worked for more than 2 months, I award each of them pro-rata leave for the months worked.
40. The payments will be based on minimum rate of pay applicable at the time of termination of employment. Claimant to tabulate the payments and file in court for purposes of decree. Mention date to be given by the Registry for confirmation of the payments due.
41. The Respondent shall pay the Claimant's costs assessed at Kshs. 50,0000.
42. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON  
THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO  
JUDGE**