

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

ELRC CAUSE NO. E038 OF 2025

(Before Hon. Lady Justice Maureen Onyango)

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

VERSUS

GREEN AGRO 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 under the laws of Kenya and carries on business of wholesale, distribution and retail shop within Kapsabet Town in Nandi and Busia Counties.
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 JOHN ADEMBA 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. In its Statement of Claim dated 25th March 2025 the Claimant avers that the Grievant was employed by the Respondent as a general worker on 5th August, 2021. It is contended that the Grievant's employment was terminated on 31st January, 2024. At the time of termination of his employment, the Grievant was earning a monthly salary of Kshs. 9,500 per month.
6. It is the Claimant's case that on 31st January, 2024, the Grievant reported to work as usual and worked until about 6.30 pm when he was paid his salary for the month of January, 2024. He was then informed by a Mr. Trapani Patel, a Manager of the Respondent, that his employment had been terminated and he should leave the premises immediately.
7. The Grievant reported the matter to the Claimant whose attempts to engage the Respondent to resolve the dispute

amicably 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. Dismas Wakhaya of Nandi County Labour Office as a Conciliator.

8. The Claimant avers that the Conciliator invited the parties for conciliation meetings on 18th and 26th June, 2024 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 remedies on behalf of the Grievant:

| | |
|------------------------------|------------|
| 1. Pay in lieu of notice | 16,130.00 |
| 2. 2 years severance pay | 16,130.00 |
| 3. 2 years accrued leave | 22,582.00 |
| 4. 5 months pro rata leave | 5,880.00 |
| 5. 2 years public holidays | 14,784.00 |
| 6. 2.5 years underpayment | 192,270.00 |
| 7. 2 years Saturday overtime | 59,520.00 |
| 8. 12 months compensation | 193,560.00 |

Total

520,856.00

9. Certificate of service

10. Cost of the suit to the Claimant at Kshs. 150,000 since the Claimant is acting in person.

11. Any other order the Honourable Court deems fit to address the cause of justice so we pray.

12. Certificate of service.

10. The Respondent, though served severally, 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 9th February 2026 when the Grievant testified as CW1. He adopted his witness statement recorded on 24th June 2025 as his evidence in chief and relied on the documents filed in support of his case. He prayed for grant of the reliefs sought in the Statement of Claim.

12. The Claimant thereafter filed written submissions.

Analysis and Determination

13. Having considered the pleadings and evidence on record and having considered the evidence adduced by the Claimant and the Claimant's submissions, 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 was unlawful and unfair
 - 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.

14. On the first issue, the Grievant testified that he was employed by the Respondent from 5th August 2021 as a General worker and worked as such until 31st January, 2024. He produced his union membership card and receipts for payment of union dues to the Claimant which receipts indicate the Respondent as the employer.

15. The Respondent failed to enter appearance or file a response to controvert these assertions. Consequently, the Claimant's evidence remains unchallenged and uncontroverted.
16. 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 was unlawful and unfair

17. Section 41 of the Employment Act provides for the procedure for termination of employment while section 43 provides for proof of valid reason for termination of employment. Section 45(1) prohibits employers from terminating employment of an employee unfairly while sub-section (2) provides that termination without both due process and valid reason amount to unfair termination of employment.
18. Section 47(5) further provides that:

(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

19. In the instant case, there is no evidence that the Respondent took the Grievant through any form of due process. As was held in the case of **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, for a termination of employment to pass the fairness test, it must be shown that there was not only substantive justification but also procedural fairness.
20. According to the evidence on record in the instant case, the Grievant was neither informed of the reasons for termination nor given an opportunity to defend himself. The termination of the Grievant's employment was therefore both procedurally and substantively unfair.

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

21. 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. *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 16,130.00 being the statutory minimum basic wage plus house allowance applicable to the Grievant.

ii. *2 years severance*

No evidence was adduced by the Claimant in support of payment of severance pay which is only due upon redundancy.

The submissions of the Claimant under this head however relate to service pay and not severance pay. The Claimant submitted that the Grievant was not a member of NSSF as the Respondent was not deducting or remitting any statutory payments.

Under section 35(6) of the Employment Act the Grievant is entitled to service pay at 15 days per year worked. I award him the same in the sum of Kshs. 16,130 as prayed.

iii. 2 years accrued leave and 5 months pro-rata leave

Under Section 28 of the Employment Act an employee is entitled to annual leave upon working for a minimum period of 2 months at the rate of 21 days a year or 1.75 days per month for any period less than a year. The burden rests upon the employer to keep and produce leave records of specifying days 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. 22,582 and Kshs. 5,880 on account of annual leave and pro-rata leave respectively as prayed.

iv. 2 years Public Holidays

No mention is made of public holidays nor did the Grievant adduce any evidence that he worked on public holidays. This prayer was therefore not proved and is declined

v. 2.5 years' salary underpayment

The Grievant having been paid Kshs. 9,500, was underpaid based on the Regulation of Wages (General) (Amendment) Order, 2022. I award the Grievant underpayments in the sum of Kshs. 192,270.00 as tabulated by the Claimant.

vi. 2 years' Saturdays Worked

No mention is made of working on Saturdays nor did the Grievant adduce any evidence that he worked on Saturdays. This prayer was therefore not proved and is declined.

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 3 months' salary as compensation in the sum of Kshs. 48,390.

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

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 7TH DAY OF MAY, 2026**

**MAUREEN ONYANGO
JUDGE**