



**Kenya Engineering Workers Union v Engineering Suppliers Limited (Cause E073 of 2021) [2025] KEELRC 93 (KLR) (24 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 93 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**  
**CAUSE E073 OF 2021**  
**AK NZEI, J**  
**JANUARY 24, 2025**

**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION ..... CLAIMANT**  
**AND**  
**ENGINEERING SUPPLIERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant union sued the Respondent company on behalf of some three named grievants vide a Memorandum of Claim dated 9<sup>th</sup> July, 2021 and filed in this Court on 6<sup>th</sup> August, 2021. The named grievants were Joseph Kadenge, George Mwashumbe and Judith Muteshi Ivayo.
2. The Claimant pleaded:-
  - a. that the parties herein had signed a valid Recognition Agreement, and a (CBA) dated 28<sup>th</sup> October, 2011 which was subsequently signed on 26<sup>th</sup> June, 2013. That the CBA covered all the Respondent's unionisable employees as per Clause 1 thereof.
  - b. that the 3 grievants were in May 2020 sent on unprocedurally compiled annual leave(s), and were subsequently sent on indefinite unpaid leave.
  - c. that on 26<sup>th</sup> and 27<sup>th</sup> May, 2020 and 9<sup>th</sup> June, 2020, the Claimant wrote to the Respondent requesting for meetings in accordance with the Recognition Agreement and a Memorandum of Understanding (MOU) (that had been signed) between stakeholders, i.e the Federation of Kenya Employers, Central Organization of Trade Unions and the Ministry of Labour, but the Respondent declined.
  - d. that the Claimant invoked Section 62 of the *Labour Relations Act* 2007 and reported a Trade Dispute to the Ministry of Labour. That a conciliator was appointed and upon meeting the



parties and taking submissions, the conciliator prepared a report with recommendations, but which the Respondent rejected, hence the suit herein.

- e. that the grievants had been employed on different dates.
  - f. that the Respondent had breached Articles 41 and 47 of *the Constitution* [of Kenya] on fair labour practice and fair administrative action.
  - g. that the Respondent's actions violated the Tripartite MoU between the Federation of Kenya Employers, Central Organization of Trade Unions and the Ministry of Labour on Covid-19 Pandemic, and its actions were null and void.
3. The Claimant sought the following reliefs:-
- a. that the 40% wage deductions made by the Respondent be refunded in full to the affected employees.
  - b. that the unpaid leave on which the Respondent sent the employees was unlawful, and payment of their respective wages be made upto the date of filing the suit herein.
  - c. that in the alternative, the management do invoke Section 40 of the *Employment Act* and do declare redundancy and payment of terminal dues as per the Collective Bargaining Agreement (CBA).
  - d. that 12 months' salary be paid to each grievant for unprocedural/unfair action.
  - e. that the grievants be issued with certificates of service.
  - f. costs of the suit.
  - g. any other relief that the court may deem just to grant.
4. Documents filed alongside the Claimant's Memorandum of Claim included an affidavit in verification of the claim, the parties' CBA, the Conciliator's report/recommendations, a letter by the Respondent's Counsel to the Conciliator (dated 27<sup>th</sup> October, 2020) rejecting the conciliator's report and a tabulation of the grievant's (individual) claims; and a bundle of other documents which included copies of letters by the Respondent to the grievants. The said letters included letters by the Respondent dated 1<sup>st</sup> December, 2020 making redundancy offers to the grievants.
5. The Respondent entered appearance on 12<sup>th</sup> August, 2021 and subsequently defended the suit vide a Memorandum of Response dated 25<sup>th</sup> August, 2021. The Respondent denied the Claimant's averments/allegations and pleaded:-
- a. that vide its letter dated 30<sup>th</sup> November, 2019, the Respondent invoked Clause 29 of the Collective Bargaining Agreement and terminated all the existing agreements, and thereupon the CBA ceased to be in force.
  - b. that the Court should take Judicial notice that following the outbreak of Covid-19 Pandemic in the country, all businesses were affected, including the Respondent.
  - c. that as a result of business being down due to the then prevailing Covid-19 Pandemic and the uncertainty of its end, the Respondent offered voluntary redundancy to its employees, offering to settle all their calculated dues for those that would accept the offer in writing, at least within 5 days of receipt of the offer letters.



- d. that the 3 grievants herein (Joseph Kadenge, George Mwashumbe and Judith Muteshi Ivayo) were among employees who did not accept the voluntary redundancy offer.
  - e. that after consultations with all its employees that did not take the voluntary redundancy offer, and on obtaining their consent in writing to a salary reduction, the Respondent proceeded to apply an overall salary reduction for its employees in April 2020.
  - f. that guided by the Memorandum of Understanding (MoU) between the Tripartite Social Partners (Central Organisation of Trade Unions (K) – COTU and Federation of Kenya Employers (FKE), the Respondent sent all its employees, including the 3 grievants herein, first on paid leave, and after exhaustion of leave days, on unpaid leave.
  - g. that subsequently, the Respondent asked all its employees, including the grievants, to resume duty; but that in an act of insubordination, the three (3) grievants herein refused to resume duty to date, despite being asked by the Respondent to do so.
  - h. that given the fact that the pleaded salary reduction was consensual, and there having been no end to the three grievants’ contracts of employment either by termination, resignation or redundancy, the Claimant was not entitled to any of the prayers sought.
  - i. that the Respondent disputed that the grievants were members of the Claimant union, as the Claimant had failed to recruit a simple majority, and thus lacked locus standi to institute the suit herein.
  - j. that the Respondent denied having breached the Constitution, the Employment Laws or the Collective Bargaining Agreement (while it was still in force), and the Tripartite Memorandum of Understanding.
6. Documents filed alongside the Respondent’s Memorandum of Response included written witness statements of Manisha Pandya and Sajay Pandya dated 21<sup>st</sup> January, 2022 and an evenly dated list of documents, listing 16 documents. The listed documents included the Respondent’s letter dated 30<sup>th</sup> November, 2019, inter-alia “terminating all the agreements”. The Respondent’s letter to the National Labour Board (dated 15<sup>th</sup> March, 2020) requesting that the Recognition Agreement between the Respondent and the Claimant union be revoked, and a follow-up letter dated 2<sup>nd</sup> February, 2021. The Respondent’s letters to the 3 grievants dated 1<sup>st</sup> April, 2020 containing written agreements to salary reduction, the Respondent’s letters to the 3 grievants dated 26<sup>th</sup> May, 2020, the Respondent’s letters to the grievants dated 1<sup>st</sup> December, 2020 giving them an offer of voluntary redundancy, a copy of a Memorandum of Understanding dated 20<sup>th</sup> April, 2020, and the Respondent’s letter to the Claimant union dated 6<sup>th</sup> May, 2020, among others.
  7. Trial opened before me on 31<sup>st</sup> July, 2023. The Claimant called one witness (George Mwashumbe Mghalu (CW-1)), one of the named 3 grievants in this case. The witness adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraph 4 of this Judgment. The witness testified that he had been engaged by the Respondent on 10<sup>th</sup> June, 2010 while the other 2 grievants, Joseph Kadenge and Judith Ivayo, had been engaged on 1<sup>st</sup> October, 2008 and 1<sup>st</sup> May, 2014 respectively. That CW-1’s last employment position in the Respondent company was Head of Workshop Department (Supervisor), that Judith Ivayo was Head of Stores Department (Supervisor), while Joseph Kadenge was a cleaner.
  8. The witness (CW-1) further testified:-



- a. that in March 2020, the 3 grievants were called into an office and were given a written document with 2 options, a salary deduction at the rate of 40%, or termination. That the grievants signed for the salary reduction. That they took the option because it was Covid-19 time.
  - b. that in May 2020, the grievants were called and given the usual paid leave during that month, and were to resume (duty) on 28<sup>th</sup> May, 2020.
  - c. that the grievants received further communication that they proceed on unpaid leave until further notice; but never resumed duty.
  - d. that the grievants agreed with the conciliator's report dated 15<sup>th</sup> October, 2020.
  - e. that in December (2020), the grievants were issued with termination letters on account of redundancy, but were not paid redundancy benefits.
  - f. that the greivants subsequently received emails to resume duty. That CW-1 and Joseph Kadenge did not receive the emails in time as they were out of network, while Judith Ivayo received and responded. That none of the grievants had resumed duty.
  - g. that the witness (George Mwashumbe – CW-1) had been paying his union dues in cash.
9. Cross-examined, CW-1 testified:-
- a. that he had testified on his own behalf and on behalf of the other two grievants. That he and Judith were heads of department, and that he was not aware that the CBA he was relying on only applied to unionisable employees and not heads of department; and was not aware that the Respondent had terminated the CBA way back in 2019.
  - b. that the grievants received the redundancy letters dated 1<sup>st</sup> December, 2020, but did not sign them within the 5 days given signifying their acceptance of being declared redundant. That none of the grievants signed the letters.
  - c. that the grievants were called back to work, but none of them resumed work. That Judith, who was upcountry, requested for, and was sent Kshs.5,000/= for transport, but she did not resume work.
10. Re-examined, CW-1 testified that the grievants had not received any communication regarding desertion of work.
11. The Respondent called 2 witnesses. The first witness, Sajay Pandya (RW-1) adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraph 6 of this Judgment. RW-1 further testified that the grievants did not, during their employment, notify the Respondent or any of its directors that they were members of the Claimant union, never presented anything to the Claimant in that regard, and that the Respondent never made any deduction of union dues from their earnings in respect of the Claimant. That the grievants belonged to the non-unionisable category of employees. That the Respondent used to make deductions from the only remaining member of the Claimant union, James Kuria, who retired in November 2019.
12. The witness (RW-1) further testified:-
- a. that when Covid-19 hit, and negatively affected the Respondent's business, the Respondent had a meeting with all its employees, and gave them the option of either redundancy and payment of redundancy dues or taking of a temporary pay cut of 40%. That all the grievants voluntarily opted for the 40% pay cut and signed to that effect.



- b. that after retirement of the Claimant's last member in 2019, the Respondent revoked the agreement and wrote to the National Labour Board in that regard. That notice was given in terms of the agreement.
  - c. that the grievants were sent on paid leave, to resume duty on 28<sup>th</sup> May, 2020, and were subsequently put on unpaid leave as lack of work continued.
  - d. that the grievants went silent when the Respondent wrote to them asking them to confirm acceptance to be declared redundant and their dues paid, and were thus never declared redundant.
  - e. that the Respondent asked the grievants to report back to work but they never did, even after the Respondent sent transport money to Judith Ivayo at her request so that she could report back to work.
  - f. that the Respondent asked Mwashumbe (CW-1) to go to its offices and when he did, he told the Respondent that he was already working elsewhere.
  - g. that the Claimant's claim was fictitious.
13. Cross-examined, RW-1 testified:
- a. that the Respondent did not dismiss the grievants, as the grievants did not confirm that they wanted to be declared redundant. That they were supposed to confirm by signing the letter(s) dated 1<sup>st</sup> December, 2020 within 5 days, but they did not. That when they did not respond, the Respondent asked them to report back to work, but they did not. That the grievants were asked to report back vide letters (emails) dated 10<sup>th</sup> March, 2021.
  - b. that although the Respondent had signed agreements with the Claimant, the Respondent revoked both the Recognition Agreement and the CBA; and wrote to the National Labour Board in that regard.
  - c. that the grievants were not members of the Claimant union, and no union deductions or agency fees were made from them by the Respondent; and that the Respondent was not aware that any of the grievants was contributing directly to the Claimant. That the Claimant's last member retired in 2019.
  - d. that the grievants were consulted on the 40% salary reduction.
14. Re-examined, RW-1 testified that the grievants were not unionisable employees pursuant to the Industrial Relations Charter Appendix "C", by virtue of their positions and duties. That the CBA contained a termination clause, being Clause 29 thereof, and that in compliance with it, the Respondent issued a one month termination notice.
15. The Respondent's second witness, Manisha Pandya (RW-2), adopted his filed witness statement dated 21<sup>st</sup> January, 2022 as his testimony. The witness testified that Joseph Kadenge was a cleaner while George Mwashumbe and Judith Ivayo were supervisors/Heads of Department, and that the 3 were not members of either the Claimant union or any other union, as none of them notified the Respondent of any such membership, and no union dues were deducted from them. That the Respondent used to make union deductions from the Claimant's remaining member, James Kuria, who retired in November 2019.
16. RW-2 further testified:-



- a. that the 40% salary cut was not forced, but the grievants took the option (to take the pay cut) after the matter was explained to them in both English and Kiswahili, and that they signed [on] their respective letters. That this was during the Covid-19 Pandemic.
  - b. that the grievants were neither terminated nor declared redundant. That when the grievants failed to respond to the letters asking them whether they wanted to be declared redundant, the Respondent sent emails to them asking them to report back to work; but they did not show up, despite the Respondent having sent transport money to one of them (Judith) at her request.
  - c. that the CBA that had existed between the Claimant and the Respondent was for 2 years, after which any party thereto could terminate it in writing, which the Respondent did.
17. Cross-examined, RW-2 testified that although the CBA was supposed to cover all unionisable employees, the same had been revoked by the Respondent. That the grievants were called back to work but did not turn up, though they received the emails calling them back to work.
  18. Having considered the pleadings filed and evidence adduced by both parties, issues that emerge for determination, in my view, are as follows:-
    - a. Whether the Claimant had locus standi to institute the suit herein.
    - b. Whether the Claimant is entitled to the reliefs sought on behalf of the grievants.
  19. On the first issue, it was a common ground that the Claimant Trade Union and the Respondent (employer) had signed both a Recognition Agreement and a Collective Bargaining Agreement. This fact is clear from the evidence presented by both parties. Whereas the date of the Recognition Agreement was not disclosed to the Court in evidence, evidence presented by the Claimant shows that a Collective Bargaining Agreement (CBA) was signed on 28<sup>th</sup> October, 2011. A copy of the CBA was produced in evidence by the Claimant.
  20. Clause 29 of the said CBA provided as follows:-
 

“29. Effective Date and Duration

“This agreement shall come into force on 1<sup>st</sup> March, 2011 and shall remain valid for 2 years. Thereafter, it shall remain in force until amended by either party by giving one month’s notice in writing of the intention to amend or terminate the agreement.”
  21. Evidence presented by the Respondent, which the Claimant did not rebut, demonstrates that vide a letter dated 30<sup>th</sup> November, 2019, the Respondent duly notified the Claimant of “termination of all agreements.” A copy of the said letter was produced in evidence by the Respondent.
  22. In my view, the aforesaid CBA stood terminated thirty days from the date of the said letter, which the Claimant did not deny having received. Indeed, a copy of the said letter that was produced in evidence shows that the letter was served on the Claimant on 5<sup>th</sup> December, 2019.
  23. Evidence on record further shows that on 15<sup>th</sup> March, 2020, the Respondent wrote to the National Labour Board and stated, in part:-
 

“. . . there has been a continuous withdrawal and loss of union members through natural attrition and direct withdrawal of workers; which has subsequently led to the last known member of the union leaving in the month of December 2019. To this date since then, we



have no acknowledged members of this union, nor are we deducting any union dues from any workers.

This has led to a situation where we feel our relationship with [the] said union serves no purpose and in this regard, and in accordance with Section 54(5) of the *Labour Relations Act* No. 14 of 2007, we do request that the Recognition Agreement be revoked by the Board immediately . . .”

24. The National Labour Board is not shown to have responded to the foregoing letter or to have revoked the recognition agreement, this despite another letter by the Respondent dated 2<sup>nd</sup> February, 2021. Section 54(5) of the *Labour Relations Act* provides as follows:-

“(5) An employer, group of employers or employers association may apply to the Board to terminate or revoke a recognition agreement.”

25. Section 54(6) of the *Labour Relations Act*, on the other hand, provides as follows:-

“(6) If there is a dispute as to the right of a trade union to be recognised for the purposes of Collective Bargaining in accordance with this Section or the cancellation of recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.”

26. The Recognition Agreement between the Claimant Trade Union and the Respondent Employer was, according to the evidence on record, never revoked and/or cancelled, and the Respondent is not shown to have referred the matter for conciliation, and ultimately to this court if unresolved at conciliation stage.

27. It is my finding that the Recognition Agreement subsisting between the Claimant and the Respondent as at the time of signing of the CBA referred to in this Judgment was never cancelled and/or revoked, and that the same was still in place when the suit herein was instituted. It follows that the Claimant had locus standi to institute the suit herein. I so find and hold.

28. On the second issue, the reliefs sought by the Claimant are as set out in paragraph 3 of this Judgment. On the claim for a refund of a 40% salary deduction, I have taken note of the Respondent’s letters to the grievants dated 1<sup>st</sup> April, 2020, on which each of the 3 grievants agreed (in writing) to a pay cut/salary deduction until further notice. Each of the 3 grievants signed and dated the said pay cut agreements, which the court was told were reached during the [global] Covid-19 Pandemic. I am satisfied that this change in the terms of the grievants’ employment contracts was done in accordance with Section 10(5) of the *Employment Act*.

29. The grievants’ restructured salaries, according to the aforesaid letters/evidence, were as follows:-

- a. George Mwashumbe ..... Kshs.60,000/=.
- b. Judith Muteshi Ivayo ..... Kshs.28,000/=.
- c. Joseph Kadenge ..... Kshs.17,850/=.

30. Evidence on record further shows that after the grievants’ paid leave ended on 28<sup>th</sup> May, 2020, the grievants were put on unpaid leave “until further notice as there was not enough work due to Covid-19 Pandemic”. No “further notice” was given until 1<sup>st</sup> December, 2020 when the Respondent wrote to the grievants offering them voluntary termination of employment on account of redundancy and payment



of terminal dues. The court was told in evidence that the grievants did not take the said offer, as they did not confirm acceptance of the offer within the five (5) days given in the said offer letters or at all.

31. It was the evidence of both parties that in April 2021, the Respondent sent emails to the grievants asking them to resume duties “after unpaid leave”. None of the grievants denied having received the said emails, though George Mwashumbe (CW-1) testified that he and Joseph Kadenge did not receive the emails in time as they were “out of network”. The Respondent testified that Judith Muteshi Ivayo even requested the Respondent for transport money to enable her to travel back to work, which the Respondent sent, but she did not report back to work. It was the Respondent’s further evidence that George Mwashumbe (CW-1) visited the Respondent company after receiving the email and indicated to them that he could not resume duty as he was already working elsewhere. This evidence was not rebutted.
32. This court has taken Judicial notice of the global Covid-19 Pandemic which ravaged all the countries of the world as from December 2019, with Kenya being affected as from March 2020; and the ensuing lockdown which brought most businesses to their knees financially.
33. The grievants’ salary reduction, which in any case was consensual, was not unlawful. I so find and hold. The prayer for refund of the consensually deducted sums is declined.
34. This court, however, finds that the sending of the grievants on unpaid leave was unlawful. The grievants had, on 1<sup>st</sup> April, 2020, consented to being paid reduced salaries. The reduced salaries appear to have been paid to them for only two (2) months, April and May 2020. The Respondent did not present any evidence to show that the grievants were consulted before they were put on unpaid leave, or that they consented to taking unpaid leave. Evidence on record shows that on 26<sup>th</sup> May, 2020, the Respondent wrote letters to the grievants “putting them on unpaid leave until further notice.” In my view, this was unlawful, as it changed the terms of the grievants’ contracts of employment without their consent.
35. The grievants are entitled to payment of their salaries at the agreed reduced salary rates as from 1<sup>st</sup> June, 2020 to 30<sup>th</sup> November, 2020. The grievants were on 1<sup>st</sup> December, 2020 offered voluntary termination of employment and payment of terminal dues, but did not even respond to the offer letters. They were subsequently called back to work but they did not resume duties. Instead of the grievants resuming duties as requested by their employer, the present suit was instituted.
36. Based on the evidence on record, I make a finding that the Respondent did not, at any given time, terminate the grievants’ employment contracts; and that the claim for 12 months’ compensation must fail. The same is declined. The alternative prayer for a declaration of redundancy is clearly misplaced, and cannot be considered.
37. The claim for issuance of certificates of service is allowed pursuant to Section 51(1) of the [Employment Act](#).
38. In sum, and having considered written submissions filed on behalf of both parties, Judgment is hereby entered for the Claimant against the Respondent as follows:-
  - a. George Mwashumbe (Kshs.60,000 x 6).. Kshs.360,000/=
  - b. Judith Muteshi Ivayo (Kshs.28,000 x 6) Kshs.168,000/=
  - c. Joseph Kadenge (Kshs.17,850 x 6) .....Kshs.107,100/=Total = Kshs.635,100/=.



39. The awarded sums shall be subject to statutory deductions pursuant to Section 49(2) of the [Employment Act](#).
40. Pursuant to Rule 70(4) of the Employment and Labour Relations Court (Procedure) Rules 2024, the Claimant Trade Union is awarded Kshs.60,000/= being a reasonable reimbursement of money spent in the course of litigation in the proceedings herein.
41. The Respondent shall issue the three (3) named grievants with Certificates of Service pursuant to Section 51(1) of the [Employment Act](#). This shall be done within thirty days from the date of this Judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Araka for the Claimant

Miss Abwao for the Respondent

