



Bakery Confectionery Food Manufacturing & Allied Workers v Kenafri Industries Ltd (Cause E1035 of 2021) [2025] KEELRC 142 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 142 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1035 OF 2021
S RADIDO, J
JANUARY 30, 2025**

BETWEEN
**BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED
WORKERS CLAIMANT**
AND
KENAFRI INDUSTRIES LTD RESPONDENT

JUDGMENT

1. Kenafri Industries Ltd (the Respondent) offered Alexander Nzioki Mutua (the Grievant) employment as a Boiler Operator on or around 6 June 1998.
2. On or around 13 February 2019, the Respondent issued a show cause notice to the Grievant. The notice requested the Grievant to explain within 24 hours.
3. The Grievant responded on 15 February 2019, and a disciplinary hearing was held on 18 February 2019.
4. The Respondent notified the Grievant of summary dismissal on 26 February 2019. The Grievant informed the Bakery Confectionery Food Manufacturing & Allied Workers Union (the Union) of the happenings and the Union sent an appeal to the Respondent on 4 March 2019.
5. An appeal hearing was held on 11 March 2019 but the decision to dismiss was upheld.
6. The Union reported a trade dispute to the Cabinet Secretary, Labour and the Conciliator issued a report dated 19 November 2019, recommending that the dismissal be reduced to a normal termination. The Respondent declined to accept the recommendation.
7. The Union sued on 10 December 2021, alleging unfair termination of employment and breach of contract.



8. The Respondent filed a Notice of Preliminary Objection on 26 August 2022 and a Response on 27 April 2023.
9. The parties appeared before the Deputy Registrar on 21 February 2024 and 26 March 2024 for compliance and on 4 November 2024, the Court scheduled a hearing for 14 January 2025.
10. When the Cause was called for a hearing, the Respondent and advocate were absent.
11. An affidavit of service filed on 14 January 2025 attested that the Respondent had been served with a hearing notice on 4 November 2024 through the email address litigation@ckaadvocates.co.ke.
12. Being satisfied that a hearing notice had been served, the Court allowed the hearing to proceed and the Grievant testified.
13. The Union filed its submissions on 16 January 2025.
14. The Court has considered the pleadings, evidence and submissions

Preliminary Objection

15. The Respondent raised a Preliminary Objection on the ground that the action contravened section 90 of the *Employment Act* on the prescribed 3-year limitation.
16. The Grievant was dismissed on 26 February 2019, and the Memorandum of Claim was lodged with the Court on 14 December 2021.
17. The action was commenced before the lapse of the prescribed limitation and the Objection is without merit.

Unfair termination of employment

Procedural fairness

18. The Grievant was issued with a show cause notice which set out the allegations to be confronted. The notice requested the Grievant to respond which he did. Thereafter, a physical hearing was held and the Grievant attended. The Grievant was thereafter dismissed.
19. The Union appealed and an appeal hearing was held.
20. The Court is satisfied that the Respondent complied with the requirements of procedural fairness.

Substantive fairness

21. The reason that was given by the Respondent for dismissing the Grievant was careless and improper performance of duties.
22. By dint of sections 43 and 45 of the *Employment Act*, 2007, the Respondent was required to lead evidence to prove the validity and fairness of these reasons.
23. The Respondent was served with a hearing notice but it did not attend the hearing. No explanation was given for the failure to attend the hearing.
24. In the circumstances, considering that the testimony and evidence of the Claimant were not interrogated or rebutted, the Court finds that the Respondent did not discharge the legal burden placed on it and that the summary dismissal of the Grievant was substantively unfair.



Compensation

25. The Grievant served the Respondent for about 21 years. The Respondent complied with procedural fairness requirements but did not attend Court to prove the validity or fairness of the dismissal.
26. Considering these factors, the Court is of the view that the equivalent of 10 months gross salary as compensation would be appropriate.
27. An attempt by the Respondent to unilaterally vary the Grievant's salary was overturned by the Court in Nairobi Cause No E687 of 2020, Bakery Confectionery Food Manufacturing & Allied Workers Union (K) v Kenafric Industries Ltd.
28. The said judgment/decree was stayed by this Court differently constituted on 17 January 2025, and the Court will therefore rely on the actual gross salary at the time of separation of Kshs 18,526/-.

Salary in lieu of notice

29. The Grievant earned a basic salary of Kshs 14,587/- and he sought the equivalent of a 3-month salary in lieu of notice.
30. With the conclusion that the dismissal was unfair, and considering clause 4 of the Collective Bargaining Agreement, the Court will allow this head of the claim.

Unpaid leave

31. The Grievant prayed to be awarded Kshs 27,708/- on account of accrued leave.
32. The Grievant did not lay an evidential foundation to this head of the claim either in the filed witness statement or during oral testimony and relief is declined.

Underpayments

33. On account of underpayments, the Grievant requested for Kshs 40,431/-. The Grievant contended that before he joined the Union, he was earning a gross monthly salary of Kshs 59,375/- which the Respondent reduced to basic salary of Kshs 14,587/- and a house allowance of Kshs 3,938/-.
34. The Grievant stated that the underpayment was the subject of litigation in Nairobi Cause No E687 of 2020, Bakery Confectionery Food Manufacturing & Allied Workers Union (K) v Kenafric Industries Ltd.
35. The Court declines to award this head of the claim because the judgment therein has been stayed pending the determination of an appeal before the Court of Appeal.

Conclusion and Orders

36. The Court finds that the summary dismissal of the Grievant was unfair and that the Respondent was in breach of contract.
37. The Grievant is awarded:
 - i. Compensation Kshs 185,260/-
 - ii. Pay in lieu of notice Kshs 43,761/-Total Kshs 229,021/-



38. The award to attract interest at court rates from the date of judgment.

39. Considering the ongoing social partnership between the parties, each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 30TH DAY OF JANUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Amalemba & Associates Advocates

For Respondent Chege Kibathi & Co. Advocates LLP

Court Assistant Wangu

