



**Kenya Tertiary and Schools Workers Union v Heltz Driving School (Academy)
(Cause 1610 of 2018) [2025] KEELRC 4 (KLR) (16 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 4 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1610 OF 2018
L NDOLO, J
JANUARY 16, 2025**

**BETWEEN
KENYA TERTIARY AND SCHOOLS WORKERS UNION CLAIMANT
AND
HELTZ DRIVING SCHOOL (ACADEMY) RESPONDENT**

JUDGMENT

1. This action is brought by Kenya Tertiary and Schools Workers Union, on behalf of its members, Humphrey G. Ojiambo and Mathew Ng'ang'a (the 1st and 2nd Grievants).
2. The claim is documented by a Statement of Claim dated 10th December 2018. The Respondent's response is contained in a Statement of Defence dated 8th January 2019.
3. The matter went to full trial where the 1st Grievant, Humphrey G. Ojiambo testified on his own behalf and on behalf of the 2nd Grievant, Mathew Ng'ang'a with Mohamed Numeir Bachani testifying for the Respondent. The parties also filed written submissions.

The Claimant's Case

4. The Claimant states that the 1st and 2nd Grievants were employed by the Respondent on 2nd February 2008 and 5th November 2011 respectively, in the position of Driver Instructor. It is pleaded that at the time of leaving employment, the Grievants earned respective monthly basic salaries of Kshs. 13,500 and Kshs. 11,000 without house allowance. It is alleged that the Grievants were underpaid.
5. The Claimant states that the 1st and 2nd Grievants were locked out of their place of work, effective 14th June 2018. The Claimant accuses the Respondent of frustrating efforts to resolve the dispute at the conciliation stage.
6. The Claimant tabulates the Grievants' claims as follows:



1st Grievant: Humphrey G. Ojiambo

- a. Salary underpayment (1st Dec 2007 – July 2018).....Kshs. 1,890,957.36
- b. Accrued overtime2,115,426.20
- c. Accrued house allowance for 132 months.....607,373.90
- d. Accrued annual leave.....333,792.10
- e. Leave travelling allowance for 11 years.....44,000.00
- f. Pay in lieu of notice.....35,221.55
- g. Severance pay for 11 years.....238,422.90
- h. Compensation for unfair termination.....281,772.55

2nd Grievant: Mathew Ng'ang'a

- a. Salary underpayment (Nov 2011 – 23rd July 2018).....Kshs.793,354.70
- b. Accrued overtime1,707,518.30
- c. Accrued house allowance for 84 months.....230,825.70
- d. Accrued annual leave.....127,052.75
- e. Leave travelling allowance for 7 years.....28,000.00
- f. Pay in lieu of notice.....21,067.40
- g. Severance pay for 7 years.....90,752.00
- h. Compensation for unfair termination.....168,539.40

7. The Claimant further seeks certificates of service, costs plus interest.

The Respondent's Case

- 8. In its Statement of Defence dated 8th January 2019, the Respondent challenges the Claimant's capacity to sue on behalf of the Grievants because there is no recognition agreement between the parties.
- 9. The Respondent further states that it cannot be sued in its own name as it lacks legal capacity. Additionally, the Respondent claims that there are similar parallel proceedings in Cause No 1244 of 2018: Kenya Tertiary Workers Union v Heltz Institute of Advanced Driving, thus rendering the present dispute sub judice.
- 10. The Respondent admits that the Grievants were employees of Heltz Driving School pursuant to respective letters of offer, whose terms and conditions the Grievants accepted.
- 11. The Respondent accuses the Grievants of gross misconduct, particulars being; holding secret meetings to incite fellow employees, planning chaos at the work place and mistreating students by being rude and demanding bribes.
- 12. The Respondent alleges that the 1st Grievant, Humphrey G. Ojiambo, absconded duty after being issued with a final warning letter. The 2nd Grievant, Mathew Ng'ang'a is said to have deserted work after being issued with a 14-day suspension notice.



13. The Respondent denies the Claimant's allegation that it ignored conciliation meetings called by the Labour Office. According to the Respondent, the present proceedings are premature as the conciliation process was not exhausted.

Findings and Determination

14. There are three (3) issues for determination in this case:
- a. Whether the present proceedings are properly before the Court;
 - b. Whether the Grievants have proved a case of unlawful termination of employment;
 - c. Whether the Grievants are entitled to the remedies sought.

Competence of Proceedings

15. The Respondent challenges the competence of these proceedings on several grounds. First is the averment that there is no recognition agreement between the parties. However, the law is now settled that a trade union does not need to be recognised by an employer, in order to exercise the right of representation of its members.
16. In its decision in *Kenya Shoe and Leather Workers Union v Modern Soap Factory* [2018] eKLR, this Court stated as follows:
- “...a trade union has many roles and although collective bargaining which is premised on recognition is a premiere one, the other roles such as association generally and representation in particular, are equally important. What is clear is that Section 54(1) of the *Labour Relations Act* creates no nexus between recognition and representation... To say that the right to representation must be preceded by recognition of the member's trade union is to lock out a whole body of employees who belong to minority trade unions, to say nothing about the ensuing onslaught on fair competition among trade unions.”
17. The matter went on appeal and the Court of Appeal affirmed the foregoing position, in its decision in *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] eKLR.
18. Secondly, the Respondent states that it cannot be sued because it lacks legal capacity, having been registered as a business name and the sole proprietor, Osman Ahmed Bachani, having passed away.
19. In his witness statement dated 28th March 2024, Mohamed Numeir Bachani, who describes himself as a son of the late Osman Ahmed Bachani and Administrator of the Estate of the deceased Bachani, states that following the death of his father, he and several other investors established a new entity known as Heltz School of Advanced Driving Limited.
20. It is however evident that the new entity carried on the exact business undertaken by the late Osman Ahmed Bachani. In employment matters, a claimant cannot be prevented from pursuing accrued rights simply because the employer has mutated. This position was succinctly captured by Rika J in *Kenya Hotels and Allied Workers Union v Diani Sea Resort t/a Carslake Nominee Limited* [2015] eKLR as follows:

“Employees cannot be closed out from pursuing their Claims on the ground that they have given the Court the wrong description, of the business and legal structures which constitute their Employers. Employees hardly know what these capacities are, and what the Employers' business and legal structures are.....Employees would be hampered in correcting



employment wrongs, if they are expected to sift through these multiple layers before filing their claims.”

21. Finally, the Respondent states that the present claim is sub judice on account of proceedings in Cause No 1244 of 2018: Kenya Tertiary Workers Union v Heltz Institute of Advanced Driving. By the Respondent’s own admission however, Cause No 1244 of 2018 had to do with recognition of the Claimant by the Respondent, for purposes of collective bargaining. The present dispute, which revolves around the termination of the Grievants’ employment is evidently distinct from the dispute in Cause No 1244 of 2018.

The Termination

22. In defending itself against the Grievants’ claim for unlawful termination of employment, the Respondent states that the Grievants themselves deserted duty. In this regard, it is alleged that the 1st Grievant, Humphrey G. Ojiambo absconded duty after receiving a final warning letter while the 2nd Grievant, Mathew Ng’ang’a is said to have absconded duty after being issued with a suspension letter.
23. Absconding duty is a serious administrative offence that may render an employee liable to dismissal. However, like all other offences, it must be proved. In its final submissions dated 11th November 2024, the Respondent cited the decision in Richard Kiplimo Koech v Yako Supermarket Ltd [2015] eKLR where it was affirmed that an employer alleging that an employee has absconded duty must demonstrate efforts made to reach out to the employee.
24. From the evidence on record, no such efforts were made by the Respondent and the allegation that the Grievants absconded duty was therefore not proved. The corollary is that the Grievants’ averment that their employment was unlawfully terminated remains unchallenged.

Remedies

25. In the result, I award the 1st Grievant, Humphrey G. Ojiambo eight (8) months’ salary and the 2nd Grievant, Mathew Ng’ang’a six (6) months’ salary in compensation for unlawful termination of employment. In making these awards, I have considered the Grievants’ respective periods of service and their employment record. I have also taken into account the Respondent’s failure to avail the Grievants an opportunity to be heard, prior to termination.

26. I further award each Grievant, one (1) month’s salary in lieu of notice.

27. The claims for salary underpayment, accrued overtime, house allowance, accrued annual leave, leave travelling allowance and severance pay were not proved and are disallowed.

28. Finally, I enter judgment in favour of the Grievants as follows:

1st Grievant: Humphrey G. Ojiambo

a. 8 months’ salary in compensation.....Kshs. 108,000

b. 1 month’s salary in lieu of notice.....13,500

Total.....121,500

2nd Grievant: Mathew Ng’ang’a

a. 6 months’ salary in compensation.....Kshs. 66,000

b. 1 month’s salary in lieu of notice.....11,000



Total.....77,000

29. These amounts will attract interest at court rates from the date of judgment until payment in full.
30. The Grievants are also entitled to certificates of service plus costs of the case.
31. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF JANUARY 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Munyua for the Claimant

Mr. Kabaiku for the Respondent

