



**Kenya Union of Commercial, Food and Allied Workers Workers v
Magunas Supermarket Limited (Employment and Labour Relations Cause
E029 of 2024) [2025] KEELRC 251 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 251 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E029 OF 2024
ON MAKAU, J
FEBRUARY 4, 2025**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
MAGUNAS SUPERMARKET LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant is a trade union registered in Kenya and brings this suit on behalf of its two members herein after called “the grievants.” The respondent is a supermarket with branches across the country.
2. By a Memorandum of Claim dated 19th June 2024, the claimant accused the respondent of unlawful and unfair termination of the grievants’ employment and prayed for the following reliefs: -
 - a. The court to enter judgment against the Respondent and order the two grievants to be paid their dues as follows;

1st Grievant Boniface Muithya Stephen



ITEMS	Amount (Kshs)
One-month notice	21,777.35
Prorate leave for 5 months =8.75 days/26 x 21,777.35	7,328.90
Accrued leave days for 8 days =8 days/26 x21,777.35	6,700.70
Underpayment of Wages Nov 2019 to April 2020 =19,444.10 -15,693=3,751.10 x6 May 2020 to April 2021 =19,444.10 -15,693=3,751.10 x12 May 2021 to April 2022 =19,444.10 -15,693=3,751.10 x12 May 2022 to Feb 2023 =19,444.10 -15,693=3,751.10 x10	22,506.60 45,013.20 45,013.20 37,511.00
Overtime – 4 hours per day =18,936.85/26 =728.30/8=91.00 =4,800hrs for 40 months x 1.5 (136.50)	655,200.00
2 months' salary before expiry of contract =21,777.35 x 2	43,554.70
Compensation for unlawful termination of contract before expiry =21,777.35 x 12 months	261,328.20
TOTAL	1,145,933.85

2Nd Grievant Annsistance Bochere Nyangaresi



Underpayment of Wages	48,142.20
May 2013 to April 2014=14,011.85 -10,000=4,011.85 x12	36,142.20 56,320.80
May 2014 to April 2015=14,011.85 -11,000=3,011.85 x12	160.80 33,901.80 45,013.20
May 2015 to April 2016=15,693.40 -11,000=4,693.0 x12	45,013.20 45,013.20
May 2016 to April 2017=15,693.40 -15,680=13.40 x12	45,013.20 60,843.50
May 2017 to April 2018=18,518.15 - 15,693= 2,825 x12	
May 2018 to April 2019=19,444.10 15,693=3,751.10 x12	-
May 2019 to May 2020=19,444.10 15,693=3,751.10 x12	-
May 2020 to April 2021=19,444.10 15,693=3,751.10 x12	-
May 2021 to April 2022=19,444.10 15,693=3,751.10 x12	-
May 2022 to Feb 2023=21,777.35 15,693=6,084.35 x10	-
Overtime - 4 hours per day =18.936.85 /26 =728.30/8 =91.00 =14,040hrs for 9 years nine months x 1.5 (136.50)	1,916,460
Salary for the month of February 2023	21,777.35



Accrued Annual leaves = 17.5 days x 21,777.35/26	14,657.80
TOTAL AMOUNT	2,368,458.45

- b. Interest in (i) to (iii) above at court rate
 - c. Any other relief the court may find to meet natural justice.
 - d. Cost of the suit in favour of the claimant.
3. The respondent did not enter appearance and as such the facts of the suit were not controverted.

Facts of the case

4. The 1st grievant, Mr. Boniface Muithya Stephen was employed by the respondent as a Shop Assistant, based in Embu town, on 26th October 2019 for a monthly salary of Kshs.13,632 plus house allowance of Kshs.2,048. He was engaged on a six-month contract.
5. On 20th June 2020, he was promoted to Office Clerk and his duties included stock taking, pricing of goods and receiving of invoices. From April 2022 he also served as a reliever to any Shop Assistant who went on leave.
6. His last one of which was renewed on 1st November 2022 to lapse on 30th April 2023. On 29th January 2023, he fell ill and failed to report to work and on 7th February 2023 he was served with a suspension letter for being absent from work on 29th January 2023. His suspension lapsed on 14th February 2023 when he reported back to work but then he was served with a letter informing him that his contract would end on 28th February 2023 yet it was scheduled to end on 20th April 2023. Thereafter he received a letter dated 1st March 2023 which prematurely terminated his contract.
7. He had continuously served for a period of three years and four months but he was not paid any terminal dues including leave days, underpayment of wages, unpaid salary for February and March 2023 plus over time.
8. The 2nd grievant, Ms Annasistance Bochere Nyangaresi, was employed by the respondent as a Shop Assistant on 5th May 2013. Her monthly salary was Kshs.10,000 without house allowance but it was later increased to Kshs.11,000 in 2014 and thereafter to Kshs.13,632 basic salary plus Kshs.2,048 house allowance. She started working at Murang'a then she was transferred to Kerugoya and finally to Embu branch. She was also engaged on six months' contract, the last one having been renewed on 16th September 2022 to 5th March 2023.
9. On 5th March 2023 she was issued with a letter informing her about the expiry of her contract. She had served for a period of 9 years 10 months but she was not paid any terminal dues including accrued leave, and underpayment of wages. She was also not issued with a certificate of service.
10. The claimant invited the respondent to an amicable settlement but the respondent declined. On 9th May 2023, the claimant declared a trade dispute and reported the same to the Cabinet Secretary of Labour. A conciliator was appointed but the respondent was adamant that the matter be referred to court for determination.



11. The claimant averred that the grievants' salary was underpaid because under the Wage Order of 2022, the minimum basic salary for Shop Assistant was Kshs.18,936.85 plus 15% of the same as house allowance totaling to Kshs.21,777.35. It prayed for judgment as prayed in the memorandum of claim.
12. The 1st grievant testified as CW1 while the 2nd grievant testified as CW2. They all adopted their written statements as evidence in chief and then produced documents as exhibits. The written statements basically reiterated the facts summarized above. They were all appointed as Shop Assistants and they were working from 7.00am to 9.00pm through out their time of employment by the respondent and they were never compensated for the extra hours worked.

Submissions

13. After the hearing, the claimant filed written submission contending that the termination of the grievants' employment was unfair, unlawful, inhuman and in bad faith. It further submitted that the grievants were victims of underpayment, had been denied annual leave and worked extra time without any compensation, which facts have not been challenged by the respondent. Consequently, it urged the court to grant the terminal dues computed in the Memorandum of Claim.

Determination

14. Having considered the pleadings, evidence and submissions presented by the claimant, it is a fact that the 1st and 2nd grievants were employed by the respondent until February 2023 and March 2023 respectively. The issues for determination are:
 - a. Whether the termination of the grievants' contracts of service was unfair and unlawful.
 - b. whether the reliefs sought by the claimant are merited.

Unfair termination

15. Section 45 (1) & (2) of the [Employment Act](#) provides as follows:
 - “45. Unfair termination
 - (1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - i. related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”

16. In this case, the 1st grievant alleged that he was employed under six months contracts and the last one was renewed on 1st November 2022 to lapse on 30th April 2023. However, on 14th February 2023 he was issued with a letter reminding him that his contract was to lapse on 28th February 2023. On 1st March 2023 he was issued with a letter reminding him that his contract lapsed on 28th February 2023.



17. The 1st grievant did not produce in court the alleged contract that was given to him on 1st November 2022 to prove that the same was prematurely terminated. Besides, on 14th February 2023 he signed below the letter captioned; “Reminder on the lapse of employment contract.”
18. By signing the letter, he confirmed that his contract was due to lapse on 28th February 2023. Consequently, I find that the contract for the 1st grievant lapsed automatically by effluxion of time on 28th February 2023.
19. As regards the 2nd grievant, her contract was signed on 6th September 2022 to run up to 5th March 2023. She confirmed that she was served with a reminder that her contract had expired and it would not be renewed. In the circumstances, I find that her contract also lapsed automatically by effluxion of time.
20. Having made a finding that the contracts of the two grievants lapsed automatically, I proceed to hold that the claimant has failed to prove on a balance of probability that the respondent terminated the contracts of service for the grievants unfairly and unlawfully.

Reliefs

21. The claimant prayed for one-month salary in lieu of notice and compensation of 12 months salary for unlawful termination of the 1st grievant’s contract of service. However, the said claims must fail because I have made a finding of fact that the contract of service lapsed automatically by effluxion of time as opposed to the alleged unlawful termination by the employer.
22. As regards the claim for leave, the claimant prayed for 16.75 days for the 1st grievant and 17.5 days for the 2nd grievant. In the letters dated 1st March 2023 and 5th March 2023 to the 1st and 2nd grievants, the employer computed the accrued leave as 11.5 days and 17.5 days respectively. The employer did not file leave records to rebut the computation by the claimant or to show how it arrived at the leave days in the separation letters. Therefore, I will award the grievants the leave prayed for being 16.75 days and 17.5 days respectively.
23. The claim for underpayment is also granted based on the applicable Wage Orders and limitation period of 3 years under section 90 of the *Employment Act*. In this case, the suit was filed on 18th July 2024. Three years goes back to July 2021. Therefore, the 2018 Wage Order applied to the underpayment sought. The grievants were earning a said gross salary of Kshs.15,693 instead of 19,444.10. From July 2021 to February 2023 is a period of 20 months. Hence the under payment of salary is $Kshs.19,444.10 - 15,693 = Kshs.3,751.10 \times 20 = Kshs.75,022$.
24. As regards the claim for overtime pay, the claimant pleaded that the grievants were working from 7.00am to 9.00pm. However, in the prayers, it computed the claim using an overtime rate of 4 hours per day for 40 months in respect of 1st grievant and 9 years for the 2nd grievant.
25. Like in the case of under payment, I can only grant the claim guided by the limitation period of 3 years up to July 2021 equaling to 20 months. Guided also by the claim for accrued leave up to the date of separation, it would appear that the grievants went for all their annual leaves save for the few days claimed. As such they never worked on daily for the entire period without break. Therefore, I find that the claim for overtime is exaggerated, lacks proper particulars and supporting evidence, and it is declined.
26. The claimant further prayed for two months for the un expired time of the 1st grievant’s contract, however, I have already made a finding of fact that the contract expired after effluxion of time. Consequently, the prayer for the two months’ salary is declined.



Conclusion

27. I have found that the contract of employment for the two grievants were not prematurely terminated by the respondent but they lapsed automatically after effluxion of time. I have also found that the claimant has proved on a balance of probability the claim for leave and salary under payment based on basic salary of Kshs.16,907.90 pursuant to 2018 Wage Order. Accordingly, I enter judgment for the claimant as follows: -

1st Grievant

Leave 16.75 days..... Kshs.9,440.25
Underpayment 20 months.....Kshs.75,022.00
Kshs.84,462.25

2nd Grievant

Leave 17.5 days'Kshs.9,862.95
Underpayment 20 months.....Kshs.75,022.00
Kshs.84,884.95

The claimant is awarded costs at Lower court rates because of the quantum of the damages awarded.

The claimant will have interest at court rates from date of filing the suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 4TH DAY OF FEBRUARY, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

