



REPUBLIC OF KENYA



KENYA LAW
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**Corrugated Sheets Limited v Kalama & 10 others (Appeal
E021 of 2024) [2025] KEELRC 1091 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1091 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
APPEAL E021 OF 2024
M MBARÚ, J
APRIL 3, 2025

BETWEEN

CORRUGATED SHEETS LIMITED APPELLANT

AND

FREDRICK MWAPONDA KALAMA 1ST RESPONDENT
DALMAS OMONDI OTULE 2ND RESPONDENT
SALESIO GITONGA NJONGU 3RD RESPONDENT
RAJAB TSUWI KATANA 4TH RESPONDENT
KATANA NGALA KANINA 5TH RESPONDENT
SAMSON MUTUA MBITI 6TH RESPONDENT
DAUDI MWANGOMA 7TH RESPONDENT
SAID CHARO IHA 8TH RESPONDENT
EDWIN LUGADIRU MUDANYA 9TH RESPONDENT
JOHN MAKAU MUSYOKA 10TH RESPONDENT
MICHAEL NDWIGA MBOGO 11TH RESPONDENT

*(Being an appeal from the judgment delivered by Hon. M. S. Kimani in
Mariakani MCELRC E022 of 2022 consolidated with MCELRC E023, E024,
E025, E026, E027, E029, E030, E031, E032 OF 2022 delivered on 9 August 2024)*



JUDGMENT

1. The appeal arises from judgments delivered on 9 August 2024 in Mariakani MCELRC No. E022 of 2022, consolidated with MCELRC E023, E024, E025, E026, E027, E029, E030, E031, and E032 OF 2022. The appellant seeks to set the judgment aside and substitute with an order dismissing the respondents' claim.
2. The exact format shall apply to the analysis of MCELRC E022 of 2022 for the appeal.
3. The background of the appeal is a claim filed by Fredrick Mwaponda Kalama against the appellant. His case was that he was employed as a machine attendant in January 2013, earning Ksh. 31, 234 per month. Previously, the respondent had been employed as a casual from 2013 to 2017, when he was issued a written contract as a permanent employee in 2018. The written contract was for 6 months, and upon lapse, he continued with his employment until 30 August 2021, when he was called by the assistant human resource manager, Zipporah, who served him with a day's termination notice. No reasons were given for the summary action or payment of terminal dues, resulting in unfair termination of employment. He claimed the following dues;
 - a. Notice pay Ksh.31,234;
 - b. Gratuity pay for 9 years Ksh.499,760.60;
 - c. Leave allowance for 8 years Ksh.65,591.40;
 - d. 12 months' compensation Ksh.374,808;
 - e. Costs of the suit.
4. Each respondent replicates similar claims, save for minor differences in date of employment, position held, and wage paid.
5. In response, the appellant admitted that the respondent was employed as a machine attendant from 1 March 2018 at a basic wage of Ksh. 25, 495. He remained under contract until 31 August 2021. The respondent manufactures galvanized roofing sheets, ridges and gutters, which were highly affected by the COVID-19 pandemic and resulted in redundancy. The respondent was employed until August 2021, and following the process under Article 13 of the ILO Convention No.158 and Section 40 of the *Employment Act*, employment was terminated. The respondent, together with the union representative, was invited to a meeting on 30 July 2021 and on 31 August 2021, there was an explanation of the reasons for the termination of employment and the effective date. Termination of employment arose from redundancy. This affected several employees, including the respondents, and the lawful terminal dues were paid. The claims for one-month notice pay, 9 years of gratuity, leave allowance, and compensation are not due.
6. The learned magistrate heard the parties and delivered judgment on 9 August 2024. He held that there was unfair termination of employment and that the redundancy procedures under Section 40 of the *Employment Act* were not adhered to. There was no procedural fairness, and the CBA that was relied upon by the appellant was not produced. The learned magistrate considered the prevailing matter of the COVID pandemic, which may have led the appellant to downsize its operations, but failed to apply the law.

The learned magistrate made the following awards;



- a. One month's notice pay for respondents under cause MCELRC No.E022, E023, E024, E025, E026, E030, E031, and E032 of 2022.;
 - b. Notice pay for claim under MCELRC No.E027, E028 and E029 of 2022 to be paid at the rate of basic salary at the time of dismissal;
 - c. Damages at 10 months' gross salary;
 - d. The awards be subject to Section 49(2) of the *Employment Act*;
 - e. Costs plus interests.
7. Aggrieved by the judgment, the appellant filed the appeal on the grounds that the learned magistrate erred in law and fact in failing to consider and evaluate the appellant's evidence in response to the claim, thereby arriving at wrong conclusions that there was unfair termination of employment. The compensation award for 10 months was in error and excessive since the appellant had paid the respondents all their terminal dues at the end of each contract. Despite making a payment of notice pay, the same was awarded, and the awards under the provisions of Section 4(a) (d) and (c) of the *Employment Act* were in error, and the appeal should be allowed.
 8. Parties attended and agreed to address the appeal by way of written submissions.
 9. The appellant submitted that the trial court consolidated the respondent's claims but later divided them into two categories: MCELRC No.E022, 23, 24, 25, 26, 30, and 32 of 2022 (first category) and separated from MCELRC No.E027, 28, and 29 of 2022 (second category).
 10. In the first category of claims, the appellant notified the Kenya Engineering Workers Union and the labour officer through a letter dated 2 June 2021 of the intention to lay off employees between July and August 2021. The respondents were then invited to a meeting on 30 July 2021 and 30 August 2021, where the appellant explained the reasons for termination of employment and the effective date. Minutes were produced in evidence for both dates.
 11. The appellant submitted that each respondent was served with a termination notice following the meeting with the union on 30 July and 30 August 2021. The reasons were COVID constraints, and the appellant was to pay terminal dues per the CBA. Such terminal dues have since been paid in full and acknowledged by the respondents. These included;
 - a. Gratuity at 19 days for each full year per the CBA;
 - b. Certificate of service.
 12. In the second category of claims, the appellant submitted that notice was issued to the Union and the labour officer, and a meeting was held on 29 June 2021. The appellant then served the respondents with notice terminating employment ending on 31 July 2021 and indicating that their contracts would not be renewed. Terminal dues have since been paid in full.
 13. The awards by the trial court did not consider the procedures taken or the terminal dues paid by the appellant to the respondents. Redundancy allows for lawful termination of employment, subject to the issuance of notice to the labour officer and the trade union and the personal notice to the employee as held in *Kenya Airways Limited v Aviation and Allied Workers Union Kenya & 3 others Civil Appeal No.46 of 2013*. In this case, consultations were between the appellant, the trade union, the labour office and the respondents. Minutes are filed to confirm these consultations on 30 July and 30 August 2021.



14. The appellant submitted that two categories of notices were issued to the employees. The second category received redundancy notices on 30 June 2021, which was to cover one month. A meeting was held on 29 June 2021 to discuss the reasons for redundancy. The appellant indicated to these employees that their written contracts would not be extended after 31 July 2021, when they were due to lapse. In the case of *Dan Caxton Chogo Undusu v Jubilee Insurance Company of Kenya Limited* [2020] eKLR, the court held that where there was a fixed-term contract with an end date, the claim of unfair termination of employment was not justified.
15. The respondents in category one were equally issued notices, which went to the union and labour officer. Meetings were held to consult on the reasons leading to the termination of employment. Terminal dues were paid in full under the CBA at 19 days for each year, which was higher than the agreed-upon 18 days.
16. The respondents submitted that there was no compliance with the provisions of section 40 of the *Employment Act* in the appellant declaring a redundancy. As held in *Kenya Airways Ltd v Aviation & Allied Workers Union (Kenya) & 3 others*, the procedures necessary under the law were not adhered to. Justification for the redundancy was not demonstrated. Hence, it became unlawful. There were no valid reasons or procedural fairness contrary to sections 41, 43 and 45 of the *Employment Act*. In the case of *Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 20 Others* [2018] eKLR, the court held that where the employer fails to issue and follow procedures under Section 40 of the *Employment Act*, termination of employment is not justified. It results in unfairness, as held in *Parliamentary Service Commission v Christine Mwambua* [2018] eKLR.
17. The respondents submitted that no notice was issued to the employees when the appellant faced redundancy. The appellant already knew of the termination of employment but did not communicate or apply due process. The respondents worked as casual employees for many years without a contract and were protected under Section 37 of the *Employment Act*.
18. The appeal discloses no error of law or fact to justify overturning the trial court judgment. The appeal should be dismissed with costs.

Determination

19. The role of a first appellate Court has been discussed in numerous Court decisions. In *Abok James Odera t/a. J. Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* (2013) eKLR, the Court of Appeal held that when addressing a first appeal, there is a duty to re-evaluate, re-assess, and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial court are to stand or not and give reasons either way. This position stands and binds this court.
20. It is a common cause that the respondents were terminated from their employment following a redundancy declared by the appellant.
21. Redundancy is a lawful and legitimate mode that leads to the termination of employment. Section 40 of the *Employment Act* regulates the procedures and the substantive conditions to be addressed by the employer upon a redundancy.



22. Upon notice to the union, labour officer and the affected employees, section 40(1)(f) allows the employer to pay in lieu of notice or allow the employees to serve the notice period as held in *Cargill Kenya Limited v Mwaka & 3 others* [2021] KECA 115 (KLR) that;

... Firstly, as we have found, no termination notice is required before redundancy under section 40(1)(f) of the *Employment Act*. Secondly, an examination of the letters issued by the appellant leads us to the conclusion that they indeed were notices of intended redundancy required by section 40(1)(a) of the *Employment Act*. ...

23. In this case, the appellant issued notices dated 2 June 2021 to the Labour Officer, Mombasa, indicating that they would lay off 17 employees from July to August 2021 due to prevailing economic conditions and loss of business due to the impact of COVID-19.

24. On the same date, 2 June 2021, the appellant notified the Kenya Engineering Workers Union of the prevailing situation and declared redundancy.

25. Both letters were received with an acknowledgement stamp on 2 and 3rd June, respectively.

26. Through notices dated 30 August 2021, Fredrick Mwaponda Kalama and the first category of employees were issued similar notices terminating their employment due to redundancy. The notice was to take effect on 31 August 2021. The appellant admitted this, and the respondents testified to these facts and the termination of employment on 31 August 2021.

In the notice, the appellant offered to make the following payment;

You will be paid your dues and one (1) month's salary in lieu of notice as per the CBA, less every money owed to the company and Nyumba Sacco.

27. Upon the notice dated 2 June 2021 to the union and labour office, the reasons for and intention to terminate employment due to redundancy were not challenged; the appellant adhered to the provisions of Section 40 of the *Employment Act*.

28. The respondents have not contested that a meeting was called on 30 July 2021. The discussion revolved around the end-of-contract notice to employees, and the underlying reasons, including the redundancy and economic challenges faced by the appellant, were discussed at length.

29. The union representing the employees, the Kenya Engineering Workers Union, was intricately involved. In various communications to the appellant, the union wrote letters dated 6 February 2020 and remained engaged over the operations. A shop steward was present, and the meetings were held on 30 August and 30 July 2021.

30. The learned magistrate faulted the appellant for failing to address the criteria in selecting the respondents for employment termination following the redundancy declaration. However, the list of the affected employees is attached to the notice dated 2 June 2021 to the union and labour officer. No issue was raised during the 30 July and 30 August 2021 meetings. Sharing information way before the termination of employment facilitated the exchange of information and engagement.

31. Of interest in these proceedings is that the respondents did not involve their trade union, the Kenya Engineering Workers Union, the entity that engaged in the discussions over the redundancy process. As much as it is their right to secure representation of choice, the union was intricately involved in the matter and would have assisted in giving evidence.



32. As long as the employer can discharge the duty of giving reasons for, and the extent of, the intended redundancy not less than a month before the date of the intended date of termination on account of redundancy, to that extent, the termination of employment is justified. The due process is accounted for.
33. In the case of *Africa Nazarene University v David Mutevu & 103 others* [2017] KECA 381 (KLR), the court held that under Section 40(1)(b), the employer is required to issue notice to the union, labour officer and ultimately to the affected employee. At the point of the initial notice, the employer may not know the employees to be affected, but where such is already ascertained, the notice issued can form part of the information shared. This position is reiterated in the case of *Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers (KUDHEIHA) v Aga Khan University Hospital Nairobi* [2015] eKLR
34. To severely fault the appellant because the selection criteria were not addressed while the list of affected employees was shared through notices dated 2 June 2021 is unjustified. In *Highlands Mineral Water Company Limited v Shaheen* [2023] KECA 1133 (KLR), the court underscored the need to give a statutory provision a purposive interpretation that gives effect to the legislative intention. In *Nation Media Group Limited v Munene* [2025] KECA 114 (KLR), the court held that the motions of Section 40 must be given context and not addressed alone. Each step is interlinked.
- To this extent, the appellant cannot be faulted.
- Employment was terminated lawfully, and there was a notice of pay.
- MCELRC 27, 28 and 29 of 2022 claim the second category of employees.
35. These employees were under fixed-term contracts. Their contracts were due to lapse on 31 July 2021, yet the appellant issued them notice and reasons that there would be a redundancy. Hence, there would be no renewal.
36. A term contract is lawful and legitimate. Section 10(3) of the *Employment Act* allows the employer to engage the employee on a fixed-term contract with a start and end date. It automatically lapses on its terms, as held in the case of *Kenya Red Cross Society v Omar* [2022] KECA 532 (KLR). Once a fixed-term contract ends, the employer has no obligation to justify termination of employment on other grounds beyond the lapse of the fixed period.
37. In this case, the appellant issued notice and held a meeting in consultation with the union and the labour officer, indicating the reasons leading to the non-renewal of the term contract. This was going the extra mile even though the appellant was not bound to renew the term contract beyond the end date.
38. To claim that there was unfair termination in this case by the respondents in MCELRC 27, 28 and 29 of 2022 was without merit. Their employment ended at the agreed-upon date under the term contracts.
39. In *Cargill Kenya Limited v Mwaka & 3 others* [2021] KECA 115 (KLR), cited above, the court emphasized the fact that once the employee is served with a redundancy notice and paid in lieu of notice even where the notice period is served, the employer has adhered to the procedural requirements of Section 40 of the *Employment Act*. In this regard, the second category of respondents was under fixed-term contracts, which did not require notice or reasons for termination. The payments made in notice and gratuity are generous exit packages. See *Abdala & 9 others v Zhongmei & another* [2025] KECA 26 (KLR), where the court held that no notice is necessary before termination under a fixed-term contract.



40. In the case of Registered Trustees of the Presbyterian Church of East Africa & Presbyterian Foundation v Ruth Gathoni Ngotho-Kariuki [2017] KECA 194 (KLR), the court held that;

The general position on the consequences of a fixed-term contract's expiry, as can be gleaned from various decisions of this Court and the Employment and Labour Relations Court, is that once a fixed-term contract is at an end, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period.

41. In this case, employment was terminated lawfully under Section 40 of the *Employment Act*.
42. The respondents' claims for notice pay are not justified. It was in error to award notice pay that was already factored in the payment of terminal dues.
43. Compensation is only due where there is substantive and procedural unfairness, which is not the case.
44. On the claim for gratuity, this was paid for 3 years. The background of the matter is that the respondents were on casual term employment until 1st March 2018. An employer is allowed to convert casual term employment into written term employment under Section 10 of the *Employment Act*. Once such written terms convert, any claim arising out of the causal term of employment must be addressed under the provisions of Section 89 of the *Employment Act*. Any claim for a gratuity arising out of any CBA should have been addressed within 3 years from 1 March 2018, and hence, such claims abated as of 1 March 2021.
45. The payment of gratuity is as stated by the court in the case of Murata Sacco Society Ltd v Banking Insurance and Finance Union (Kenya) [2025] KECA 173 (KLR) that gratuity is only due under a private treaty, CBA or other agreement. It is not factored under the *Employment Act* and remains gratuitous.
46. In this case, the appellant paid gratuity and relied on the CBA. Even though the CBA is not produced, the pay is gratuitous. The union with which the appellant enjoyed a CBA is not a party in these proceedings.
47. Of interest, the respondents did not plead for payment of any severance pay.
48. For the 3 years worked from March 2018 to July and August 2021, employment was terminated lawfully, and the claim for payment of gratuity for 9 years is unjustified.
49. The claim for leave allowance for 8 years is a continuing injury and should be addressed within 12 months upon cessation and in the context of section 89 of the *Employment Act*. I have scanned the record, and each respondent took annual leave, and the payment statements submitted by the appellant confirm this fact. The trial court analyzed the evidence and declined this claim.
50. The appeal was successful on costs. The court considered that the appellant paid the respondents immediately, and they each executed a letter of acceptance and collected a cheque. Under Section 45(5) of the *Employment Act*, the fact considered, the respondent should pay 50% of the costs due to the appellant in this appeal.
51. The appeal analysed above is with merit. Judgment in Mariakani MCELRC No.022 for 2022 consolidating MCELRC E023, E024, E025, E026, E027, E029, E030, E031, E032 OF 2022 is hereby set aside. The appellant is awarded 50% of the due costs for the appeal.

DELIVERED IN OPEN COURT AT MALINDI ON THIS 3RD DAY OF APRIL 2025.

M. MBARŪ



JUDGE

In the presence of:

Court Assistant: Davis Wekesa

..... and

