

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

ELRC CAUSE NO. E016 OF 2025

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

VERSUS

**H.M ELDO VARIETIES 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 under the laws of Kenya and carries out business of wholesale of household goods within Uasin Gishu County.
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 claim herein is filed on behalf of **Venic Mukhwana Mundonyi** a former employee of the Respondent who the Claimant states was its member paying union dues directly to the union, herein after referred to as **the Grievant**.
5. The Claimant in its Statement of Claim dated 25th March 2025 avers that the Grievant was employed by the Respondent as a general worker on 5th July 2016. It is contended that at the time of termination of his employment, the Grievant was earning a monthly salary of Kshs. 11,000 per month.
6. It is the Claimant's case that on 7th June 2022, the Grievant was informed by the Respondent's management that it was no longer able to afford to employ the Grievant since business was not performing well and it was experiencing low business.
7. The Claimant states that its attempts to engage the Respondent to resolve the dispute were not successful, leaving it with no option but to report a trade dispute to the Cabinet Secretary Ministry of Labour and Social Protection which it did. The Cabinet Secretary accepted the dispute and, through the Chief Industrial Relations Officer, appointed Mr. Philip Kemboi of Eldoret Labour Office as a Conciliator.

8. The Claimant avers that the Conciliator invited the parties for conciliation meetings on 3rd May 2023 and 17th May 2023 but the Respondent did not attend the said meetings. The Conciliator therefore issued a Certificate of Unresolved Dispute.
9. The Claimant thereafter moved this court seeking the following orders/remedies on behalf of the Grievant:

- a) Order that the Grievant be reinstated without loss of benefits

- b) In the event reinstatement is untenable, the Claimant seeks the following alternative prayers: -

- i. Payment in lieu of notice.....Kshs 16,113.75
- ii. 6 years leave.....Kshs 67,677.75
- iii. 3 years salary underpayment.....Kshs 184,695
- iv. 6 years severance pay.....Kshs 48,341.25
- v. 7 days worked in the month
of June 2022.....Kshs 4,338.3
- vi. 12 months compensation.....Kshs 193,365

Total.....Kshs 514,531.05

10. The Respondent, though properly served, did not file appearance or respond to the Claim. The suit was therefore certified ready for hearing as an undefended claim.

Evidence

11. The suit was heard on 21st January 2026 when the Grievant testified as CW1. He adopted his witness statement recorded on 25th May 2025 as his evidence in chief and relied on the documents filed in support of his case. He prayed to be granted the reliefs he sought in his Statement of Claim.

Analysis and Determination

12. Having considered the pleadings and evidence on record and having considered the evidence adduced by the Claimant, the issues for determination are the following:
 - i. Whether there existed an employment relationship between the Grievant and the Respondent.
 - ii. Whether the termination of the Grievant’s employment on account of redundancy was lawful and fair

iii. Whether the Grievant is entitled to the reliefs sought in the Statement of Claim.

Whether there existed an employment relationship between the Grievant and the Respondent.

13. On the first issue, the Grievant testified that he was employed by the Respondent from 5th July 2016 until 7th June 2022 as a General worker. He produced union receipts showing payment of union dues to the Claimant which receipts indicate the Respondent as the employer.

14. The Respondent, despite being duly served, failed to enter appearance or file a response to controvert these assertions. Consequently, the Claimant's evidence remains unchallenged and uncontroverted.

15. In the absence of any rebuttal, the Court is satisfied that the Claimant has proved on a balance of probabilities that there existed an employment relationship between the Grievant and the Respondent.

Whether the termination of the Grievant's employment on account of redundancy was lawful and fair

16. Section 40 of the Employment Act sets out the mandatory procedure to be followed in cases of redundancy. These include issuance of prior notice to the employee and the Labour Officer, consultation, and payment of all statutory dues including severance pay.
17. In the present case, there is no evidence that the Respondent issued the requisite notice, engaged in any consultation, or complied with the procedural safeguards provided under the law.
18. Further, the Respondent did not demonstrate that the termination was carried out in accordance with fair procedure as required under Sections 41, 43 and 45 of the Employment Act.
19. In the absence of such evidence, and the Respondent having failed to participate in these proceedings, the Court finds that the termination of the Grievant's employment was procedurally and substantively unfair.

Whether the Grievant is entitled to the reliefs sought in the Statement of Claim.

20. Having found that the termination of the Grievant's employment was unfair, the Court now turns to the remedies sought by the Claimant on behalf of the Grievant

i. Reinstatement

Section 12(3)(vii) Employment and Labour Relations Court Act provides that reinstatement can only be ordered within 3 years from the date of leaving service. From the evidence on record, the Grievant was terminated from employment on 7th June 2022 which is now over three years ago. The prayer for reinstatement is therefore declined as it is only available within 3 years of termination.

ii. Pay in lieu of notice

The Grievant is entitled to pay in lieu of notice in terms of section 35(1) as read with section 49(1) of the Act. The same is awarded at Kshs 16,113.75

iii. 6 years leave

On the claim for leave pay for six years, it is trite that a claim for accrued leave is a statutory entitlement under Section 28 of the Employment Act and is payable where an employee demonstrates that leave was earned but not taken or paid for. The burden rests upon the employer to keep and produce records of leave taken by an employee. Where such records are not produced, the Court is entitled to draw an adverse inference against the employer. In this case, the Respondent did not place before this Court any leave records to demonstrate that the Grievant proceeded on annual leave or that he was paid in lieu thereof. In the absence of documentary evidence that the Grievant proceeded on leave, I am inclined to award the Grievant Kshs 67,677.75 as prayed.

iv. 3 years salary underpayment

The Respondent did not deny that the Grievant was underpaid based on the Regulation of Wages (General) (Amendment) Order, 2018 which was applicable in 2022. I

award the Grievant underpayments in the sum of Kshs. 184,695

v. *6 years severance*

Having found that the termination of the Grievant's employment on redundancy was unfair, he is entitled to severance pay at the rate of fifteen (15) days' salary for each completed year of service. The Grievant served for six (6) years and is therefore entitled to severance pay as claimed at Kshs 48,341.25

vi. *7 days Worked in June 2022*

The Grievant testified that he worked up to 7th June 2022. This was not contested by the Respondent. I award him 7 days pay at Kshs. 4,338.30

vii. *Compensation for Unfair 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 the Grievant 4 months' salary as compensation in the sum of Kshs. 64,455

21. The Respondent is directed to issue the Grievant a Certificate of Service within 30 days from the date of this judgment.
22. The Respondent shall pay the Claimants costs which I assess at Kshs. 50,000.
23. Interest shall accrue at court rates from date of judgment.
24. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 16TH DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**