



REPUBLIC OF KENYA



KENYA LAW
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Kenya Engineering Workers Union v East Africa Cables Limited (Cause E492 of 2020) [2025] KEELRC 1538 (KLR) (21 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1538 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E492 OF 2020
HS WASILWA, J
MAY 21, 2025

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
EAST AFRICA CABLES LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 3rd September 2020 on grounds of unfair and unprocedural termination of contract and refusal by the employer to pay terminal benefits as per the CBA to Kyalo Kilonzi and Dancum Gatuguta. The Claimant union prays for judgment against the Respondent THAT: -
 1. The Honourable Court deem fit and find that the terms of service offered to the two grievants herein were against the parties CBAs and declare them to be Null And Void.
 2. The Honourable Court deem fit and find that the continuous alleged casual and fixed contract to be permanent in line with the parties CBAs.
 3. The Honourable Court find the termination of the two grievants herein to be unfair and unprocedural and award the grievants herein as enunciated under paragraph 4.3 of the Memorandum of Claim:
 - a. Grievant no. 1 (Kyalo Kilonzi) a total amount of Kshs. 1,138,785
 - b. Grievant no. 2 (Dancum Gatuguta) a total amount of Kshs Kshs. 1,138,785
 4. The Honourable Court grants prayer no. 4.3 deem fit and issue an order against the Respondent to pay the amount with interest at the Court's rate for the period she has held to the solid benefits within the shortest time possible.



5. The Respondent to issue the grievants with certificates of service.
6. The Respondent be ordered to meet the costs of this suit
7. Any other relief the Honourable Court may deem fit to grant.

Claimant's Case

2. In respect to the 1st grievant, Kyalo Kilonzo, the Claimant union avers that the Respondent engaged him on continuous casual contracts on 6th April 2007 for a period of 8 years as carpenter in its technical department at a daily wage of Kshs 248, way below the parties CBAs.
3. The Claimant union avers that the 1st grievant was issued with the first fixed term contract on 10th September 2014 and the last was to expire on 31st July 2018.
4. During the first contract, the 1st grievant was paid a basic salary of Kshs 16,887 and house allowance of Kshs 4,1999 and during the last one he was earning a basic salary of Kshs 23,616 and house allowance of Kshs 7,000. The 1st grievant was paid below the CBA salaries and given the wrong grade which it shall be demanding.
5. The Claimant union avers that 1st grievant was served with a clearance certificate on 31st July 2018 and informed by the Respondent that he is no longer in service and instructed to hand over all of the Respondent's property under his custody.
6. In respect to Dancun Gatuguta, 2nd grievant, the Claimant union avers that he was engaged by the Respondent as a Winder in the technical department on 23rd July 2008 on alleged continuous casual contracts earning a daily wage of Kshs 248 paid after every 2 weeks.
7. The Claimant union avers that the 2nd grievant continued his service without any letter until he was issued with a casual employment letter dated 24th May 2013 earning Kshs. 413.10 per day below the parties CBA.
8. The Claimant union avers that after expiry of the contract on 11th August 2012, the 2nd grievant continued his service until he was issued with a fixed term contract dated 24th September 2014 at a basic salary of Kshs 16,887 and house allowance of Kshs 4,100. This remuneration was reviewed on 1st September 2014 vide the Respondent's letter dated 1st December 2014.
9. The Claimant union avers that on 4th November 2016, the 2nd grievant was issued with 2 contracts for 6 months and 8 months, the last one expiring on 31st July 2018; he was earning a consolidated salary of Kshs. 25,497 per month.'
10. It is the Claimants union case that the 2nd grievant was issued with a clearance certificate on 31st July 2018 and asked to return all the Respondent's properties in his possession.
11. The Claimant union avers that during the period the grievants were leaving employment there was a long-standing dispute between the parties in Cause 793 of 2018 at Nairobi, but when parties embarked on an out of court settlement, they signed an agreement on 14th September 2018 in respect to a new grading and when arrears shall be paid.
12. The Claimant union avers that when they did not agree at their level, it invoked Section 62 of the [Labour Relations Act](#) by reporting the dispute to the Ministry of Labour which was accepted under reference MLSS/LD/IR/13/45/2018 and a conciliator, Mr. Nelson Kimeu, appointed.



13. The Claimant union avers that the parties made their submissions but no amicable solution was reached hence they were issued with a certificate of unresolved dispute.
14. The Claimant union avers that the grievants were its members and the Respondent used to deduct and remit union dues to the Claimant from their salaries.
15. The Claimant union avers that the parties CBAs on CASUALS clause states that a casual employee who has completed 'S' continuous working months with the employer shall qualify to permanent employment, hence, the grievants need to be treated as permanent employees.

Respondent's Case

16. In opposition to the Claim, the Respondent filed a Statement of Response dated 30th March 2021.
17. The Respondent avers that the grievants were employed on a fixed term basis for a period of 6 months earning monthly wages of Kshs 16,887 together with house allowance of Kshs 4,100 and later the salary and house allowance was reviewed upwards.
18. It is the Respondent's case that the grievants signed the letter of offer and accepted the terms and conditions contained therein and in the contract of employment, therefore, they were not induced or manipulated but signed on their own volition.
19. The Respondent avers that the grievants cleared with it on 31st July 2018 upon expiry of their fixed term contracts and they collected their lawful terminal benefits.
20. It is the Respondent's case that the grievants were employed on a fixed term contracts which was to run for a period of 6 months and renewed depending on the availability.

Evidence in Court

21. The Claimant (CW1) adopted his witness statement dated 15th September 2022 as his evidence in chief and produced his list of documents dated 15th September 2023 as his exhibits marked 1-5.
22. Upon cross-examination, CW1 testified that he was paid all his dues in accordance with the termination letter.
23. During re-examination, CW1 testified that he signed the disclaimer form but indicated 'without prejudice' because he was told he was to sign in order to receive his payment.
24. The Respondent's witness (RW1) James Chomba stated that he works as the Respondent's Human Resource Manager. He adopted the witness statement and list of documents dated 14th September 2023 as his evidence in chief.
25. During cross examination, RW1 testified that he joined the Respondent Company in September 2024 and was not working for the Respondent when the Claimant's employment was terminated on account of redundancy.
26. RW1 testified that he does not have any list of employees declared redundant and that the letter dated 28th October 2021 to the labour office did not refer to a declaration of redundancy of employees as it only mentions one employee.
27. RW1 testified that the Respondent has not produced any audited report to show that the company was not doing well and neither does it have any evidence that the Company ceased to exist.



Claimant's Submissions

28. The Claimant union submitted that four issues: whether the fixed term contract of the grievants were legal and binding; what was the rightful remuneration of the grievant herein; whether termination of the grievants was in line with the parties CBA and the labour laws; and whether the prayers sought by the Claimant are merited and grantable.
29. The Claimant union submitted that the fixed term contracts of the grievants are not legal and binding as it is against the law specifically Sections 59 (1) (b) and (3) of the *Labour Relations Act* which provides that a collective agreement binds for the period of the agreement all unionisable employees employed by the employer, group of employers or members of the employers' organisation party to the agreement. This gives the grievants the green light that they were entitled to full benefits of the parties CBA.
30. The Claimant union submitted that the grievants having been engaged and paid after 2 weeks before being engaged for monthly pay, the fixed contracts were not provided in law and the CBA and should be declared null and void. It relied on *Kenya Shoe & Leather Workers Union v Bata Shoe Co. (K) Limited [2017] KEELRC 1935 (KLR)* where the court determined as follows on whether the Respondent has a valid justification to employ grievants on fixed term contracts, while keeping other employees on permanent and pensionable basis:
 - “ 27. Provided the CBA herein is in place, the respondent violates its terms when it employs a unionsable employee on fixed term contract. Nothing justifies a breach of contract between the parties unless the justification is an express term of the contract.
 28. In conclusion, the grievants who are still in employment of the respondent provided are unionsable must be converted from fixed term contract to permanent and pensionable terms. The court orders accordingly.”
31. On the second issue, the Claimant submitted that the Respondent did not tender any proof in evidence to demonstrate the selection criteria to determine the employees to be laid off as provided under Section 40 (1) (c) of the *Employment Act*. Section 40 (1) (c) provides that the employer in the selection of employees to be declared redundant must have due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy.
32. The Claimant produced a disclaimer form executed by him on a 'without prejudice' basis and it is the Claimant's submission that having executed the documents on a without prejudice basis, it cannot be used against the Claimant. The Claimant executed the same and reserved his right to take further action as he deems fit.
33. The Claimant submitted that the it is settled in law that a discharge executed on a without prejudice basis does not preclude a party from seeking legal recourse on issues requiring adjudication such as the claim herein. This was settled in *Republic v Attorney General & another ex-parte Macharia Waiguru [2017] KEHC 5201 (KLR)* where the Court held: “Upon signing the applicant did not declare that he was signing it conditionally that any further interest that accrued be paid before the matter is put to rest; nor was the discharge voucher signed on a “without prejudice basis”; This court reiterates that the applicant is a fully-fledged advocate and is not illiterate so as to claim that he had no benefit of legal advice.”



34. The Claimant submitted that the Respondent's conduct of coercing him to sign an undated resignation letter informed his decision to sign the disclaimer form on a without prejudice basis and further because this termination was unfair and un-procedural.

Respondent's Submissions

35. The Respondent submitted on two issues: whether the redundancy was lawful or it amounted to unfair termination; and whether the claimant is entitled to the reliefs sought
36. On the first issue, the Respondent submitted that pursuant to Section 40 of the *Employment Act*, it informed the Claimant among other employees of the intended redundancies vide notices and also notified the Labour Office on 28th October 2021 of the declaration of redundancy of the Claimant herein. This evidence was not controverted by the Claimant.
37. It was submitted for the Respondent that the redundancy was both procedurally and substantively fair and justified, as the Respondent were within its right to organize and restructure its functions to ensure efficacy and viability both functionally and financially as stipulated in the redundancy notices to the affected employees and labour office and totally in line with the labour laws.
38. The Respondent submitted that followed the selection criteria under the *Employment Act* considering the operational requirements of the Company. The Respondent satisfied the requirements of the Act with regards to ability, skill, diligence, honesty and reliability in the selection of the Claimant who had worked for the Respondent for less than a year.
39. On the second issue, the Respondent submitted that the Claimant cannot claim under redundancy and then claim unfair termination. Additionally, the Claimant was paid his terminal dues for lawful termination on account of redundancy, therefore, a claim for compensation which is not particularized in the claim should be declined.
40. The Respondent submitted that the prayer for notice pay is not merited as it is not in dispute that the Claimant was paid notice pay.
41. The Respondent submitted that there is neither a breakdown of amount due for leave days earned but not taken nor proof that he never proceeded for any leave or never paid his leave balance for the period worked. Further, the Claimant worked for the Respondent company for less than 12 consecutive months as provided for under Section 28 of the *Employment Act*.
42. The Respondent submitted that the Claimant has not adduced proof of any salary arrears and there is no tabulation of the same in his pleadings. The only tabulation is in the Respondent's list of documents which shows the Claimant dues and what was paid and acknowledged.
43. The Respondent submitted that a certificate of service prepared and issued to the claimant in compliance with Section 51 of the *Employment Act*.
44. It is the Respondent's submission that it was never served with any demand letter before the filing of this suit, therefore, the Claimant is not entitled to the costs of the claim or interest thereof.
45. I have examined all evidence and submissions of the parties herein. The Claimant have submitted that the grievants worked for them for a period of over 9 years as casual employees and so they should be considered as permanent and pensionable employees.
46. The Claimant produced evidence that as at 30th January 2015 Gatuguta Chege was being commended for good performance in 2014 appraisal year. He was thus paid a bonus of 16,886.40 for the period.



47. In 2012, Gatuguta Chege was also working for the Respondent as a casual employee and was paid 413.10/- per day for each day worked. On 5/5/2015 he was now placed on a one year contract and paid 23,176/- per month.
48. Kyalo Kilonzi was also employed on contract on a 6 month contract with effect from 10th September 2014 earning a salary of 20,987/=. There is however no evidence produced by the grievants that they were employed by the Respondents from 2007 as submitted herein.
49. The 1st contract submitted by the grievants show that they served on contract basis from 2014.
50. The contracts issued from 2014 were fixed term with a definite start and end period which the grievants accepted and signed against and the last of which ended on 31st July 2018. The grievants have averred that they were unfairly terminated by the Respondent but have not exhibited any termination letter. What is evident is that their fixed term contracts ended by effluxion of time and therefore the claim of an unfair termination is unfounded.
51. Having found as above, I find the claim by the Claimant of an unfair termination untenable and the remedies sought are not available to them.
52. I therefore find the claim unsustainable. The same is dismissed accordingly. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST OF MAY, 2025.

HELLEN WASILWA

JUDGE

