

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

**ELRC CAUSE NO. E067 OF 2024**

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

**VERSUS**

**BHUMI DISTRIBUTORS 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 wholesale and distribution of goods 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. The Claimant avers that the parties herein were involved in Eldoret ELRC Cause No. E004 of 2023 wherein judgment was delivered on the issues of recognition agreement and deduction of union dues in favour of the Claimant and since then the Respondent has not been acting in good faith and is determined to frustrate the fundamental rights of its employees to join and belong to a trade union as protected under the Constitution of Kenya.
5. The Claimant avers that 4 former members of the Claimant union were served with redundancy letters after the dates indicated in the letters. That the letters appear to be intended as punishment of the employees because of their union activities.
6. It is the averment of the Claimant that the Respondent did not issue redundancy notices to the County Labour Officers for Eldoret and Kisumu where the employees were based.
7. The Claimant avers that it wrote several letters to the Respondent to stop victimizing its members and to seek a meeting to discuss the issue but the Respondent never

responded. That it was left with no option but to lodge the instant suit.

8. The Claimant gives the particulars of the Grievants as follows:

- i. Mr. Stanley Kibii Mutai was employed by the Respondent on 01/06/2020 as a General labourer earning monthly of Kshs. 16,129.00.
- ii. Mr. Jared Onsongo Abuya was employed by the Respondent on 01/03/2020 as Driver earning monthly of Kshs.25,000.00.
- iii. Mr. Peter Ekicheles Epukon was employed by the Respondent on 01/03/2020 as a General Labourer earning monthly of Kshs.16,129.00.
- iv. Nancy Kemunto Abuya was employed by the Respondent on 01/03/2020 on a long term minimum 5 years contract as an invoicing earning monthly of Kshs. 25,000.00
- v. Daniel Otieno Ochiel was employed by the Respondent on 28/1/2023 as a driver and posted to

Kisumu, he was being paid Ksh.23,600/= perm month.

9. In the Memorandum of Claim dated 9<sup>th</sup> August, 2024 the Claimant seeks the following reliefs from the court: -
- a. Declare the redundancies as unfair and unlawful.
  - b. Order the Respondents to reinstate the affected employees to their previous employment without loss of any benefits.
  - c. If reinstatement is untenable, the claimant seeks that the affected employees be paid as follows;-

Stanley Kibii Mutai

1 month notice pay	16,130.00
3 years severance pay	24,195.00
5 months pro rata leave	3,360.00
3 years Saturday overtime	17,884.00
12 months compensation	168,300.00
Total	229,869.00

Jared Onsongo Abuya

1 month notice pay	27,274.00
3 years severance pay	40,911.00

7 days pro rata leave	7,994.00
December, 2023 salary	22,500.00
3 years salary underpayment	81,864.00
3 years Saturday overtime	30,384.00
2 years contract balance	600,000.00
12 months compensation	284,592.00
Total	1,095,519.00

Peter Lekicheles Epukon

1 month notice pay	16,130.00
3 years severance pay	24,195.00
10 days pro rata leave	6,720.00
3 years Saturday overtime	17,884.00
12 months compensation	168,300.00
Total	233,229.00

Nancy Kemunto Abuya

1 month notice pay	25,000.00
3 years severance pay	37,500.00
2 years contract balance	600,000.00
3 years Saturday overtime	30,384.00
2 years unlawful deductions	72,000.00

12 months compensation	300,000.00
Total	1,064,884.00

Daniel Otieno Ochiel

1 month notice pay	27,274.00
1 year severance pay	13,637.00
1 year leave	19,091.00
4 months pro rata	7,994.00
1 year underpayment	60,384.00
1 year Saturday overtime	10,128.00
12 months compensation	284,592.00
TOTAL	428,820.00

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

e. Costs of the Claim be awarded to the Claimant.

10. The Respondent filed a Memorandum of Response dated 11<sup>th</sup> October, 2024 in which it denies the averments in the Memorandum of Claim. The Respondent specifically denies victimizing the Grievants on account of union membership and states that it had no knowledge that the Grievants had joined membership of the union.

11. That the Respondent further avers that due to economic down turn affecting the country it was not feasible to have a large work force and hence the decision to lay off some workers. It avers that contrary to allegations contained in the memorandum of claim, it acted within the confines of law and gave the requisite notices and paid all entitlements to the affected employees. It further avers that there is no issue of unlawful redundancy targeting certain number of employees as the conditions on redundancy were clearly complied with as follows:

- i) The employees were notified in writing of the redundancy
- ii) Notice was also given to the County labour office
- iii) There was due regard to the seniority in time and to the skills, ability and reliability of each employee.
- iv) Leave dues were paid to the employees.
- v) Severance pay at the rate of fifteen (15) days in each completed year was also paid.-2

12. The Respondent avers that the employees declared redundant never raised any issue or complain at the time of leaving the Respondents employment. That the Respondent's action was therefore justified. It avers that the claim is actualized by malice, bad faith and false allegations in particular that the Respondent was targeting certain employees.
13. At the hearing the Claimant called all the Grievants. CW1 Otieno Daniel Ochieng adopted his witness statement dated 5<sup>th</sup> May, 2025 and testified that he was employed by the Respondent as a driver in 2023. That he and the other Grievants were stopped from working. That he was issued with a letter with the title: "TO WHOM IT MAY CONCERN". That after he read the letter he was told to wait for his salary for the month. He stated that he was paid salary that month Kshs. 23,000 from which statutory deductions were effected. He testified that he was not paid terminal dues. He testified that his last month of service was April, 2024. He testified that he was a member of the union.
14. Under cross examination by Mr. Kariuki Mwaniki, counsel for the Respondent, CW1 stated that he worked for the

Respondent in Kisumu, then Eldoret, Nairobi, then back in Eldoret where his employment was terminated. He stated that there was no reduction in work.

15. He testified that while working in Kisumu he used to go to far off places where he could not report back to the station the same day. That the number of trips depended on the employer.
16. CW1 testified that the leave days he took were deducted from his last salary. That the last cheque for salary issued to him was for Kshs. 20,217.
17. He stated that it was not true that his employment was terminated because there was no work.
18. CW2 Jared Onsongo Abuya testified that he was employed by the Respondent in March, 2020 as a truck driver. He adopted his witness statement dated 9<sup>th</sup> August, 2024. He stated his salary was Kshs. 23,000 and was paid by cheque.
19. He testified that one evening he was called with other employees to the office of the manager and told that they had been declared redundant. That there was no notice and no letter was issued to them.

20. He prayed for terminal dues as specified in the Memorandum of Claim.
21. He testified that he was the shop steward. That he was targeted because he had joined the union. He testified that Mr. Kariuki Mwaniki who was cross examining him was sent to talk to the employees to leave the union. He stated that he joined the union immediately he started working for the Respondent in Eldoret in March, 2021. That the Respondent has 3 branches.
22. RW2 testified that they were not given letters of redundancy. That they were issued with letter the day after they were declared redundant because he asked for the letters. He stated other than salary he was not paid terminal dues. He denied that he was paid Kshs. 49,375. He testified that he did not sign anywhere for the money. He acknowledged that his Bank account was at Equity Bank as stated by counsel but denied receiving Kshs. 49,375 from the Respondent in December, 2023 from the Respondent. he stated he had not used the account since 30<sup>th</sup> November, 2023.
23. CW2 denied that he incited the employees to go to court and reiterated that they were terminated because they were union

members. He stated that since they were sacked no other employees had joined union membership.

24. Under re-examination CW2 stated that he and the other employees were issued with letters 3 days after they were declared redundant verbally. That he was not paid Kshs. 49,375 into his account as he banked all cheques personally and his last salary cheque which he banked was for Kshs. 22,695.
25. CW3 Nancy Kemunto Abuya adopted her witness statement dated 7<sup>th</sup> May, 2025 and testified that she was employed by the Respondent on 2<sup>nd</sup> March, 2020 as invoicing clerk. Her salary was Kshs. 25,000 before deductions. She was paid Kshs. 23,000 when she was transferred to Kisumu.
26. CW3 testified that she was issued with a contract of 5 years but did not complete the contract.
27. CW3 testified that while working in Kisumu she was issued with a letter of termination which she refused to sign because she was not given the reason for termination as the manager said he was given the letter from above. She stated that previously she used to be paid by cheque but she was paid cash Kshs. 19,000 for the last month.

28. She stated that she did not resign. That on 9<sup>th</sup> December, 2023 she was issued with a letter dated 9<sup>th</sup> December, 2023. That she left work on 9<sup>th</sup> December, 2023.
29. Under cross examination CW3 testified that the contract she signed did not have a stamp, that she took a copy of the letter. That no representative of the company signed the letter. That the file copy was retained by the Respondent. she denied that she forged the letter. She further denied that she wrote a resignation letter on 13<sup>th</sup> December, 2023 which was after the termination of her employment. She stated the letter of termination was given to her by the manager in Kisumu Mr. Dassit Shah. She stated that she refused to sign the letter because she was not given reason for the termination.
30. For the Respondent RW1 Bhavin Shah testified that he is a director of the Respondent. he adopted his witness statements, one dated 11<sup>th</sup> November, 2024 and the other dated 10<sup>th</sup> March, 2025. He further adopted the documents filed in support of the Respondent's case being the list dated 17<sup>th</sup> January, 2025 and a second list dated 10<sup>th</sup> March, 2025.

31. He testified that Jared was paid Kshs. 49,165 vide cheque No. 6958 received on 14<sup>th</sup> December, 2023. That Nancy resigned from employment. He stated Nancy had no contract as she was never issued with any by the Respondent.
32. RW1 testified that Daniel was paid his dues in full as per documents filed by the Respondent.
33. RW1 testified that the Grievants were not dismissed due to union membership as the Respondent was not aware they had joined the union. He testified that the Respondent paid all dues and complied with the law.
34. Under cross examination RW1 stated that Nancy was employed around March, 2023 and resigned in December, 2023 after working for 10 months. That Nancy was earning 23,000. That Daniel was employed in 2024 but before that he was under an agency. He stated the payment to Daniel included notice.
35. RW1 stated that he was not aware about Cause No. E004 of 2023 or that the Respondent was served with check off forms for union membership.
36. Upon the conclusion of the hearing both parties filed written submission.

## **Analysis and Determination**

37. I have considered the pleadings, evidence and submissions of the parties. The issues arising for determination are the following:
- a) Whether the termination of the employment of the Grievants was fair; and,
  - b) Whether the Claimant is entitled to the orders sought in the Memorandum of Claim.
38. It is not in dispute that all the Grievants were in the employment of the Respondent. This is confirmed in the witness statement of BHAVIN SHAH dated 11<sup>th</sup> November, 2024, which he adopted and relied upon at the hearing.
39. In the witness statement of 11<sup>th</sup> November, 2024 Mr. Bhavin Shah states that PETER LEKICHELES EPUKON, STANLEY KIBII MUTAI and NANCY KEMUNTO ABUYA were declared redundant due to economic down turn that affected the Respondent's business. It was stated in the statement that the Respondent was no longer able to continue employing them.

40. It is further stated in the statement that the Grievants' were paid requisite notices and the County Labour Office was informed.
41. In the witness statement dated 10<sup>th</sup> March, 2025 the same Mr. BHAVIN SHAH states that NANCY KEMUNTO ABUYA resigned from employment on 13<sup>th</sup> December, while serving in Kisumu after working for 10 months while DANIEL OTIENO OCHIEL only worked for the Respondent for 9 months at Kisumu Branch.
42. It is the Respondent' case that it declared the Grievants redundant and complied with the law.
43. Section 40 of the Employment Act provides for redundancy as follows:

*(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—*

*(a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent*

*of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;*

*(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;*

*(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*

*(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy;*

*(e) the employer has not placed the employee at a disadvantage for being or not being a member of the trade union; (f) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;*

*(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and*

*(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.*

44. In the instant case the only evidence adduced by the Respondent are letters of termination and evidence of payments made to the Grievants.

45. The letters of termination on account of redundancy for Stanley Kibii Mutai, Jared Abuya and Peter Lekicheles Epukon are dated 27<sup>th</sup> October, 2023. The letters which are similar, state as follows:

**BHUMI DISTRIBUTORS LIMITED-ELDORET BRANCH  
GODOWN G3A, RUPA MILLS COMPOUND, UGANDA  
ROAD**

*DATE 27/10/2023*

*STANLEY KIBII MUTAI*

*ID 28177627*

*CC: County labour office (Uasin Gishu)*

RE-TERMINATION ON ACCOUNT OF REDUNDANCY

*You were employed by Bhumi Distributors Limited to work as a General Labourer with effect from 01.03.2020.*

*We wish to inform you that due to reduction of operations Bhumi Distributors have decided to declare some positions redundant with effect from 30,11.2023 as pursuant to the notice Issued by company.*

*It is with regret that we are informing you that your employment contract will be terminated effective 30.11.2023 on account of redundancy.*

*The company will process your terminal dues less any liabilities and statutory deduction as follows.*

- 1. Payment for the days worked until exit date.*
- 2. One month pay on the lieu of Notice.*
- 3. Service pay for 15 days for every completed year*

*We appreciate your contribution to the company and wish you all the best in your future endeavors. Please acknowledge the receipts of this letter by a signing a copy of thereof.*

*Signed*

*Yours faithfully*  
*Bhumi Distributors Limited*

46. The Respondent also sent a separate letter of even date to the Labour Officer as follows:

***BHUMI DISTRIBUTORS LIMITED-ELDORET BRANCH***  
***GODOWN G3A, RUPA MILLS COMPOUND, UGANDA***  
***ROAD***

*27/10/2023*

*To County Labour Officer*  
*Ministry of Labour and Social Protection*  
*Post Box, 110-30100*  
***ELDORET***

***RE- Termination of Contract of Services on Account of Redundancy***

*This is to notify your office of the company's intention to restructure its operations by way of downsizing the workforce by three (3) members.*

*The Redundancy process have been necessitated by reduction in operation due to economic downtown which has led to financial distress of the organization.*

*In the regards the company wish to effect the lay off by 30/11/2023.*

*The following will be taken into account as employment separation is implemented as per the provision of section 40(1)a, b, c, d, e, f, g of the Employment Act 2007. We have taken into account staff performance and duration in the organization while arriving at our decision.*

*The Following entitlement will be paid.*

- a. Notice of separation of employment will be paid.*
- b. Payment of December salary in lieu of notice*
- c. Calculation and payment of any pending leave days*
- d. Service pays*
- e. Certificate of services and recommendation*
- f. Payment of days worked until exit date*

*The company will notify all employees of its intention to come out redundancy on 30/11/2023.*

*Yours Sincerely,*

*Bhumi Distributors Limited,*

*Signed*

*Branch Manager*

*Keyur Shah*

47. The letter to the Labour Officer indicates that the employees to be declared redundant were 3. The letters of redundancy are all dated 27<sup>th</sup> October, 2023.

48. According to the evidence adduced by the Respondent the Grievants were paid as follows:

a) Peter Ekicheles Epukon

Kshs. 9,317.00 by cheque dated 30/11/2023

Kshs. 34,250 by cheque dated 01/12/2023

b) Stanley Kibii Mutai

Kshs. 10,317 by cheque dated 30/11/2023

Kshs. 34,250.00 by cheque dated 01/12/2023

c) Jared Onsongo Abuya

Kshs. 49,165 cheque dated 01/12/2023

Kshs. 22,695 cheque dated 30/11/2023

d) Daniel Otieno Ochiel

Kshs. 20,217 Pay slip for 30<sup>th</sup> April 2024

e) Nancy Kerubo Abuya

Kshs. 19,913 pay slip for December, 2023

49. I will first determine the terminal benefits payable to the 3 grievants who were issued with letters of termination on account of redundancy: **Stanley Kibii Mutai, Jared Abuya and Peter Lekicheles Epukon.**
50. Upon being declared redundant the 3 Grievants were entitled to notification under section 40(1) (a) as read with (b) which requires that the employee or his union are given notification of at least one month before the redundancy is effected. In this case there was no notification prior to the redundancy as the letters addressed to the Grievants were dated 27<sup>th</sup> October, 2023 and notified them of termination of their employment by way of redundancy effective on 30<sup>th</sup> November, 2023.
51. The breakdown filed by the Respondent for the 3 Grievants itemizes service pay, leave balance, if any and pay in lieu of notice.
52. Peter Ekicheles Epukon and Stanley Kibii Mutai were paid one month's salary in lieu of notice while Jared Onsongo Abuya was not. Jared is thus entitled to pay in lieu of notice.

53. In addition, all 3 Grievants Jared Onsongo Abuya, Peter Ekicheles Epukon and Stanley Kibii Mutai are entitled to pay in lieu of notification of redundancy under section 40(1)(a) and (b).

54. They are also entitled to severance pay which they were not paid according to the breakdown by the Respondent. All 3 worked for just under 4 years. They are thus entitled to severance pay for 3 completed years of service.

55. The Respondent further did not adduce any proof that the Grievants took leave in the year they were declared redundant or respond to the claim by the Grievants in respect of outstanding leave days. Under section 10 and 74 of the Employment Act the Respondent is required to keep and produce details of

56. *Section 10(3) provides:*

*(3) The statement required under this section shall also contain particulars ...: -*

*(a) any terms and conditions relating to any of the following*

*— (i) entitlement to annual leave, including public holidays,*

*and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);*

57. In the absence of proof that leave was taken, I award the Grievants leave days as prayed.

58. With respect to **Daniel Otieno Ochiel**, it was the Respondent's case that he worked for only 9 months and was paid salary plus notice. The pay slip reflects that the Grievant was paid only salary.

59. Having worked for less than one year the Grievant was entitled to salary, pay in lieu of notice and prorated leave for the 9 months worked. Based on his salary of 47,200 the Grievant is entitled to the following:

i. Pay in lieu of notice - Kshs. 47,200

ii. Annual leave for 9 months at 1.75

days per month (15.75 days) - Kshs. 28,593

**Total Kshs. 75,793**

60. With Respect to Nancy Kemunto Abuya the Respondent attached only a pay slip for December, 2023 for Kshs. 19,913. According to the pay slip Nancy Kemunto Abuya earned Kshs. 25,600 per month.
61. The Respondent averred that she worked for only 10 months while the Grievant testified that she worked from 2020 as invoicing clerk.
62. In the witness statement of Bhavin Shah dated 10<sup>th</sup> March, 2025 at paragraph 3 it is stated that she was paid leave, salary and notice. The pay slip reflects payment of salary only.
63. The Respondent averred that the Grievant resigned from employment by letter dated 13<sup>th</sup> December, 2023. The Grievant denied writing the letter. There is no evidence that the said letter was received by the Respondent and acknowledged or that the resignation was accepted.
64. I am inclined to agree with the Grievant that she did not resign because there is no acknowledgement of the Letter by the Respondent.
65. The Grievant also produced a contract which she alleges was issued by the Respondent. RW1 denied that the Respondent

issued the letter. I am inclined to agree with the Respondent as the said letter does not bear any date of issue or signature of either the Respondent or Grievant and its authenticity cannot be ascertained.

66. There having been no evidence that the Grievant was employed in 2020, I find that she was employed in March, 2023. Although RW1 stated in his witness statement that the Grievant was paid notice and leave, the same is not reflected in the pay slip. I will therefore award her both as follows:

- i. Annual leave 10 months 17.5 days) - Kshs. 17,231
  - ii. Pay in lieu of notice - Kshs. 25,600
- Total - Kshs.**

**42,831**

67. The tabulation for **Stanley Kibii Mutai, Jared Onsongo Abuya** and **Peter Lekicheles Epukon** are as follows:

68. **Stanley Kibii Mutai**

- Pay in lieu of one-month notification - Kshs. 16,129
- Severance pay - Kshs. 24,195
- Leave for 5 months - Kshs. 3,360

**Total** - **Kshs. 43,684**

69. **Jared Onsongo Abuya**

o Pay in lieu of one-month redundancy

notification - Kshs. 27,274

o Severance pay - Kshs. 40,911

o Leave 4 days (3 days was paid) - Kshs. 5,494

o One months' salary in lieu of

termination notice - Kshs. 27,274

**Total** - **Kshs. 100,953**

70. **Peter Lekicheles Epukon**

o Pay in lieu of one-month redundancy

notification - Kshs. 16,129

o Severance pay - Kshs. 24,195

o Pro-rata Leave for 10 days - Kshs. 6,720

**o Total** - **Kshs. 47,044**

71. On the Claimant's averment that the Grievants were victimized and terminated due to their membership of the union, it is not

contested that the Claimant and Respondent were parties to **Eldoret ELRC Cause No. E004 of 2023** wherein the cause of action was refusal by the Respondent to deduct and remit union dues and refusal by the Respondent to recognize the Claimant.

72. In his witness statement Bhavin Shah alluded to the Grievants having been influenced to file the instant suit. During the hearing of this suit Mr. Bhavin Shah again stated that *“The claim seems to have been instigated by someone and is false.”*
73. CW2 testified that he was targeted because he was a strong member of the union and was the shop steward. That he was accused of brainwashing the rest of the employees.
74. During cross examination CW2 testified that counsel representing the Respondent personally the Respondent’s premises to talk to the workers to withdraw from the union membership.
75. Further, no evidence was adduced to prove that the Respondent was experiencing low volumes of work at the time of declaring the Grievants redundant. The Grievants testified

that at the time they were declared redundant the company was very busy.

76. Further, at the time of declaring the Grievants redundant there was a suit pending for recognition of the Claimant by the Respondent and the Respondent was therefore aware of the existence of the union for purposes of notification of redundancy under section 40(1)(a) of the Employment Act.
77. I thus find the redundancy to have been not only unlawful for failure to comply with section 40(1) the Employment Act on redundancy and section 4 and 5 of the Labour Relations Act on employees' right to freedom of association and protection of employees against discrimination of account of union activities, but also a violation of the right of the Grievants to fair labour practices under Article 41 and right to freedom of association under Article 36 of the Constitution of Kenya.
78. I therefore award each of the Grievants 6 months salary as compensation for the violation of their statutory and constitutional rights to join and participate in the activities of a union of their choice and for unfair termination of their employment.

79. I consequently make the following orders:
- a) I declare the redundancy of the Grievants unfair and unlawful
  - b) The prayer for reinstatement is declined
  - c) Each Grievant is awarded terminal dues as set out above as follows:
    - i. **Stanley Kibii Mutai - Kshs. 43,684**
    - ii. **Jared Abuya - Kshs. 100,953**
    - iii. **Peter Lekicheles Epukon - Kshs. 47,044**
    - iv. **Daniel Otieno Ochiel - Kshs. 75,793**
    - v. **Nancy Kemunto Abuya - Kshs. 42,831**
  - d) Each of the Grievants is in addition awarded compensation equivalent to 6 month's salary
  - e) The Respondents shall bear the Claimant's costs assessed at Kshs. 70,000.
  - f) Interest from date of Judgment
80. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON**

**THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO  
JUDGE**