



**Kenya Engineering Workers Union v Metal Crowns Ltd (Cause E719 of 2023) [2025] KEELRC 677 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 677 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E719 OF 2023  
S RADIDO, J  
MARCH 6, 2025**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
METAL CROWNS LTD ..... RESPONDENT**

**JUDGMENT**

1. The Cause was heard on 23 October 2024. Beatrice Akinyi (the Grievant) testified.
2. Upon the close of the Grievant’s case, Metal Crowns Ltd (the Respondent) applied for an adjournment to enable it to file and serve a witness statement.
3. The Court granted the leave and scheduled the Respondent’s case for a hearing on 28 January 2025.
4. When the Cause was called out on 28 January 2025, the Respondent’s advocate informed the Court that she had just come on record and requested an adjournment. The Court declined to grant the adjournment and the reasons are on record.
5. The Respondent, therefore, closed its case without leading evidence.
6. The Kenya Engineering Workers Union (the Union) filed its submissions on 17 February 2025, and the Respondent on 27 February 2025.
7. The Court has considered the pleadings, evidence and submissions.

**Unfair Termination of Employment: Redundancy**

8. The procedural steps an employer should take not to run afoul of the fairness elements are set out in section 40 of the [Employment Act](#), 2007.



9. On 21 May 2021, the Respondent wrote to the Union giving notice of intended redundancies. The Union asserted that it received the letter on 24 June 2021.
10. Upon receipt of the notice, the Union wrote to the Respondent on 24 June 2021 decriing that the notice did not comply with section 40 of the Employment Act, 2007 and the parties Collective Bargaining Agreement. The Union requested for a consultative meeting.
11. On 31 May 2021, the Respondent wrote to the Grievant informing her of the termination of her contract on account of redundancy effective 25 June 2021. The Grievant testified that she was given the letter on 25 June 2021.
12. Section 40 of the *Employment Act*, 2007 requires an employer to issue a written notice of intention to declare redundancies 30 days in advance to the employee or trade union. The local Labour Officer should also be notified.
13. The Respondent did not place any material before the Court to demonstrate that the Labour Officer was notified. The notification of a redundancy to a Labour Officer is not just a matter of course. There are public policy considerations behind the requirement.
14. The Union and the Respondent had a recognition agreement which lapsed on 31 July 2020. However, clause 30 of the agreement sustained the agreement until amendment.
15. Clause 19.2 of the Collective Bargaining Agreement outlined the redundancy procedures. Among the procedures was the criteria of Last In First Out.
16. The Respondent did not demonstrate that it followed this criterion.
17. Apart from the procedural aspects, sections 43 and 45 of the *Employment Act* have placed a burden on the employer to prove the validity and fairness of the reasons leading to termination of employment.
18. The Respondent did not lead evidence to discharge the burden.

### **Compensation**

19. The Grievant served the Respondent for about 11 years and factoring the length of service and the dues which the Respondent offered her, the Court is of the view that the equivalent of 8 months' gross salary would be fair (gross monthly salary in May 2021 was Kshs 31,744/-).

### **Pay in Lieu of Notice**

20. The Respondent offered the Grievant the equivalent of 2 months' salary in lieu of notice which the Grievant did not collect. The monthly basic pay was Kshs 20,719/- and the Court will allow this head of the claim as prayed.

### **Severance Pay**

21. The Respondent offered the Grievant severance pay at the rate of 24 days for each year served for 10 years but did not disclose the amount.
22. Clause 19.4.1 of the Collective Bargaining Agreement set the formula for computing severance pay. The Respondent did not question the Union's computation and the Court will allow the same in the sum of Kshs 197,527/-.



### **June 2021 Salary**

23. The Grievant's testimony that she was not paid salary for June 2021 was not rebutted and the claim for Kshs 24,683/- is allowed.

### **Accrued Leave Days**

24. On account of leave, the Union requested for Kshs 14,312/-.
25. The Respondent had acknowledged this head of claim but did not give its computations and in consideration of section 10(3) of the Employment Act, the Court will allow Kshs 14,312/- as claimed.

### **Transport Allowance**

26. Under clause 19.2.7 of the Collective Bargaining Agreement, the Grievant was entitled to Kshs 6,500/- transport allowance and it is allowed.

### **Conclusion and Orders**

27. The Court finds and declares that the termination of the Grievant's employment through redundancy was unfair and that the Respondent was in breach of contract.
28. The Grievant is awarded:
- i. Compensation Kshs 253,952/-
  - ii. Pay in lieu of notice Kshs 41,438/-
  - iii. Severance pay Kshs 197,527/-
  - iv. Accrued leave Kshs 14,312/-
  - v. Transport allowance Kshs 6,500/-
- Total Kshs 513,729/-
29. The award to attract interest at court rates from the date of judgment.
30. Because of the social partnership between the parties, each party to bear own costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 6<sup>TH</sup> DAY OF MARCH 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Union Mr Araka, Industrial Relations Officer

For Respondent Morara Apiemi & Nyangito Advocates

Court Assistant Wangu

