



**Kenya Union of Commercial and Food Allied Workers v R.B
Shah Kenya Limited (Employment and Labour Relations Cause
E018 of 2023) [2025] KEELRC 1526 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1526 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
EMPLOYMENT AND LABOUR RELATIONS CAUSE E018 OF 2023
MA ONYANGO, J
MAY 22, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL AND FOOD ALLIED
WORKERS CLAIMANT**

AND

R.B SHAH KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company registered under the laws of Kenya operating carrying on business of wholesale and distribution of goods within Trans Nzoia County and its environs.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant's membership and it is the right union to represent the employees of the Respondent in labour matters.
4. The claim herein is filed by the Claimant against the Respondent on behalf of Mr. Moses Shitati Ambayo, hereinafter referred to as the Grievant.
5. It is the Claimant's case that the Grievant was employed by the Respondent on 6th October, 1996 as a casual labourer earning Kshs. 110 per day. He was later confirmed as a permanent employee and as at the time of termination of his employment he was earning a gross salary of Kshs. 17,500 per month.
6. It is the Claimant's case that on 7th December, 2021 at around 11.00 am while the Grievant was at his work station the Respondent's Director Mr. Amit Shah told the Grievant to go home and not to report back since business was slow and not performing well.



7. The Grievant reported the termination of his employment to the Claimant where he was a paid-up member. The Claimant tried to resolve the matter with the Respondent at shop floor level but there was no agreement forcing the Claimant to report a dispute to the Ministry of Labour on 8th April, 2022.
8. By letter dated 8th June, 2022 the Cabinet Secretary through the Chief Industrial Relations Officer accepted the dispute and appointed Ms. Tenya Josephine of Eldoret County Labour Office as Conciliator.
9. The Conciliator invited the parties for joint conciliation meetings on 28th June, 2022 and 5th July, 2022 which the Claimant union attended but the Respondent did not. On 6th July, 2022 the Conciliator issued a Certificate of Unresolved Dispute as the Claimant did not agree with the Conciliator's report.
10. It is the Claimant's case that the Respondent terminated the services of the Grievant without notice or payment in lieu of notice contrary to section 35 of the *Employment Act*, that the Grievant was not given an opportunity to be heard as provided in section 41 of the Act, that the Respondent ignored the procedure set out in sections 43 and 45 of the Act and that the termination of the Grievant's employment was therefore unfair and unprocedural.
11. Further, that the Claimant complied with the procedure for resolution of disputes and the case is properly before this court.
12. In the Statement of Claim dated 11th January, 2023, the Claimant prays for the following reliefs:
 - i. 24 years severance pay $17,500 \times 24 \div 30 = 210,000.00$
 3 year overtime (1 hour daily) $(936 \times 73) = 68,328.00$
 3 years public holiday (27 days x 583) = 15,741.00
 7 days worked in December, 2021, $(7 \times 583) = 4,081.00$
 1 month notice in lieu = 17,500.00
 1 year leave $17,500 \times 21 \div 30 = 12,250.00$
 12 months compensation $1700 \times 12 = 210,000.00$
 Total = 537,900.00
 - ii. Certificate of Service
 - iii. cost of the suit to the Claimant
 - iv. any other order the Honourable Court deems fit to address the cause of justice.
13. The Respondent filed a Response dated 3rd March, 2023 in which it denied that it employed the Grievant on or before 6th October, 1996 as a casual labourer. The Respondent avers that the Grievant's employment, if at all terminated, was due to persistent theft of the Respondent's goods by the Grievant and his accomplices, referring to a letter dated 24th November, 2012 from Charlie Agencies Limited, a security firm.
14. The Respondent denied all other averments in the Statement of Claim and put the Claimant to strict proof.
15. At the hearing the Claimant called the Grievant who testified as CW1. The Respondent called Amit R. Shah, a director of the Respondent. The parties thereafter filed and exchanged written submissions.



Claimant's Case

16. at the hearing Moses Shitati Ambayo, Grievant, reiterated the averments in the Memorandum of Claim and his witness statement.
17. He further testified that he was not issued with a letter of appointment, that his salary was paid in cash and he signed for the same on a voucher which was kept by the Respondent.
18. Under cross examination the CW1 stated that he had no evidence in writing that his salary was Kshs. 17,500 per month as he signed on a voucher and the Respondent did not give him a copy.
19. The Claimant further stated that he had no written evidence that his employment was terminated by the Respondent on 7th December, 2021 as the termination was verbal. He further stated he had no written evidence that there was a conciliation meeting as he left the minutes at home.
20. CW1 further testified that he had no written evidence in support any of the prayers in the Statement of Claim.

Respondent's Case

21. RW1 adopted his witness statement dated 9th March, 2023 and the documents filed with the Response to the Claim. He testified that he did not dismiss the Grievant, that the Grievant stole goods from the shop and went away without saying he would report back to work.
22. RW1 further testified that he had no contract with the Grievant to show that the Grievant was employed on permanent and pensionable basis.
23. Under cross examination RW1 stated that the Grievant did not return to work after he ran away in 2012. He further testified that he did not attend conciliation meetings called by the Conciliator.
24. RW1 further testified that he originally paid the Grievant as a casual labourer but later paid him monthly. He testified that he did not send the Grievant away on 7th December, 2021.

Analysis and Determination

25. I have considered the pleadings, the evidence adduced in court and the submissions as well as authorities cited and relied upon by the parties. The issues arising for determination are whether the Respondent employed the Grievant, when and how the Grievant left employment, whether the termination of the Grievant's employment was unfair and if he is entitled to the reliefs sought in the Statement of Claim.
26. The Grievant testified that he was employed by the Respondent on 6th October, 1996 as a casual and was later confirmed as a general worker. The Respondent in its Response to the Statement of Claim denied that there was ever any employment relationship between the Respondent and the Grievant.
27. In what would appear to be a contradiction, the Respondent averred that the Grievant absconded duty in 2012 after he was caught stealing from the Respondent's shop where he was working. It filed a copy of a letter from Charlie Agencies Ltd T/A Charlie Security Services which is reproduced below:

Charlie Agencies Ltd

24th November, 2012

The Director

R.B.. Shah (K)LTD



BOX 426-30200

Kitale

Dear Sir,

RE: Moses Shitati Ambayo Id No. XXXXXXXX

Please kindly note that the above person was spotted on 23rd of November, 2012 while trying to sneak out of the shop with some goods in a gunny bag. This happened on 23rd of November, 2012 at about 6:30 pm.

This employee rushed back to the shop on seeing the security guard and Mr. Pritesh near the main door to the shop.

The matter was investigated on 24/11/2012 at 8:15 and the employee Moses Shitati Ambayo admitted stealing the goods worth Ksh.18,765 from your shop. However, he apologized for the offence and promised never to repeat it again. He also promised to pay Ksh.30,000 (Monthly payment of Kshs. 4,000) for the theft.

Although you have pardoned the employee but he must be monitored very closely such that any slightest mistake must see him out of employment without further warning.

Yours faithfully,

Signed

Stephen Koskey

Operations Manager

28. From the contents of the letter it is clear that the Grievant was an employee of the Respondent. The final paragraph of the letter specifically states that after the incident the Respondent pardoned the Grievant after it was agreed that the sum of Kshs. 30,000 would be recovered from his salary by installments of Kshs. 4000 per month as penalty for the goods worth Kshs. 18,765 which he was alleged to have attempted to steal and which notably, he did not steal as the attempted theft was discovered and the goods recovered.
29. In the Notice of Motion dated 3rd June, 2024 the Respondent attached a Statement of Amit Raichand Shah as Exhibit SKJ2 to the affidavit of Songole K. Joshua, counsel for the Respondent sworn on 3rd June, 2024. In the witness statement the said Amit Raichand Shah states:
 - i. I am the director of the respondent herein and by virtue of this position, I am conversant with matters of employment within the company.
 - ii. The claimant herein worked as a casual laborer for the respondent.
 - iii. On 7th December 2021, at around 12:30 in the afternoon, the claimant in the company of other employees stole assorted goods from the respondent's shop.
 - iv. Upon being caught, they confessed to the theft before the county Labour officer.
 - v. On the said date, I asked the employees, including the claimant, to go for their lunch break.
 - vi. I became suspicious and asked them to stand and be checked to ensure they were not carrying anything outside.



- vii. They both refused to be checked and started behaving suspiciously. When I asked them to reveal all they had on themselves, they became aggressive, pushed me and managed to run away.
 - viii. In the meantime, we called security and checked the shop. We found that crates of sodas had missing sodas.
 - ix. Under the chair, we found 6 bottles of Minute Maid (400ml) and 2 bottles of coke (500ml) missing.
 - x. In the meantime, we called security and checked the shop. We found that crates of sodas has missing sodas.
 - xi. Under the chair, we found 6 bottles of Minute Maid(400ml) and 2 bottles of coke (500ml) missing.
 - xii. Thereafter, the claimant absconded from work and has not reported back since.
 - xiii. The theft was reported at Kitale Police station and the reason as to why the claimant has not been arrested is that he is currently at large.
 - xiv. That is all.
30. From paragraph 3 of the witness statement of Amit Raichand Shah it is clear that the Grievant was an employee of the Respondent and left employment on 7th December, 2021.
31. I thus find that the Grievant was indeed an employee of the Respondent and that he left employment on 7th December, 2021. I further find that the Grievant's employment was terminated without him being subjected to any disciplinary process and the termination was therefore unlawful in terms of section 45(2) of the *Employment Act*.

Remedies

32. Having found that the Grievant was an employee of the Respondent from 1996 to 2021 and there being no evidence that the Respondent remitted NSSF on his behalf, he is entitled to service pay by virtue of section 35(5) of the Act which I award him at 15 days per year worked for 25 years (24x8750) Kshs. 210,000
33. The Claimant did not adduce any evidence to prove that the Grievant worked for the overtime hours that he claims. The same is declined.
34. The Claimant did not prove that the Grievant worked on public holidays. The prayer is declined.
35. The Grievant is awarded one years' annual leave of 21 days as claimed at Kshs. 12,250 as the Respondent did not adduce any evidence that the Grievant took leave for the last year worked.
36. The Grievant is awarded salary for 7 days worked in December, 2021 at Kshs. 4,081.
37. Having worked for about 25 years and having been unfairly terminated, I award the Grievant maximum compensation at Kshs. 210,000.
38. The Respondent shall pay the Claimant's costs for this suit assessed at Kshs. 50,000.
39. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 22ND DAY OF MAY 2025

MAUREEN ONYANGO



JUDGE

