



Kenya Engineering Workers Union v Quick Star Limited (Employment and Labour Relations Cause E625 of 2022) [2025] KEELRC 84 (KLR) (24 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 84 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E625 OF 2022**

**AN MWAURE, J
JANUARY 24, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
QUICK STAR LIMITED RESPONDENT**

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 26th August 2022.

Claimant's case

2. The Claimant avers that it is a duly registered trade union within the meaning of the [Labour Relations Act](#).
3. The Claimant avers that the grievant (Jackson Ochieng Ogutu) was employed by the Respondent and was terminated verbally contrary to Article 41 of [the Constitution](#) and section 35(1) of the [Employment Act](#).
4. The Claimant avers that no explanation was given on the lock-out or notice was issued on the lock-out.
5. The Claimant avers that it reported the trade dispute to the Cabinet Secretary of the Ministry of Labour in accordance with section 62(1) of the [Labour Relations Act](#).
6. The Claimant avers that the Ministry of Labour accepted the report and meeting was called on or about 5th November 2018, and the Respondent failed to attend the conciliation meeting; thus, a certificate of unsolved matter was issued.
7. The Claimant avers that despite the grievant having his service terminated verbally, he was not paid his terminal dues by the Respondent.



8. The Claimant avers that the Respondent has breached Article 41 of *the Constitution* on fair labour practices together with section 41 of the *Employment Act*.
9. The Claimant avers that the Respondent's action of locking out the grievant without justifiable cause or explanation for the lockout is null and void.
10. The Claimant prays that:
 - a. This Honourable court to order the Respondent to pay the grievant all his entitlement as per the requirement of the provisions of laws
 - b. The Respondent be ordered to reinstate back the grievant to his normal duties without any loss of his benefits
 - c. The Respondent to pay terminal dues as follows:
 - i. One month's salary in lieu of notice –Kshs.20,000
 - ii. Kshs.46,140 being 4 years pay of service
 - iii. Accrued leave not paid amounting to Kshs.12,207
 - iv. Leave travelling allowance amounting to Kshs.12,207
 - v. Compensation of 12-month salary amounting to Kshs.240,000
 - vi. House allowance amounting to Kshs.70,000
 - d. Any other relief the Honourable Court may deem fit to grant.
11. The Respondent did not enter an appearance or file any pleadings to oppose the claim despite being served.
12. The claim proceeded by way of formal proof.

Evidence in court

13. The Claimant adopted its pleading as evidence in chief.
14. The Claimant did not file its submissions.

Analysis and determination

15. The court has considered the pleadings on record and has noted that there is no proper documentation on record in accordance with sections 107, 108 and 109 of the *Evidence Act* which provides as follows:
 107. (1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
 108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
 109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.



16. There is no proof that there was a trade dispute that was reported to the Cabinet Secretary Ministry of Labour. Also, there is no letter showing the acceptance of the report or issuance of certificate of the unresolved matter.
17. Actually the claim is very scantily drafted. It has no dates, no details and no evidence of the employment details of Mr. Jackson Ochieng Ogutu the grievant by the Respondent Quick Star Limited. There is no evidence of the process of termination of the claimant and the specific dates. The claimant just refers to a lock out but no dates and details are provided.
18. The claimant has stated that a trade dispute was reported to the Ministry of Labour on 5th November 2018. It is not provided the date the claimant was locked out of the premises. If the dispute was reported to the Ministry of Labour in November 2018 then clearly the lock out had occurred before November 2018. That means by the time the case was filed and is dated 26th August 2022 three years had expired. The case then would have been time barred.
19. There is no supportive evidence therefore to persuade the court to enter judgment in favour of the claimant and it would appear the same was filed out of time. The case is not proved and it is dismissed.
20. The Respondent did not defend the suit. Under the circumstances each party will meet their costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 24TH DAY OF JANUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

