

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE NO. E036 OF 2025

EVANSON	MUCHIRI
NGIRI.....CLAIMANT	
VERSUS	
STEEL	MARKERS
LIMITED.....RESPONDENT	

JUDGMENT

1. By a Statement of Claim dated 11th September 2025, the Claimant states that he was engaged by the Respondent on 2nd June 2000 as a mill filter. He avers that his duties entailed installing, maintaining, diagnosing, and repairing machinery and equipment used in the manufacturing process, as well as supervising other employees in their use of machinery and equipment.

2. The Claimant further states that his remuneration was subsequently increased and that he assumed additional responsibilities, albeit informally. This was characterized by residing within the Respondent’s premises, ensuring the proper functioning and responsible use of machinery and equipment, overseeing more than 78 employees, and resolving disputes between employees related to the Respondent’s operations.

3. It is the Claimant's case that the terms of his employment, including subsequent variations, were never reduced into writing and that he was not issued with a formal contract of employment, unlike other employees. He contends that this amounted to discriminatory treatment.
4. The Claimant further avers that although he was initially paid regularly on a monthly basis, salary payments became irregular from 2018. In certain instances, he alleges that the Respondent failed to pay his wages for periods exceeding three (3) months, prompting him and his colleagues to seek the intervention of a labour officer.
5. He further asserts that the Respondent failed to remit his authorized deductions to Chuma Moto SACCO, contending that by the end of 2018, the unremitted amount stood at Kshs 200,200.00.
6. The Claimant contends that these circumstances adversely affected his physical and mental well-being.
7. The Claimant further avers that, notwithstanding his diligent service, his employment was unfairly and unlawfully terminated on 27th November 2024, and that he was not paid his dues up to the date of termination.
8. The Claimant further states that although he was not assigned any official duties between August and 27th November 2024, he was nonetheless required to remain

within the Respondent's premises. He avers that on 27th November 2024, the Works Manager, **Mr. Menon**, instructed him to vacate both the premises and his accommodation immediately, while at the same time directing him not to leave with his personal belongings on the basis that they were deemed to belong to the Respondent.

9. The Claimant maintains that being kept without pay for the final five (5) months of his employment subjected him to psychological distress, mental anguish, and emotional suffering.
10. He further avers that his dismissal was unfair as he was neither issued with a notice nor provided with reasons for the termination.
11. On the basis of the foregoing, the Claimant seeks various reliefs, including unpaid salary for the period July to November 2024, one (1) month's salary in lieu of notice, refund of SACCO deductions, payment for accrued leave, compensation for unfair termination, and damages for mental anguish and emotional distress.
12. The Respondent neither entered appearance nor filed a defence despite having been served with the Notice of Summons and Statement of Claim. In that regard, the Claimant filed an Affidavit of Service sworn by **Magdalene Wanjiku Mwangi** on 20th February 2026, confirming service upon the Respondent. The Court, being satisfied as to proper service, certified the matter as undefended and directed that it proceed for formal proof hearing.

Claimant's case

13.The Claimant testified as CW1 in support of his case and called one additional witness, **Philip Wambua**, who testified as CW2. In his evidence, the Claimant adopted his witness statement as his evidence in chief and produced the list and bundle of documents filed on his behalf as exhibits before the Court.

14.Philip Wambua (CW2) likewise adopted his witness statement as his evidence in chief. He informed the Court that he joined the Respondent's employment in 2001, after the Claimant, and confirmed that the Claimant resided within the company premises.

15.CW2 further testified that he was aware the Claimant was a member of Chuma Moto SACCO and had authorized the Respondent to make deductions from his wages for remittance to the SACCO. He added that, similar to the Claimant, he had a grievance that the Respondent failed to remit his own SACCO deductions.

16.He further stated that the Claimant, unlike other employees, was never issued with a letter of employment.

17.Additionally, CW2 testified that during the 23 years he worked alongside the Claimant, he observed him to be a kind, diligent, hardworking and reliable employee, and that he and other employees respected his authority as their senior technician.

Submissions

18. At the close of the hearing, the Claimant, through his advocate, informed the Court that he would not be filing written submissions.

Analysis and determination

19. Flowing from the record, the Court has identified the following issues for determination:

- a) **Whether the Claimant's termination from employment was unfair and unlawful;**
- b) **Whether the Claimant is entitled to the reliefs sought.**

Unfair and unlawful termination of employment?

20. The Claimant contends that his termination from employment was both unfair and unlawful.

21. **Section 45(2) of the Employment Act** provides that a termination is deemed unfair where the employer fails to demonstrate that the reason for the termination is valid, fair, and related to the employee's conduct, capacity, or compatibility, or is based on its operational requirements, and that the termination was carried out in accordance with fair procedure.

22. In essence, an employer is required to establish both substantive and procedural fairness. Substantive fairness concerns the reasons for termination, while procedural fairness relates to the process followed in effecting the termination.
23. In the present case, no letter of termination was produced before the Court, and consequently, the reasons for the cessation of the Claimant's employment remain unknown.
24. In the absence of such reasons, the Court is unable to undertake an evaluation against the criteria set out under **Section 45(2)(a) and (b) of the Employment Act**, namely, whether the said reasons were valid, fair, and related to the Claimant's conduct, capacity, compatibility, or the Respondent's operational requirements.
25. This position is further compounded by the Respondent's failure to enter appearance, file a defence, or participate in these proceedings.
26. It therefore follows that the Respondent failed to discharge its evidential burden under **Sections 43(1) and 45(2)(a) and (b) of the Employment Act**. Accordingly, the Claimant's termination is deemed substantively unfair.
27. With regard to procedural fairness, the Respondent was obligated under **Section 45(2)(c) of the Employment Act** to demonstrate that the termination was effected in accordance with a fair procedure.

28.The elements of a fair process are set out under **Section 41 of the Employment Act**, which entail the employer informing the employee of the reasons for the contemplated termination and giving him an opportunity to make representations in the presence of a fellow employee or a union representative.

29.Owing to the Respondent's failure to defend the claim or participate in the proceedings, there is no evidence to suggest that it complied with the requirements of **Section 41 of the Employment Act**.

30.In the circumstances, the Court arrives at the inescapable conclusion that the termination of the Claimant's employment was procedurally unfair and, therefore, unlawful.

31.In sum, the Court finds that the termination of the Claimant's employment was unfair and unlawful for want of compliance with **Sections 41, 43, and 45 of the Employment Act**.

Reliefs?

32.Having found that the Claimant's termination from employment was unfair and unlawful, he is entitled to compensation under **Section 49 (1) (c) of the Employment Act**. Accordingly, the Court awards him compensation equivalent to ten (10) months' gross salary, having taken into account the length of his service spanning close to 24 years, as well as the Respondent's failure to prove that the

termination of employment was for a fair and valid reason and was in compliance with fair process.

33.The Claimant is also entitled to one (1) month's salary in lieu of notice, the Court having found that his termination was unlawful.

34.Further, the Claimant is entitled to unpaid salary for the months of July, August, September, October, and November 2024, there being no evidence that the same was paid by the Respondent.

35.With respect to the claim for refund of SACCO deductions effected from the Claimant's salary but not remitted by the Respondent, the Claimant produced a letter dated 2nd August 2018 from the Cooperative Officer, Rabai Sub-County, addressed to the Respondent, indicating that the Respondent owed Chuma Moto SACCO Kshs 6,454,145.46. He also produced a letter dated 9th June 2023 from the Sub-County Cooperative Officer indicating that the Respondent owed the SACCO Kshs 4,999,387.00, as well as a letter dated 5th April 2017 from the Respondent requesting a breakdown of the amounts owed and undertaking to settle the same.

36.In light of the foregoing, the Court finds no reason to doubt that the Respondent deducted sums from the Claimant's salary and failed to remit the same to the SACCO as required.

37. The Claimant is further entitled to payment in lieu of accrued leave days. The Respondent, having failed to defend the suit or participate in the proceedings, did not produce any leave records despite its statutory obligations under **Section 74(1)(f) of the Employment Act** to demonstrate the leave taken vis-à-vis the leave outstanding. However, this claim shall be limited to a period of eighteen (18) months in accordance with **Section 28(4) of the Employment Act**.

38. The Claimant's assertion that the Respondent withheld his salary for a considerable period without lawful justification was not controverted. Similarly, the claim that the Respondent withheld his SACCO deductions and failed to remit them was unchallenged. In the circumstances, the Court finds that the Respondent's actions amounted to an unfair labour practice and constituted a violation of **Article 41(1) of the Constitution**, particularly in view of the pecuniary hardship and attendant consequences occasioned to the Claimant. In the circumstances, the Court finds that the Claimant is entitled to compensation for the violation of his constitutional right to fair labour practices, which is hereby assessed at **Kshs 300,000.00**.

39. Further, there is no dispute that the Respondent retained the Claimant's personal property following the termination of his employment. The Court therefore finds that the Claimant is entitled to the return of the said property, it being evident that the accommodation provided to him within the Respondent's premises vide the letter dated 1st March 2017 was unfurnished.

40. The Claimant is also entitled to a certificate of service in accordance with **Section 51 of the Employment Act.**

41. The claim for severance pay is declined, as such payment is only applicable where termination occurs on account of redundancy. In the present case, the reasons for the termination of the Claimant's employment remain unknown, and it would therefore be speculative to award severance pay.

Orders

42. Against this background, judgment is entered in favour of the Claimant in the following terms:

- a) **A declaration is hereby issued that the termination of the Claimant's employment was unfair and unlawful.**
- b) **A declaration is hereby issued that the Respondent violated the Claimant's right to fair labour practices as guaranteed under Article 41(1) of the Constitution.**
- c) **The Claimant is awarded one (1) month's salary in lieu of notice in the sum of Kshs 78,036.00.**
- d) **The Claimant is awarded compensation for unfair termination equivalent to 10 months' gross salary, amounting to Kshs 780,360.00.**
- e) **The Claimant is awarded Kshs 390,180.00 being unpaid salary for the months of July, August, September, October, and November 2024.**

- f) The Claimant is awarded Kshs 202,000.00 being refund of SACCO deductions effected from his salary but not remitted to Chuma Moto SACCO.**
- g) The Claimant is awarded Kshs 81,937.80 being payment in respect of accrued leave for 18 months preceding the termination of his employment.**
- h) The Claimant is awarded Kshs 300,000.00 as compensation for breach of his constitutional right to fair labour practices.**
- i) The total award is Kshs 1,832,513.80.**
- j) Interest shall accrue on the sum in (i) at court rates from the date of judgment until payment in full.**
- k) The Respondent shall release to the Claimant his personal property as particularised under paragraph (e) of the Statement of Claim.**
- l) The Claimant shall be issued with a certificate of service within 30 days from the date of this judgment.**
- m) The Respondent shall bear the costs of the suit.**

DATED, SIGNED and DELIVERED at NYERI this 24th day of April 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant	Mr. Mwangiru instructed by Mr. Kagio
For the Respondent	No Appearance
Court Assistant	Ndati

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE