



Mwoja & 24 others v Nyali Sun Africa Beach Hotel and Spa Limited (Cause 924 of 2017 & 49 of 2020 (Consolidated)) [2025] KEELRC 994 (KLR) (27 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 994 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 924 OF 2017 & 49 OF 2020 (CONSOLIDATED)**

**M MBARŪ, J
MARCH 27, 2025**

BETWEEN

**GERALD MWOJA & 23 OTHERS & 23 OTHERS & 23 OTHERS & 23 OTHERS
& 23 OTHERS CLAIMANT**

AND

NYALI SUN AFRICA BEACH HOTEL AND SPA LIMITED RESPONDENT

AS CONSOLIDATED WITH

CAUSE 49 OF 2020

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**

AND

NYALI SUN AFRICA BEACH HOTEL AND SPA LIMITED RESPONDENT

JUDGMENT

1. The claimants under Cause No.924 of 2017 filed the claim as members of KUDHEIHA against the respondent, Nyali Sun Africa Beach and Spa Limited, as the former employees. The claim is premised on the fact that parties have a Recognition Agreement and a negotiated CBA.
2. The claim is that on 9 November 2017, the respondent terminated the employment of 24 claimants on account of redundancy without proper procedure under clause 11 of the CBA. There was no notice to the union or labour officer, and hence failed to meet the provisions of sections 40, 43, 78, 77 and 76 of the *Employment Act*. The action of unlawful redundancy violated Article 41 of *the Constitution*.



3. There was no payment of terminal dues. During employment, the respondent failed to pay salaries and service charges and non-remittance of statutory deductions, particularly union dues and 0.5% of service charge dues as part of the accrued contractual obligation. The redundancy was unnecessary, unwarranted and unlawful.
4. The claimants are seeking unconditional reinstatement to their positions without loss of benefits.
5. In the alternative, the claimants are claiming payment of terminal dues;
 - a. 12 months' compensation for wrongful termination;
 - b. Accrued service charge from September and October 2017;
 - c. Pending leave days;
 - d. Off-days;
 - e. Service gratuity for years served,
 - f. Severance pay at 16 days for years served;
 - g. Notice pay as provided under CBA;
 - h. Unpaid leave travelling allowance for years served,
 - i. Unpaid salary.
6. In this regard, all claimants were terminated on 9 November 2024, and each claimant is claiming;
 1. Gerald Mwonja Employed on 13 September 1999 as a plant operator with a wage of Ksh.48,061.20 and a house allowance of Ksh.8,894 and claims;
 - a. 10% of 43,692 Ksh. 4,369.20;
 - b. Pending leave and off days 20 Ksh.40,450.80;
 - c. 4 months' pay in lieu of notice Ksh.227,820.80;
 - d. Severance pay for 16 days for 18 years Ksh.630,888.40;
 - e. Shoes compensation for 34 months at Ksh.500 total Ksh.17,000;
 - f. One month's notice pay Ksh. 52,586;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months' compensation Ksh.683,462.40;
 - i. Service charge for September and October 2017 Ksh.9,432;
 - j. Service gratuity for 18 years Ksh.512,595.
 2. Vitalis M. Mwawasi
Employed on 1 March 2012 as an accountant at a basic wage of Ksh.110,000 and a house allowance of Ksh.25,000. Worked for 5 years and 6 months and claims;
 - a. Underpayments for May to August 2017 Ksh.400,375;
 - b. Pending leave and off days 77 Ksh.179,230.80;



- c. 3 months' notice pay Ksh.405,000
- d. Severance pay at 16 days for 5 years at 500 Ksh.415,384.60;
- e. Shoes compensation for 34 months 500 Ksh.17,000;
- f. One month's notice pay Ksh.153,000;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.1,620,000;
- i. Service charge for September and October 2017 Ksh.9,432;
- j. Service gratuity for 5 years Ksh.12, 980.80.

3. Paul Mboya Ojow

Was employed on 1 June 1993 as a cook on a basic wage of Ksh 23,640 and house allowance of Ksh 8,687, and worked for 23 years and 6 months, and claims.

- a. 10% of 23,640 Ksh.2,364;
- b. 20 leave and off days ksh.20,003.80;
- c. 4 months' notice pay Ksh.104,016;
- d. Severance pay at 16 days Ksh.365,056.60;
- e. Shoes compensation for 34 months Ksh.17,000;
- f. One month's notice pay Ksh.26,004;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.312,048;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 23 years Ksh.512, 595.

4. Humphrey Maina

Was employed in 1990 as a barman at a gross wage of Ksh.46, 352.70 and worked for 27 years and 4 months and claims;

- a. 10% of basic wage Ksh.1,878.70;
- b. 20 leave and off days Ksh.35,655.90;
- c. 4 months' notice pay Ksh.185,410.80;
- d. Severance pay at 16 days for 27 years Ksh.770,167.90;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.46,352.70;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.556,232.70;



- i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 27 years ksh.625,761.50
5. Kassim Kalume

Was employed on 12 January 1998 as a general worker at a gross wage of Ksh.25, 048.10 and worked for 29 years and 11 months and claims;

 - a. 10% of basic wage Ksh.1,504.10;
 - b. 35 leave and off days Ksh.33,718.60;
 - c. 4 months' notice pay Ksh.100,192.40;
 - d. Severance pay at 16 days for 29 years Ksh.447,012.20;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month's notice pay Ksh.25,048.10;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months' compensation Ksh.683,463.40;
 - i. The service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 29 years ksh.363,197.45
6. Mpe Bundi

Was employed on 19 January 1990 as a cook at a gross wage of Ksh.52, 586 and worked for 27 years and 9 months and claims;

 - a. 10% of basic wage Ksh.4,369.20;
 - b. 20 leave and off days Ksh.40,450.80;
 - c. 4 months' notice pay Ksh.227,820.80;
 - d. Severance pay at 16 days for 27 years Ksh.630,888.40;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month's notice pay Ksh.52,586;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months' compensation Ksh.683,462.40;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 27 years ksh.512,595
7. Lawrence K. Tsori

Was employed as a front office at a gross wage of Ksh.52, 586 and worked for 5 years and 5 months and claims;

 - a. 10% of basic wage Ksh.4,369.20;
 - b. 20 leave and off days Ksh.40,450.80;



- c. 4 months' notice pay Ksh.227,820.80;
- d. Severance pay at 16 days for 18 years Ksh.630,888.40;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month notice pay Ksh.52,586;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months compensation Ksh.683,462.40;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 18 years ksh.512,595

8. Albert Peku

Was employed on 10 November 2010 as a plumber at a basic wage of ksh.18,787 and house allowance of Ksh.8,687 and worked for 5 years and 4 months and claims;

- a. 10% of basic wage Ksh.4,369.20;
- b. 20 leave and off days Ksh.40,450.80;
- c. 4 months' notice pay Ksh.227,820.80;
- d. Severance pay at 16 days for 18 years Ksh.630,888.40;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month notice pay Ksh.52,586;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months compensation Ksh.683,462.40;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 18 years ksh.512,595

9. Joel Nyandoro

Was employed on 7 March 2012 as chef-dipartite at a basic wage of Ksh.23,640 and house allowance of Ksh.8,687 and worked for 5 years and 4 months and claims;

- a. 10% of basic wage Ksh.4,369.20;
- b. 20 leave and off days Ksh.40,450.80;
- c. 4 months' notice pay Ksh.227,820.80;
- d. Severance pay at 16 days for 5 years Ksh.630,888.40;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.52,586;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.683,462.40;



- i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 5 years ksh.512,595
10. Paul Juma Abira
- Was employed on 1 September 1991 as a laundry operator at a basic wage of Ksh.23, 640 and worked for 26 years and 4 months and claims;
- a. 10% of basic wage Ksh.2,364;
 - b. 20 leave and off days Ksh.40,450.80;
 - c. 4 months' notice pay Ksh.227,820.80;
 - d. Severance pay at 16 days for 26 years Ksh.630,888.40;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month's notice pay Ksh.52,586;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months' compensation Ksh.683,462.40;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 26 years ksh.512,595
11. Seif Ali
- Was employed on 13 September 1995 as an artisan at a basic wage ksh.23,243 and house allowance ksh.8,894 and worked for 22 years and 3 months and claims;
- a. 10% of basic wage Ksh.2,324;
 - b. 20 leave and off days Ksh.40,450.80;
 - c. 4 months' notice pay Ksh.137,016;
 - d. Severance pay at 16 days for 22 years Ksh.630,888.40;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month's notice pay Ksh.34,254;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months compensation Ksh.683,462.40;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 22 years ksh.512,595
12. Amur Abdalla
- Was employed on 20 January 1988 as a swimming pool attendant at a basic wage of Ksh.48,061.20 and house allowance Ksh.8,894 and worked for 18 years and 3 months and claims;
- a. 10% of basic wage Ksh.4,369.20;



- b. 20 leave and off days Ksh.40,450.80;
- c. 4 months' notice pay Ksh.227,820.80;
- d. Severance pay at 16 days for 18 years Ksh.630,888.40;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.52,586;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.683,462.40;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 18 years ksh.512,595

13. Stephen Mataisu Kioko

Was employed on 1 February 1990 as a general cleaner at a basic wage of Ksh.13,926 and house allowance of Ksh.8,503 and worked for 27 years and 9 months and claims;

- a. 10% of basic wage Ksh.1,393
- b. 26 leave and off days Ksh.23,522;
- c. 4 months' notice pay Ksh.95,288;
- d. Severance pay at 16 days for 27 years Ksh.395,812;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.23,822;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.285,864;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 18 years ksh.321,597

14. Washington Waka Otieno

Was employed on 11 February 1993 as a cook at a basic wage of Ksh.24,614 and house allowance of Ksh.8,687 and worked for 24 years and 11 months and claims;

- a. 10% of basic wage Ksh.2,461;
- b. 29 leave and off days Ksh.34,570;
- c. 4 months' notice pay Ksh.143,048;
- d. Severance pay at 16 days for 24 years Ksh.528,177;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month notice pay Ksh.35,762;
- g. Leave travelling allowance Ksh.28,600;



- h. 12 months compensation Ksh.429,144;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 18 years ksh.429,144
15. Ruben Isiiye
- Was employed on 1 April 2004 as a telephone operator at a basic wage of Ksh.23,640 and house allowance Ksh.8,894 and worked for 18 years and 3 months and claims;
- a. 10% of basic wage Ksh.2,364;
 - b. 27 leave and off days Ksh.31,222;
 - c. 4 months' notice pay Ksh.138,764;
 - d. Severance pay at 16 days for 13 years Ksh.277,528;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month's notice pay Ksh.34,691;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months' compensation Ksh.416,292;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 18 years ksh.225,492
16. Nasoro Mohamed Mwapesa
- Was employed on 1 October 1987 as a carpenter at a basic wage of Ksh.23,640 and house allowance Ksh.8,687 and worked for 30 years and claims;
- a. 10% of basic wage Ksh.2,364;
 - b. 20 leave and off days Ksh.23,127;
 - c. 4 months' notice pay Ksh.138,764;
 - d. Severance pay at 16 days for 30 years Ksh.640,449;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month notice pay Ksh.34,691;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months compensation Ksh.416,292;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 18 years ksh.520, 365.
17. Juma Bendera Mashaka
- Was employed on 1 August 2013 as a store assistant at a basic wage of Ksh.21,688 and house allowance Ksh.8,687 and worked for 5 years and 3 months and claims;
- a. 10% of basic wage Ksh.2,169;



- b. 26 leave and off days Ksh.28,205;
- c. 2 months' notice pay Ksh.65,088;
- d. Severance pay at 16 days for 5 years Ksh.100,135;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.32,544;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.390,528;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 5 years ksh.81,360

18. Said Usama Nabhan

Was employed on 1 February 2002 as a driver at a basic wage of Ksh.18,797 and house allowance Ksh.8,687 and worked for 15 years and 3 months and claims;

- a. 10% of basic wage Ksh.1,880;
- b. 28 leave and off days Ksh.27,406;
- c. 4 months' notice pay Ksh.117,456;
- d. Severance pay at 16 days for 15 years Ksh.271,052;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.29,364;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.352,368;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 15 years ksh.220,230

19. Moses Odhach

Was employed on 21 December 1992 as a mason at a basic wage of Ksh.[0] and house allowance Ksh.8, 894 and worked for 25 years and one month and claims;

- a. 10% of basic wage Ksh.4,369.30;
- b. 20 leave and off days Ksh.40,450.80;
- c. 4 months' notice pay Ksh.227,820.80;
- d. Severance pay at 16 days for 25 years Ksh.701,147;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month notice pay Ksh.52,586;
- g. Leave travelling allowance Ksh.28,600;



- h. 12 months compensation Ksh.683,461;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 25 years ksh.657,325
20. Kilonzo Mweri
- Was employed on 1 April 1989 as a cook at a basic wage of Ksh.48,061.20 and house allowance Ksh.8,894 and worked for 28 years and 3 months and claims;
- a. 10% of basic wage Ksh.2,033;
 - b. 36 leave and off days Ksh.37,259;
 - c. 4 months' notice pay Ksh.124,196;
 - d. Severance pay at 16 days for 28 years Ksh.534,998;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month notice pay Ksh.31,049;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months compensation Ksh.372,588;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 28 years ksh.434,686
21. Joseph Ngomwa Mwaringa
- Was employed as a plant operator a basic wage of Ksh.48,061.20 and house allowance Ksh.8,894 and worked for 18 years and 3 months and claims;
- a. 10% of basic wage Ksh.4,369.20;
 - b. 20 leave and off days Ksh.40,450.80;
 - c. 4 months' notice pay Ksh.227,820.80;
 - d. Severance pay at 16 days for 18 years Ksh.630,888.40;
 - e. Shoes compensation for 34 months at 500 Ksh.17,000;
 - f. One month notice pay Ksh.52,586;
 - g. Leave travelling allowance Ksh.28,600;
 - h. 12 months compensation Ksh.683,462.40;
 - i. Service charge for September and October 2017 Ksh.9,423;
 - j. Service gratuity for 18 years ksh.512,595
22. Gasper Mwanyota
- Was employed on 2 October 1998 as a waiter and worked for 18 years and 3 months and claims;
- a. 10% of basic wage Ksh.4,369.20;



- b. 20 leave and off days Ksh.40,450.80;
- c. 4 months' notice pay Ksh.227,820.80;
- d. Severance pay at 16 days for 19 years Ksh.630,888.40;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month notice pay Ksh.52,586;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months compensation Ksh.683,462.40;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. Service gratuity for 18 years ksh.512,595

23. Morris Mashaiahu Jilani

Was employed on 31 August 2014 as a driver at a basic wage of Ksh.48,061.20 and house allowance Ksh.8,687 and worked for 4 years and 3 months and claims;

- a. 10% of basic wage Ksh.1,725;
- b. 20 leave and off days Ksh.18,438;
- c. 2 months' notice pay Ksh.55,314;
- d. Severance pay at 16 days for 4 years Ksh.68,049;
- e. Shoes compensation for 34 months at 500 Ksh.17,000;
- f. One month's notice pay Ksh.27,657;
- g. Leave travelling allowance Ksh.28,600;
- h. 12 months' compensation Ksh.331,884;
- i. Service charge for September and October 2017 Ksh.9,423;
- j. [0]

Cause No.49 of 2020

The claim by KUDHEIHA relates to 70 employees (grievants) and the issue in dispute is the wrongful and unfair termination of employment on account of redundancy.

The claim is that the parties have a Recognition Agreement and negotiated a CBA where the respondent is under the Union of Kenya Hotelkeepers and Caterers Association (KHCA). The grievants were employed by Nyali International Beach Hotel Limited having taken over possession and operations from 4 September 2017.

On 5 September 2017, the claimant wrote to the respondent requesting a joint meeting which was held on 8 September 2019. The respondent issued the grievants with new letters of appointment. The respondent then terminated employment on account of redundancy without notice to the claimant or the labour officer contrary to Sections 40, 43, 78, 77 and 76 of the *Employment Act* or in compliance with clause 15 of the CBA.

The grievants are seeking payment of terminal dues for;



- a. Notice pay;
 - b. Severance pay;
 - c. Service gratuity;
 - d. 12 months' compensation;
 - e. One month's notice pay.
7. Upon consolidating the suits, the claimants/grievants called Gerald Mwonja, the shop steward, as the single witness. He testified that he represented other grievants and former employees of Block Hotels under the respondent. The claimant union had a CBA with the respondent under KHCA, and the grievants worked in different capacities until 2017, when salary payments stopped. The respondent took over the hotel's running and proposed that the grievants get new employment contracts. At the time, there were salary and service charge arrears. The respondent blamed the shop steward, who agreed that 24 employees would be laid off and then denied access to the premises. The claimant filed Cause No.924 of 2017, claiming redundancy dues.
 8. Mwonja testified that the respondent has a sister company where similar claims were made and paid. The respondent has failed to make payments despite the matter being in court.
 9. Upon cross-examination, Mwonja testified that the grievants had been employed under Block Hotels since 1999. The respondent did not issue employment contracts, yet they dismissed the grievants. The respondent was taken over by a different company, Muthu, which is not a party herein. The respondent should join the new entity. Mombasa ELRC Cause No.88 of 2023 exists, and the claimant is an interested party. Mombasa Cause No.49 of 2020 and 924 of 2017 were consolidated.
 10. There is Mombasa Cause No.960 of 2016, and judgment has since been delivered. The case was related to salary and service charge arrears, and despite the judgment, the respondent has not paid. The suit relates to Nyali Beach Hotel and the employees, where the hotel sued its employees over an alleged strike. The respondent was not a party.
 11. Mwonja testified that he is unaware of Mombasa ELRC Cause No.592 of 2023.

Response

12. In response, the respondent argues that there is no valid claim against it. Upon due diligence, the property was acquired from a bank and had no liabilities transferred to third parties. The respondent's claim for terminal dues on account of redundancy is an act of futility, as the respondent does not know any liabilities of previous entities cited by the claimants and grievants.
13. As alleged, the respondent has no Recognition Agreement or CBA with the claimant or the grievants. The grievants were strangers to the respondent and had no employment agreement or contracts. No liability is attached between any one of the grievants and the respondent in any manner.
14. The Memorandum of Claim is fatally defective and should be struck out and filed against the respondent instead of those with no contractual relationship with any grievant. The concerned parties are not enjoined herein. The suit is filed contrary to the provisions of Sections 34 and 36 of the Advocates Act as regards the drawer of the claim.
15. The redundancy dues claimed are not justified. The respondent does not owe the grievants Ksh. 71, 925,863.60, as particularized in the Memorandum of Claim. The claimant is guilty of material non-disclosure, and the claim should be dismissed. The employment dates are incorrect, the terminal dues



claimed are not justified, and the alleged wrongful and unlawful declaration of redundancy was not issued. The role of KUDHEIHA is not procedural to file the claim. The respondent did not acquire any grievant liabilities from the previous entities of the grievants.

16. The claimant has previously filed other similar suits.
 1. Mombasa ELRC Cause No.960 of 2016 Mpe Shindo & 145 others bearing the same description as Cause No. 960 of 2016 against Nyali International Beach Hotel, where 146 persons were listed as claimants, including the current grievants. This suit has not been disclosed.
 2. There is Cause No.960 of 2016, which contradicts the claims herein. The claim is supported by Peter Kiarie, whose affidavit contradicts the instant claim.
 3. In Cause No.924 of 2017, the supporting affidavit has itemized various claims, while in Cause No.960 of 2016, the grievants make different claims in contradiction and inconsistency.
17. The response is also that the claimant has filed and attached irrelevant documents and indicated to have served Sun Africa Hotels. The filed documents are not certified, and the CBA is not executed. Some grievants are repeated, others are deceased, and KUDHEIHA has no authority to bring the suit against the Estate of the deceased persons.
18. The respondent filed the witness statement of Sanjay Kishokumar Mashru, the director, who avers that he does not know of any redundancy in the company. The claims made are non-existent. The correct entity that employed the grievants has not been sued, and there is no CBA or Recognition Agreement as alleged.
19. Mashru avers that no contractual obligations exist between the respondent and the claimant. The claims relate to a period when the respondent had not been incorporated. The property was acquired from the bank, and no liabilities were transferred to third parties. The claimant has not disclosed that it filed the following suits;
 1. Mombasa Cause No.960 of 2016;
 2. Mombasa Cause No.924 of 2017;
 3. Mombasa Cause No.88 of 2020.
20. The grievants have been duplicated, the claims repeated, and the case should be dismissed with costs.
21. The respondent opted not to call any witnesses in court.
22. At the close of the hearing, the parties agreed to file written submissions.
23. The claimant submitted that Block Hotels Limited employed the grievants through letters of appointment. Block Hotels Limited is also traded as Nyali Beach Hotel Limited. In 2009, Nyali Beach Hotel Limited was overtaken by Nyali Hotel International Limited through a Discharge and Transfer dated 14 October 2009, leading to Mombasa ELRC Cause No.960 of 2016. Nyali Hotel International Limited failed to pay the grievants' salaries and service charges of Ksh.30, 746,326.
24. The grievants were aggrieved and issued a strike notice. The employer, Nyali Hotel International Limited, filed Mombasa Cause No.960 of 2016 against 146 employees to stop the industrial action. In a ruling on 12 June 2017, the court barred the employees from taking any industrial action for 40 days and referred the dispute to the Labour Office for investigations. The office was to determine if there were unpaid salaries and service charges.



25. Within 40 days, the court allowed a stay of the industrial action. The Nyali Hotel International Limited changed to Nyali Sun Africa Beach Hotel and Spa and took over the management. The union filed an application dated 7 December 2017 to enjoin the new entity as a second claimant under Cause No.960 of 2016.
26. Upon Nyali Sun Africa Hotel and Spa taking over the company, it terminated the employment of the grievants. There was no due diligence by the respondent herein in taking over the management of Nyali Hotel International Limited. Under clause 11(vi) of redundancy, the CBA requires that the incoming management or owner pay full benefits. The claimant was not informed of the charges as required under the CBA.
27. The claimant submitted that various suits have been filed where the grievants are involved,
 1. The employer filed Cause No.960 of 2016 to stop industrial action. The employer had not paid the employees their due salaries and service charges.
 2. Cause No.88 of 2023 is filed by Kenya Hotels & Allied Workers for its members. The claimant is enjoined as an interested party.
 3. Cause No.924 of 2017, and the claimant files Cause No.49 of 2020 on behalf of its members.
28. On these suits, the court delivered a ruling on 15 April 2022 and consolidated the various suits. The allegations that there are deceased parties are not supported by evidence. On duplicity of names, the suits are different but consolidated to address the same.
29. Under Cause No.88 of 2023, the claimant was enjoined as an interested party after entering into a consent agreement with management on MGM Muthu Hotels' takeover of Sun Africa Hotels Limited. The agreement was based on the fact that there is a CBA between the claimant and Sun Africa Hotels Limited, the first respondent under Cause No.88 of 2023.
30. The claimant is not a party in Cause No.592 of 2023 (Nairobi), as alleged by the respondent.
31. The claimant submitted that the respondent unfairly declared the grievants redundant. The respondent did not adhere to the CBA terms and conditions as a member of KHCA. The CBA applicable requires a general wage increase of 9% from 1 October 2017, which was not implemented.
32. The grievants seek payment of pending leave, off days not taken, and leave travelling allowance under clause 12 of the CBA.
33. Notice pay is due where employment is terminated without notice. Upon a redundancy, an employee with less than 5 years of service is entitled to 2 months' notice pay. Employees with 5 to 10 years of continuous service are entitled to 3 months' notice pay. Employees with 10 years or above of continuous service are entitled to 4 months' notice pay.
34. Each grievant was entitled to 34 months of shoe allowance under clause 16 of the CBA.
35. The service charge due for September and October 2017 was not paid.
36. Compensation is due under Sections 49 and 50 of the *Employment Act* for unlawful and unfair termination of employment.
37. The respondent submitted and challenged the legality of the claim as fatally defective. The claim against the respondent was filed before registration as a legal entity, hence incompetent. The claimant failed to disclose material facts that there was no Recognition Agreement or CBA with the respondent.



37. The respondent submitted that the claimant has filed a claim for grievants who have filed other claims in the abuse of the court process. The claim is vexatious and should be dismissed.
38. Due to the duplicity of suits, the claimant has engaged in a deliberate and fraudulent scheme to use the court to make various claims.
 - a. In Nairobi ELRC Cause No.E592 of 2023, Kenya Hotels & Allied Workers Union v Sun Africa Hotels Limited & MGM Muthu Hotels;
 - b. Mombasa ELRC Cause No.88 of 2023, Kenya Hotels & Allied Workers Union v Sun Africa Hotels Limited & MGM Muthu Hotels; and
 - c. Mombasa ELRC No.960 of 2016, Nyali International Beach Hotel v Mpe Shindo Bundi & 145 others and Nyali Sun Africa Hotel & Spa [interested party];
39. The suits relate to the same grievants over the same cause of action.
40. The respondent submitted that the claimant has failed to join the culpable parties to the suit. The grievant who testified confirmed that employment was with Block Hotels, Nyali Beach Hotel, and Nyali International Beach Hotel. Other third parties have been involved in the employment relationship but are not respondents. The claimant has not made an effort to submit documentary evidence on the respondent's culpability. This renders the suit incurably defective and should be dismissed with costs.

Cause No.49 of 2020

41. The claimant filed the claim for 70 grievants against the respondent.
42. The cause of action is the alleged unfair termination of employment due to redundancy contrary to Section 40 of the *Employment Act* and Clause 11 of the CBA.
43. The claim is that the parties have a Recognition Agreement and a CBA. The grievants were former employees of the respondent, formerly Nyali International Beach Hotels Limited. The respondent took possession on 4 September 2017 and, on 5 September 2017, wrote to the claimant requesting a joint meeting. On 8 September 2017, the respondent agreed to issue the grievants with new employment letters.
44. The claim is that the respondent terminated the grievants' employment because of redundancy without notice to the claimant or labour officer, contrary to sections 40, 43, 78, 77 and 76 of the *Employment Act* and Clause 11 of the CBA.
45. The claimant is seeking orders that the respondent should pay the grievants their terminal dues;
 - a. Notice pay;
 - b. Service gratuity;
 - c. Severance pay under the CBA;
 - d. 12 months' salary in compensation;
 - e. One-month notice pay.
46. Each grievant's claims are particularized. The claimant filed the CBA and the letters of appointment for the grievants under Block Hotels Management Limited, the employer of Nyali Beach Hotel. There



are letters of contract of service under Nyali International Beach Hotel & Spa, the employer of Nyali International Beach Hotel.

47. In reply, the claimant has not sued the correct entity. The respondent did due diligence and confirmed that the property was acquired from a bank and that no liabilities were transferred to third parties. The claim for terminal dues on account of redundancy from the respondent is an act of futility. The respondent had no knowledge of such matters upon taking over from the previous entities without liabilities. There is no Recognition Agreement or CBA between the parties.
48. The claimant is a stranger to the respondent, and there are no employment contracts between the respondent and the grievants.
49. The claim is incompetent and filed contrary to Sections 34 and 36 of the *Advocates Act*.

Determination

50. In both suits, Cause Nos. 924 of 2016 and 88 of 2020 consolidated, and the respondents gave similar responses. The respondent challenged the claims as incompetent and duplicative and argued that they were filed contrary to Sections 34 and 36 of the *Advocates Act*.
51. The parties' consent consolidated the suits. The claims involve grievants represented by the claimant union as its members, as allowed under the *Labour Relations Act* (LRA). Section 22 of the *Employment and Labour Relations Court Act* allows a trade union official, an advocate, or the party to file and appear before the court.
52. The claimant, registered under the LRA and representing its members, can attend these proceedings.
53. The application of Sections 34 and 36 of the *Advocates Act* is discussed at length in the case of National Bank of Kenya Limited v Anaj Warehousing Limited [2015] KESC 4 (KLR). The gist is not to allow an unqualified person, one who has not secured a Practicing Certificate, from filing pleadings. See Department of Agriculture and Food Authority v George & 4 others [2022] KEHC 11006 (KLR)
54. In this case, under the provisions of the LRA, the claimant is duly authorized to attend court and represent its members as held in Kenya Medical Practitioners, Pharmacists and Dentists' Union [KMPDU] v County Government of Kilifi [2022] KEELRC 693 (KLR). The claimant is a proper party in these proceedings.
55. Under Cause No.924 of 2017, the respondent filed the Certificate of Incorporation dated 28 August 2017 as Nyali Sun Africa Beach Hotel & Spa Limited.
56. The respondent filed a Discharge of Charge over title no. CR 13599 between the Kenya Commercial Bank and Nyali Beach Hotel Limited, the chargor with a transfer of Nyali Hotels International Limited, as the transferee. Under the Discharge of Charge, the chargor indemnified the KCB from liability to the transferee and for releasing land and property Title No. CR 13599/1.
57. Under Mombasa ELRC Cause No.960 of 2016, the claimant union filed an application dated 7 December 2017 to enjoin the respondent with Nyali International Beach Hotel Limited as a 2nd claimant. This application was not prosecuted.
58. However, with the transfer of business, the grievants being the employees, the change of the employer became protected under Section 12 of the *Employment Act*. Despite the respondent acquiring the property through the bank and citing that it did not carry any liabilities, the employees subject to the transfers between different entities are protected.



59. Section 12 (6) of the *Employment Act* is intended to insulate employees caught up in business changes without their knowledge. Parliament in allowing such employees security under the law, provided that the employee's contract is protected where the employer's name is changed without any change in the employer's identity. Where the employer's identity is changed in circumstances where the continuity of the employee's employment is not broken, a statement should be issued to the employee of the change, giving the specific date on which the employee's period of continuous employment began. Section 12(6) of the *Employment Act* requires that;
- (6) Where, after an employer has given to an employee a statement under section 10 either—
- (a) The name of the employer is changed without any change in the identity of the employer; or
- (b) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken, and subsection (7) applies in relation to the change, the person who is the employer immediately after the change is not required to give to the employee a statement under section 12 but the change shall be treated as a change within subsection (1).
- And further sections 12(7) and (8) of the *Employment Act* require that
- (7) Subsection (6) applies in relation to a change if it does not involve any change in any of the matters, other than the names of the parties, particulars of which are required by sections 10 and 11 to be included or referred to in the statement under subsection (1).
- (8) A statement under subsection (1) which informs an employee of a change referred to in subsection (6) (b) shall specify the date on which the employee's period of continuous employment began.
60. In the case of *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] KEELRC 920 (KLR), the court held that continuity of employment was broken between two employers who issued employees separate contracts for different periods. In this case, save for the change of the employer, the grievants continued their employment with the respondent upon the change of business ownership.
61. In the case of *Kenya National Union of Teachers v George Wesonga Ojwang* [2017] eKLR the court appreciated that where an employee is retired and is allowed to serve beyond such period under a new title, having been paid his terminal dues upon retirement, he cannot claim for further terminal dues for the initial period served.
62. In this case, the grievants did not cease their employment. Upon the respondent's takeover, any employment dues arising from the employer are payable.
63. The link between the claimant and the entity and the transition of the respondent from Nyalı International Beach Hotel Limited cannot be applied to negate the provisions of Sections 12(6), (7), and (8) of the *Employment Act*. The grievants can prosecute and protect their interests upon the respondent's takeover of the entity.
64. Although Mombasa ELRC Cause No.960 of 2016 was initiated by the employer to stop the employees' industrial action, the suit allowed them to counterclaim and seek their unpaid salaries and service charges, if any. Abandoning that suit and initiating the current suits as consolidated herein does not aid their case.



65. Mwonja testified on behalf of the grievants that Block Hotels Limited employed them. The letters of appointment filed with the Memorandum of Claim are from Nyali International Beach Hotel & Spa. There is a Recognition Agreement between the parties under the Kenya Hotelkeepers and Caterers Association on behalf of its members. The respondent, by extension of rights under Sections 10 and 12 of the *Employment Act*, under the changes from Nyali International Beach Hotel & Spa, is listed as a member of the association.
66. The respondent is a proper party in these proceedings.

Cause 49 of 2020

67. Under Cause 49 of 2020, the claimant filed the CBA and the letters of appointment for the grievants under Block Hotels Management Limited, the employer being Nyali Beach Hotel. There are letters of contract of service under Nyali International Beach Hotel & Spa, the employer of Nyali International Beach Hotel.
68. In an internal memo dated 27 September 2002, Block Hotels Management Limited wrote to all shop stewards and employees about the court proceedings and appointment of a Receiver Manager following proceedings on the company's ownership. The employer noted that protecting the employees' rights was necessary whether the shareholding and ownership changed or not. The employees would remain engaged and positive in their work, and operations would continue.
69. The respondent took over operations on 4 September 2017.
70. There are several employment contracts issued to various grievants, including;
1. Pili Kahindi Kithi, letter dated 10 October 2017 with effect from 4 October 2017. The employer is Sun Africa Hotels, based at the Nyali Sun Africa Beach Hotel & Spa, the respondent.
 2. Thomas Elvis Kaplanga, letter dated 10 October 2017 with effect from 4 October 2017. The employer is Sun Africa Hotels, based at Nyali Sun Africa Beach Hotel & Spa, the respondent. His employment was confirmed on 14 December 2017;
 3. David Kioko Kiamba, letter dated 10 October 2017 with effect on 4 October 2017. The employer is Sun Africa Hotels, based at the Nyali Sun Africa Beach Hotel & Spa, the respondent.
 4. Francis Maina Muriithi;
 5. John Njuguna Mukiri; and
 6. Grace Chao Mwambili.
71. These employees had contracts with the respondent.
72. Others had contracts which were not renewed over time; these included Grace Chao Mwambili, through a notice dated 9 September 2018; the respondent did not renew her contract.
73. What arises from Cause 49 of 2020 is that some grievants were issued with letters of employment on 4 October 2017, upon the takeover of the management. These contracts have different and varying terms and conditions, especially the term limits. Some contracts were not renewed, and notices were issued to this effect. An example is Grace Chao Mwambili, whose contract was not renewed through a notice dated 9 September 2018. This means the respondent issued her with a contract upon the takeover.



74. The issues in dispute claimants have the same framework of claims under Cause 924 of 2017 and 49 of 2020. However, namely, the alleged unfair termination of employment on account of redundancy in both suits, no notices were filed on how employment was terminated in each case.
75. Save for the single notice to Grace Chao Mwambili dated 9 September 2018 related to the non-renewal of her employment contract. None other is filed.
76. The allegations that the termination notices failed to meet the threshold of sections 40, 43, and 45 of the *Employment Act* cannot be audited with the subject notices. The case that there was a redundancy contrary to Section 40 of the *Employment Act* where the claimant was not issued with notice or the labour officer cannot be analyzed in the absence of the subject notice.
77. Fundamentally, the question of how employment terminated after the respondent took over management on 4 September 2017 must be addressed before a determination of the reliefs sought. Whether employment was terminated wrongfully, unlawfully, or unfairly, such questions cannot stand without the subject notice or lack thereof.
78. The claimant has referred to this notice terminating employment without stating its date or contents. This is a serious lapse in the relief sought.
79. A case in point is the notice and letter dated 10 October 2017 to Pili Kahindi Kithi, which notes;

LETTER OF APPOINTMENT

We are pleased to offer you a one-year employment contract on a renewable basis under the following terms and conditions: (You are required to discuss in writing the renewal of your contract with the Hotel Manager and Human Resource Manager one month prior to expiry.)

Your employment with the company commences on 4 September 2017 ...

80. In the Memorandum of Claim, Pili Kahindi Kithi is grievant No.2. And the claim is particularized as follows;

Employed on 1 February 1990 as a laundry operator. employment terminated, on 1 September 2017, after working for 27 years and 10 months;

 - a. Claim for notice pay;
 - b. Severance pay;
 - c. Service gratuity;
 - d. 12 months' compensation;
 - e. One month's notice pay.
81. The other claim is by Thomas Elvis Kaplanga, listed as grievant No.6, and his claim is particularized as follows;
82. Employed on 4 October 1994 as a waiter and employment terminated on 1 September 2017 after working for 23 years;
 - a. Claims 4 months' notice pay;
 - b. Severance pay;



- c. Service gratuity;
 - d. 12 months' notice pay;
 - e. One month's notice pay.
83. The records indicate these employees were issued similar term contracts on 10 October 2017, effective 4 October 2017. It is not clear if their contracts were renewed after one year.
84. What is apparent to the court is that these employees are grievants under Cause No.49 of 2020, filed on 28 August 2020.
85. They claim that their employment was terminated on 1 September 2017. The Notice terminating employment has not been filed, and evidence of term contracts exists beyond 1 September 2017.
86. Where these grievants seek to claim under redundancy provisions, the Notice declaring the redundancy is not filed.
87. Indeed, even where the termination of employment notices or the redundancy notices are filed for the grievants under Cause 49 of 2017, where employment is alleged to have been terminated by the respondent from 1 September 2017, the records demonstrate an employment relationship beyond such date.

Was it a case of redundancy? Or was it an unfair termination of employment?

88. The remedies sought are a mixed bag. Severance pay can only accrue upon a redundancy notice. Whereas a claim for unfair termination of employment may arise from both a redundancy and termination of employment, the basis must be established to allow the court to analyse and apply appropriately. Mr. Gerald Mwonja testified that his employment under the Block Hotels was unfairly terminated. However, the issue in dispute is the alleged unfair redundancy contrary to Clause 11 of the CBA, which relates to redundancy provisions.
89. Without clarity on the reasons leading to termination of employment, the evidence presented, the reliefs made considered, and the respondent's boundness to the employment of the grievants, the only remedy available is payment for work done and not paid for.
90. Salary arrears claims are justified to the extent that for work done, whatever reasons leading to termination of employment, the due wage should be paid in full under Section 18(4) of the [Employment Act](#) as held in *Thomas Sila Nzivo v Bamburi Cement Limited* [2014] KEELRC 118 (KLR) that Section 18 [4] of the [Employment Act](#) demands that even in cases of summary dismissal, the Employee shall be paid all the monies, allowances and benefits, due to him up to the date of dismissal. In the case of *Matsesho v Newton* [2022] KEELRC 1554 (KLR), the court held that without evidence that there is payment for the period worked, whatever reason(s) lead to termination of employment, the employee should be paid his dues. This includes a case of summary dismissal unless the employee has a liability to the employer.
91. In the case of *Kyalo & 6 others v Kenya Railways Corporation & 8 others* [2025] KEELRC 828 (KLR), the court emphasized that even where there is dismissal from employment for a lawful cause, all money, allowances and benefits due to an employee are payable. See *Mombasa Apparels (EPZ) Limited v Tailors and Textiles Workers Union* [2016] KEELRC 226 (KLR) that section 18(4) of the [Employment Act](#) requires that an employee who is summarily dismissed for a lawful cause shall be paid all monies allowances and benefits due to him up to the date of his dismissal.



92. As cited above, the courts agree that for work done, time served, and whatever dues accrue to the employee, these must be paid by the employer. The only exception is where the employee has a liability. In this case, the grievants have not been said to accrue any liabilities. For the claims relating to salary arrears, service charge and leave accrued under the provisions of Section 28(4) of the *Employment Act* are payable.
93. As outlined above, some grievants have not adequately particularized their claims. The respondent does not help set the record as the legal custodian of work records under Sections 74 and 10(6) and (7) of the *Employment Act*. Analyzing the salary arrears owing will require parties to return to the shop floor for an audit and return to the court. In this exercise, the Labour Officer, Mombasa, shall assist the parties in accessing and analyzing the work records.
94. Equally, leave days earned and not taken should be paid under section 28 of the *Employment Act*. These should be assessed under the provisions of Section 28(4) for the last 18 months of service, where such leave days accrue. The accumulation of annual leave days is not permissible and should not be claimed beyond the legal threshold. What is payable shall be tabulated based on the basic wage for the last 18 months only.
95. The service charge was agreed under the CBA as earned for the period worked. An agreed term in the CBA registered with the court is lawful and legitimate. Based on the parties' practice over the years, the service charge shall be tabulated as due for each grievant. The respondent shall provide work records on the service charge.

These will be assessed for each grievant.

96. Accordingly, the claims consolidated, judgment is entered for the claimant against the respondent for payment of earned and accrued dues during employment in the following terms;
 - a. Salary arrears unpaid;
 - b. Service charge arrears;
 - c. Leave pay under Section 28(4) of the *Employment Act*;
 - d. Parties shall tabulate the dues owing to each grievant as above and take a schedule for approval by the court within the next 30 days. The respondent shall allow access to the work records for this purpose. Where the respondent fails to cooperate, the claimant shall be at liberty to take a tabulation and report to court.
 - e. Parties are at liberty to seek the assistance and facilitation of the County Labour Officer.
 - f. Mention on 30 April 2025.
 - g. On the ongoing industrial relations between the parties, no orders on costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 27 MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

