



Kenya Engineering Workers Union v Kenya General Industries Limited (Cause E074 of 2022) [2025] KEELRC 1496 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1496 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E074 OF 2022**

K OCHARO, J

MAY 22, 2025

BETWEEN

KENYA ENGINEERING WORKERS UNION CLAIMANT

AND

KENYA GENERAL INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed this suit on behalf of the Grievants, asserting that it maintained a recognition agreement and a negotiated Corrective Bargaining Agreement with the Respondent at all relevant times. It contended that the employment of the Grievants, its members, was unfairly terminated and sought declaratory, compensatory, and reinstatement relief for them.
2. The Respondent challenged the Claimant's claim by a Statement of Response dated 2nd May 2023, stating that it employed the Grievants at various times through individual fixed-term contracts that each expired without renewal at different intervals. Therefore, their employment contracts were not unfairly terminated; consequently, the reliefs sought cannot be granted to them.
3. After hearing the parties herein on their cases, this Court directed them to file their written submissions, which they did.

The Claimant's Case.

4. The Claimant asserted that, at all relevant times, the Grievants were employed by the Respondent on various dates and in different positions, as follows:
 - I. William Nyongesa - February 2012 to September 2019,
 - II. Hussein Issa Ambrose - November 2008 to July 2020,
 - III. Phinias Kanyaniza Masiza - January 2016 to October 2020,



IV. Paul Ogwello Ogowe - March 2010 to September 2020,

V. Mouris Ambetsa - November 2008 to July 2020.

VI. Henry Juma Wamukoya – January 2008 to December 2020, and

VII. Fadhili Mohammed Fadhili- January 2011 to August 2020.

5. All were laid off due to redundancy. The Respondent failed to comply with Section 40 of the Employment Act and the Collective Bargaining Agreement terms in dismissing them for this reason. The Claimant and the Ministry of Labour were not involved in the process. The Grievants were informed verbally, without any explanation, that their services were no longer required.
6. The Claimant was prompted to report a trade dispute to the Minister. The dispute was acknowledged, and a conciliator was appointed.
7. The Claimant asserted that during the conciliation proceedings, the Respondent admitted that it had engaged all the workers on a monthly and pensionable basis after the enactment of the new Labour laws. This engagement was confirmed in its letter dated 1st September 2010.
8. The conciliator did not release his report, and this case was initiated before its release due to concerns that it might be affected by the time limitations set out in section 90 of the Employment Act, 2007.
9. At the time of separation, the Grievants were earning;
 - a. Fadhili Mohammed Fadhili
Basic Salary27,039.85
House allowance.....4,000.00
Leave allowance.....1,819.99
Total Ksh. 32,859.84
 - b. William Nyongesa Okello
Basic Salary.....ksh. 15,954.59
House allowance.....3,300.00
Leave allowance.....1,073.87
Total Ksh. 20,328.56
 - c. Phinias Kanyangiza Masiza
Basic salary.....ksh. 20,750.30
House allowance.....4,000.00
Leave allowance.....1,396.65
Total Kshs. 26,146.95
 - d. Paul Ogwalo Ogone
Basic salary..... Kshs. 23,695.73
House allowance..... 4,000.00
Leave allowance.....1,594.90



Total Kshs. 29,290.63

- e. Morris Mbetsa Douglas
- Basic salary..... Kshs. 19,897.96
- House allowance.....4,000.00
- Leave allowance.....1,339.29
- Total Kshs. 25,237.25
- f. Hussein Issa Ambrose
- Basic salary..... Kshs. 27,039.85
- House allowance4,000.00
- Leave allowance.....1,819.99
- Total Ksh. 32,859.84
- g. Henry Wamukoya
- Basic salary.....kshs, 17,230.96
- House allowance.....4,000.00
- Leave allowance.....1,159.78
- Total Kshs. 22,390.74

10. It was argued that the Grievants are entitled to;
- a. An order of reinstatement without loss of any benefit.
- b. In the alternative,
- I. Compensation for unfair termination of employment, twelve months' gross salary,
 - II. Two months' salary in lieu of notice.
 - III. Service gratuity, 20 days' salary for each year worked,
 - IV. Twenty-three days' salary for each year of service,
 - V. Accrued leave days
 - VI. Travelling allowance.
 - VII. Costs and interest.

The Respondents' case.

11. The Respondent admitted to having a Recognition Agreement and a negotiated CBA signed on 16 November 2016. However, the CBA was not registered as required by law.
12. It employed the Grievants on diverse dates on short-term, non-continuous contracts in different capacities. Thus;
- a. William Nyongesa Okello from February 2012 to 24 September 2019
- b. Fadhil Mohamed Fadhili from August 2001 to 17th August 2020



- c. Hussein Issa Ambrose from November 2008 till 21st July 2020
 - d. Phinias Kanyaniza Masiza on 11th January 2016 to 7th October 2020
 - e. Paul Ogwallo Ogowe from June 2002 to 10th April 2020
 - f. Mouris Ambetsa from August 2009 to 24th August 2020
 - g. Henry Wamugopa from June 2014 to September 2020
13. The contracts regulated the employment of the Grievants, stipulating a leave allowance of 1.75 days per month and a one-month termination notice. The contracts did not provide a leave travelling allowance.
 14. The Grievants' contracts expired on the aforementioned dates without renewal, and they were not declared redundant, as the Claimant asserted.
 15. The Claimants referred a trade dispute to the Minister under section 62 of the [Labour Relations Act](#). This suit was filed before the conciliator's report was released; therefore, prematurely.

Submissions by the Claimant.

16. The Claimant identified the following issues for determination;
 - a. Whether parties had a valid Collective Bargaining Agreement.
 - b. Are the house allowance arrears payable to the Grievants, and if so, what amount?
 - c. What remedies are the Grievants entitled to?
17. The parties had a valid Collective Bargaining Agreement, which was duly executed by the parties and came into effect on the date agreed upon by the parties, per section 59[5] of the [Labour Relations Act](#), 2007.
18. Under the Collective Bargaining Agreement and their respective contracts, the Grievants were entitled to a monthly house allowance of KShs 4000. The pay slips presented in evidence demonstrate that the allowance was not paid to them. Consequently, they are entitled to compensation for the unpaid house allowance.
19. The Grievants are entitled to all the other reliefs sought as they are anchored on the CBA and the fact of unfair termination. To support this point, reliance was placed on Nairobi ELRC Cause No. 245 of 2014- Kenya Shoe & Leather Workers Union vs Bata Shoe Co.[K] Limited.

The Respondent's Submissions.

20. The Respondent identified two issues for determination, namely, whether the Grievants were declared redundant, and whether the Grievants are entitled to the reliefs sought.
21. It was argued that section 47[5] of the [Employment Act](#) required the Grievants to demonstrate that their termination was unfair. Since they did not meet this burden, their case should be dismissed at this stage. To support this point, reliance was placed on the case of Protus Wanjala Mutike v Anglo African Properties t/a Jambo Mutara Lodge Laikipia [2021] eKLR.
22. Furthermore, the Grievants did not provide adequate evidence to demonstrate that their employment was terminated due to redundancy. On the contrary, all indicators suggested that their contracts lapsed by effluxion of time.



23. Regarding the reliefs sought, the Respondent asserted that the rights and obligations of the parties to an agreement are derived from a contract. Given that the Grievants' employment contracts have lapsed due to the expiration of time, no claim for wrongful termination can arise. To support this assertion, reference was made to the decision of the Court of Appeal in *Presbyterian Church of East Africa and Another v Ruth Gathoni Ngotho* [2017]eKLR.
24. The contract between the parties did not provide for service gratuity calculated as 20 days' salary for each year worked; travelling allowances; 23 days' salary for each year of service; and 2 months' notice. Consequently, these benefits cannot be awarded to the Grievants. At the time of separation, none of them had accrued but unutilised leave days.
25. The CBA agreement upon which the Claimant based its case for the reliefs had not been duly registered in accordance with the requirements of the *Labour Relations Act*. Consequently, under section 59 [5] of the Act, it was not enforceable against the Respondent.

Analysis and Determination.

26. I have thoroughly reviewed the parties' pleadings, evidence, and submissions, and the following points emerge for determination:
 - I. How did the separation occur?
 - II. Can the Grievants' claim of unfair termination be sustained?
 - III. Are the Grievants entitled to the reliefs sought?
27. Undeniably, the parties took divergent positions regarding how the employer-employee relationship between them ended. The Respondent maintained that the contracts of employment of the Grievants, which were personal to each of them, lapsed by effluxion of time at their respective appointed dates, while the Claimant vehemently contended that the Grievants' contracts of employment were terminated on account of redundancy.
28. Section 47[5] of the *Employment Act* provides a reverse burden of proof unique to disputes arising under the Act or flowing from employment contracts. The section provides;

“For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination or wrongful dismissal shall rest on the employer.”
29. The section establishes a circumstance in which the burden of proof shifts between the parties, albeit in a manner that differs from standard practice. According to the provision, the employee is responsible for demonstrating prima facie that the employer's decision to terminate their employment was made without compliance with the statutory requirements of procedural fairness, or that the employer lacked a fair and justifiable reason for the termination or summary dismissal. Consequently, it is conceivable that a Claimant's case may falter if the employee fails to meet this burden of proof.
30. However, when an employee successfully fulfils their obligations as outlined in the section mentioned above, the burden of proof, determined by a balance of probabilities, shifts to the employer. The employer must substantively demonstrate the justification for the termination or summary dismissal, as stipulated in section 43 of the *Employment Act*. Additionally, the employer must establish that the reasons provided were both fair and valid, in accordance with section 45 of the Act. Furthermore, it is essential to adhere to the principles of procedural fairness, as outlined in section 41 of the Act.



The employer is also required to act with equity and justice when deciding to terminate or summarily dismiss the employee, as referred to in section 47 (5).

31. There is no dispute that the Grievants served the Respondent under short-term fixed-term contracts. The Respondent contended that there were breaks between the lapse of an expiring contract and a subsequent entry into another contract. The Claimant didn't dispute this. Further, it is not in dispute that the last contracts of employment under which they served were fixed-term and with express dates of lapse.
32. The Respondent contended that the Grievants' last contracts lapsed at their appointed dates without being renewed. In my view, the Claimant's pleadings and the evidence presented by the Grievants do not unsettle this position of the Respondent in the slightest. A critical look at them reveals an implicit admission of the Respondent's version.
33. Ultimately, I perceive no reason for this Court to conclude that the Grievants' employment was terminated in any way other than by the expiry of time.
34. Based on my findings concerning the manner of separation, I hold that the Grievants' claim of unfair termination lacks merit. This conclusion is supported by the Court of Appeal's decision in the case of *Presbyterian Church of East Africa & Another* [2017] eKLR.
35. The compensatory relief contemplated under section 49[1][c] of the *Employment Act* is only awardable to an employee who has successfully demonstrated that the termination of their employment or summary dismissal against them was unfair or wrongful. Having found that the Grievants' employment contracts lapsed by effluxion of time, they were thus not unfairly terminated, and the relief cannot be available to them.
36. The claim for notice pay was based on the premise that the termination of the Grievants' employment was unfair. Having ruled otherwise, there can be no grounds for awarding the same in their favour.
37. The order of reinstatement sought for the Grievants cannot be granted for two reasons: such an order would effectively force the Respondent to extend employment contracts that have lapsed due to expiry; and even if it were determined that a reinstatement order is warranted, it cannot be granted, as section 12 of the *Employment and Labour Relations Act* prohibits the provision of such relief three years after the date of the contested termination.
38. The Claimant substantially submitted on the unpaid house allowance, which, according to it, the Grievants were entitled to, but which wasn't paid to them. I have carefully reviewed their pleadings, the witness statements and the testimony of the witness, and see no mention of the relief or the Grievants' entitlement to it. Submissions are never a substitute for pleadings and evidence. This Court cannot grant the alleged unpaid house allowance solely based on submissions.
39. This Court notes that the Grievants have sought compensation for unpaid leave, travel allowances, and service gratuity. The Respondent asserted that these were benefits not provided for in their contracts, and therefore could not be granted to them. The Claimant argues that although the benefits were not stipulated in their contracts, they were specified in the Collective Bargaining Agreement.
40. It is imperative to point out that during the relevant period, the only Collective Bargaining Agreement apparently in existence was the one dated 16 November 2018. It had undoubtedly not been registered by the time the Grievants were leaving employment.
41. The Court agrees with the Respondent that, under section 59[5] of the *Labour Relations Act*, a Collective Agreement becomes enforceable and shall be implemented upon registration by the Court, taking effect from the date agreed upon by the parties involved. Since the agreement had not been



registered at the time the Grievants concluded their employment following the expiration of their contracts, it follows that the agreement could not serve as a basis for a claim against the Respondent

42. In light of the foregoing premises, I find no merit in the Claimant's case. It is hereby dismissed.

READ, SIGNED AND DELIVERED THIS 22ND DAY OF MAY 2025.

OCHARO KEBIRA

JUDGE

