



**Kenya Union of Commercial and Food Allied Workers v Jamii Distributors
E.A. Ltd & another (Employment and Labour Relations Cause
E021 of 2023) [2025] KEELRC 1413 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1413 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E021 OF 2023
MA ONYANGO, J
MAY 15, 2025**

BETWEEN

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

AND

JAMII DISTRIBUTORS E.A. LTD 1ST RESPONDENT

SARUJA SUPPLIES LTD 2ND 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 1st Respondent is a business registered under the laws of Kenya dealing in wholesale and distribution of goods within Uasin Gishu County and its environs.
3. The 2nd Respondent is a company dealing in supply of labour services to various establishments within Uasin Gishu County and its environs.
4. 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.
5. The Claimant avers that it does not have a recognition agreement with the 1st Respondent but the 1st Respondent has been deducting and remitting union dues through the 2nd Respondent since April, 2023.
6. The Claimant further avers that the 1st Respondent, acting in bad faith, transferred some employees who were members of the Claimant to the 2nd Respondent but did not notify the Claimant of the transfer of the employees to the 2nd Respondent.



7. It is alleged that the Respondents carried out redundancies but served only three employees with redundancy letters while the rest were informed verbally that they had been rendered redundant.
8. The Claim herein was filed by the Claimant vide a Memorandum of Claim dated 10th August, 2023 and filed in court on 14th August 2023 on behalf of seven Grievants namely; Kenneth Wanyama Masibo, David Kibiwott Kemei, Linda Jelagat, Eli Kibiwott Koech, Juliet Wanjala Nasimiyu, Evans Koech and Denis Kiptoo.
9. According to the Claimant, the redundancies were intended to punish union members due to their trade union activities and in particular to subvert the right of the employees to belong to a union which is their fundamental right.
10. The Claimant avers that the 2nd Respondent issued letters of termination of the employment of the Grievants on account of redundancy on 28th July 2023 and the termination was to take effect on 31st July 2023.
11. The Claimant filed the instant suit seeking that the court: -
 - i. Declares the redundancies as unfair and unlawful
 - ii. Order the Respondents to reinstate the affected employees to their previous employment without loss of any benefits
 - iii. Order the Respondents to pay the accrued leave dues and final benefits to its affected employees
 - iv. Grant any other relief deemed fit and just to meet the ends of justice
 - v. Costs of the claim be awarded to the Claimant
12. The firm of Kiproop Luseria & Company Advocates entered appearance for both Respondents vide a Memorandum of Appearance dated 30th August 2023. In response to the Claim, the Respondents filed a Response dated 16th October 2023.
13. In the response the Respondents admit that the Claimant indeed approached the 1st Respondent seeking recognition but the 1st Respondent referred the Claimant to the 2nd Respondent who according to the 1st Respondent, was the employer of the 1st Respondent's workers.
14. It was further averred that the 1st Respondent is not in a position to handle employment issues of the Grievants herein as they are not its employees.
15. It was pleaded for the 2nd Respondent that the letters issued to three of its employees were not redundancy letters but re-deployment letters. The Respondents therefore denied that the Grievants were terminated from employment on account of redundancy as alleged by the Claimant.
16. The Respondents urged the court to dismiss the Claimant's claim with costs.
17. The suit was heard on 15th February 2024. The Claimant called Kennedy Wanyama Masibo in furtherance of its case while the Respondents' witness, Jacton Kiboi Ereka testified on 5th March 2024.
18. At the close of the Respondents' case, the court directed parties to file written submissions. I have perused the record and found only submissions for the Respondents dated 12th June 2024.
19. Kennedy Wanyama Masibo testified as CW1 and stated that he was employed by the 1st Respondent in October 2020 as a general labourer at a salary of Kshs 15,000. He testified that he did not know the 2nd



- Respondent. It was his testimony that on 28th July 2023, he received a letter from the 2nd Respondent informing him that he had been terminated from employment.
20. On cross examination, the Claimant stated that he was terminated from employment by the 1st Respondent because of his affiliation with the Claimant. That he was paid one months' salary.
 21. The Respondents witness, Jacton Kiboi Ereka testified as RW1 and introduced himself as the director of the 2nd Respondent. He adopted his witness statement recorded on 16th October 2023 as his evidence in chief. He stated that he entered into an agreement with the 1st Respondent for supply of labour services whereby he outsourced workers for the 1st Respondent.
 22. RW1 denied issuing redundancy notices to the three Grievants. He testified that the 1st Respondent asked him to reduce the staff for two months and that he informed the three Grievants that he was stopping their services at Jamii Distributors. It was his evidence that the said Grievants were not terminated from employment of the 2nd Respondent. He further stated that he was to pay them one months' salary in lieu of notice. With regard to the other four Grievants who are alleged to have been terminated verbally, RW1 stated that they were casual employees who were paid on a daily basis.
 23. It was the evidence of RW1 that two of the Grievants, Juliet and David, were re-engaged by the 2nd Respondent within one month but Kenneth could not be reached on phone.
 24. He also stated that the 2nd Respondent was amenable to re-engaging the Grievants to its employment and to pay them their benefits.
 25. On cross examination, RW1 admitted that all the Grievants were employees of the 2nd Respondent. He however denied the allegation that he dismissed them from employment on account of redundancy and stated that he was terminating them from Jamii Distributors and not from employment with the 2nd Respondent. He stated that the 2nd Respondent deducted and remitted union dues on account of the 2nd Respondent's employees who were members of the Claimant.
 26. On re-examination, RW1 stated that the Grievants were not members of the Claimant and that there is no document from the union to Saruja to inform it of the employees who were members of the union.

Determination

27. From the pleadings, the evidence and the submissions on record, the issues that fall for my determination are whether the termination of the Grievants was wide redundancy and if so, what reliefs should issue.
28. At the onset, it is important that the court establishes the relationship between the parties herein. The Claimant in its Memorandum of Claim averred that it does not have a recognition agreement with the 1st Respondent but maintained that the 1st Respondent has been deducting and remitting union dues through the 2nd Respondent since April 2023. On the other hand, the Respondents in their response to the Memorandum of Claim averred that the 1st Respondent outsources its workers from the 2nd Respondent and that the Grievants herein are employees of the 2nd Respondent and not the 1st Respondent. This position was asserted by RW1 who stated that the 2nd Respondent supplies employees to the 1st Respondent.
29. From a cursory look at the documents filed by the Claimant particularly the letters referred to by the Claimant as redundancy notices issued to the three Grievants, it is clear that the said letters were issued by the 2nd Respondent. Further, RW1 in cross examination acknowledged that the 2nd Respondent deducted and remitted union dues to the Claimant. To this extent, there is no doubt that the Grievants



were employees of the 2nd Respondent and despite there being no recognition agreement between the Claimant and the 2nd Respondent, the 2nd Respondent still remitted union dues to the Claimant and was thus aware that the employees were members of the Claimant. The allegation by RW1 during re-examination that the Grievants were not members of the Claimant is therefore not true. I also find that the Grievants were originally in the employment of the 1st Respondent before being transferred to the 2nd Respondent as admitted by RW1.

Whether the Grievants were terminated from employment vide redundancy

30. The Respondents' witness, RW1 denied issuing the three Grievants with redundancy notices and maintained that he issued them with re-deployment letters. RW1 stated that the 1st Respondent asked him to reduce the staff for two months and that the 2nd Respondent informed the three Grievants, namely Kenneth Wanyama Masibo, David Kibiwot Kemei and Juliet Wanjala Nasimiyu, that it was stopping their services at Jamii Distributors but did not terminate them from employment with the 2nd Respondent. RW1 stated that after issuing them with the letters, Juliet and David were re-employed within one month
31. With regard to the other four Grievants, Linda Jelagat, Eli Kibiwott Koech, Evans Koech and Dennis Kiptoo whom the Claimant alleged were declared redundant verbally, RW1 stated that they were not terminated from employment as they were casuals and were paid on a daily basis.
32. The Grievants relied on the letters issued on 28th July 2023 to aver that they were unfairly rendered redundant. The letters issued to the three Grievants are similar in content and for context, the letter issued to CW1 is reproduced hereunder: -

28/07/2023

To

Kenneth Wanyama Masibo

ID No. 28XXXX47

Re: Re-Deployment

As per the meeting we had with M/s Jami Distributors (E.A) Ltd, we were informed that as business is very low in market conditions, Jamii has decided to reduce its manpower to control the overheads in this crucial period.

As per the above subject, we hereby give you a termination letter with one month salary in lieu of one month notice.

We shall check and arrange a placement somewhere else soon and keep you updated.

Your last day of working with M/S Jamii Distributors (E.A) Ltd is dt. 31.07.2023.

You hereby advised on the same day i.e.. 31.07.2023 come to our office viz.. M/S Saruja Supplies Ltd and collect your salary for July 2023 along with one month salary in lieu of notice from our offices.

Thanking you

Yours faithfully,

M/S Saruja Supplies Ltd

33. As can be discerned from the above letter, the reason given for the termination of the Grievants from employment was that the 1st Respondent herein had decided to reduce its manpower. Although RW1



denied that the Grievants were terminated from employment on account of redundancy, the contents of above letter leaves no doubt that the Grievants were declared redundant.

34. Section 2 of the *Employment Act*, defines the term redundancy to mean;-

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment”.

35. In the case of *Kenya Airways Ltd v Aviation & Allied Workers Union Kenya and 3 others Civil Appeal No 46 of 2013*, the court of Appeal observed as follows;-

“Loss of employment by redundancy has to be at no fault of the employee and arises where services of an employee are superfluous through the practice commonly known as abolition of job or occupation and loss of employment”

36. Section 40 (1) of the *Employment Act* provides for termination of employment on account of redundancy as follows ;-

“ 40. Termination on account of redundancy

1. An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
 - a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
 - c. the employer has, in the selection of employees to be declared redundant had 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;
 - d. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;



- e. the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- f. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- g. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.”

37. From the letter reproduced above, the 2nd Respondent notified the three Grievants of their redundancy through the letters dated 28th July 2023. The letters indicated that the last working day was 31st July 2023. Evidently, the notice period given to the Grievants was short of the 30 days' notice prescribed under Section 40(1) (b) of the *Employment Act*. The other requirements under section 40 of the Act such as notification to Labour Officer and payment of terminal dues including severance pay were not observed.
38. With regard to the other four Grievants who the Claimant alleged were verbally terminated from employment on account of redundancy, RW1 on cross examination admitted that they were employees of the 2nd Respondent. Having analyzed the evidence of RW2, I am convinced that all the Grievants herein were terminated from employment on account of redundancy. RW1 told the court that he was willing to re-engage all the Grievants who had left employment.
39. It is therefore my finding that the 2nd Respondent unfairly terminated the Grievants on account of redundancy as it did not comply with the provisions of Section 40(1) of the *Employment Act*.

What reliefs should issue?

40. Having found that the 2nd Respondent did not comply with the requirements with section 40(1) of the *Employment Act*, I declare that the termination of the Grievants on account of redundancy was unprocedural and therefore unfair.
41. The prayer for an order that the Respondent reinstates the affected employees to their previous employment without loss of benefits is granted but as re-engagement. This is based on the evidence of RW2 in the court where he stated that the 2nd Respondent was ready to re-engage the Grievants herein as its employees. The re-engagement is with effect from 1st June, 2025.
42. The 2nd Respondent did not deny that the Grievants were not given paid annual leave or paid in lieu thereof. The Respondents are directed to pay all the Grievants in lieu of any leave outstanding for the period they have been in the employment of both the 1st and 2nd Respondents. The Grievants will also be paid severance pay for the years worked for both the 1st and 2nd Respondent to the date of termination of their employment on 31st July, 2023 in view of the evidence of RW1 that their services were transferred from the 1st to the 2nd Respondent.
43. The Claimant's costs for this claim is assessed at Kshs 50,000 and shall be borne by the 2nd Respondent.
44. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 15TH DAY OF MAY 2025

MAUREEN ONYANGO



JUDGE

