



**Namba v Ken Knit Kenya Limited (Employment and Labour Relations Cause 152 of 2017) [2025] KEELRC 1363 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1363 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 152 OF 2017**

**MA ONYANGO, J**

**MAY 9, 2025**

**BETWEEN**

**LAWRENCE NAMBA ..... CLAIMANT**

**AND**

**KEN KNIT KENYA LIMITED ..... RESPONDENT**

**RULING**

1. Vide an application dated 14<sup>th</sup> June, 2024, the Applicant seeks the following orders:
  - a. The Honourable court be please to find that judgment and orders of 8<sup>th</sup> June, 2022 are still pending implementation and/or execution by the Respondent.
  - b. upon grant of prayer (3) above, the Claimant's calculations dated 10<sup>th</sup> of January, 2023 amounting to Ksh.1,398,275..26/= annexed herein be adopted as the correct calculations.
  - c. The Claimant's terminal dues under section 40 of the *Employment Act*, pension and terminal benefits payable to an employee who works up to normal retirement be tabulated and/or calculated by this Honourable court.
  - d. In the alternative, an order be issued by this Honourable court directing Uasin Gishu Labour Officer to tabulate Claimant's terminal dues under section 40 of the *Employment Act*, pension and terminal benefits payable to an employee who works up to normal retirement and the guidance of this Honourable court and file a report.
  - e. This Court do issue such other orders/directions as it may deem fit and just to issue to serve the ends of justice in the circumstance herein.
  - f. Costs of the application to be borne by the Respondent.
2. The grounds in support of the application are that:



- a. Sufficient cause exists to warrant grant of orders sought.
  - b. The Claimant will suffer prejudice and irreparable loss if this application is not granted as prayed.
  - c. The application is brought in utmost good faith.
  - d. That this Honourable court has wide and unfettered discretion to allow this application in the interest of justice and fairness.
3. The application is supported by the affidavit of Lawrence Namba Mmhehisworn 14<sup>th</sup> June, 2024 in which he states that vide a judgment delivered on 8<sup>th</sup> June, 2022 by Judge Abuodha J.N. the court gave directions that his services be terminated as if he was declared redundant and payment formula under section 40 of the Employment Act or the CBA if any, be applied in calculating his terminal dues. That he shall in addition be entitled to pension and terminal benefits payable to an employee who works up to normal retirement.
  4. The Applicant states that his advocates prepared a tabulation of his terminal dues in accordance with the directions of the court and on 10<sup>th</sup> January, 2023 his advocates addressed a letter to the Respondent's advocates to pay.
  5. That the Respondent's advocates responded by letter dated 18<sup>th</sup> January, 2023 and 24<sup>th</sup> January, 2023. That after several correspondence was exchanged between the advocates and before consensus was reached the Respondent's advocates sent a cheque No. 8446 of Kshs. 137,560 to the Applicant's advocates without explaining how the amount was arrived at. According to the Applicant the Respondent has not complied with the directions of the court as per judgment of 8<sup>th</sup> June, 2022.
  6. On 14<sup>th</sup> October, 2024 the court directed that the application be disposed of by way of written submissions.
  7. From the record there is no response to the application and only the submissions of the applicant are on the file.
  8. In view of the fact that what is in issue is whether or not the Respondent has complied with the judgment of this court, there is no prejudice in the court determining the application without the Respondent's response and submissions.
  9. From the record, there is a judgment dated and delivered on 11<sup>th</sup> June, 2021. In the Judgment the court ordered as follows:

The Claimant was injured on 25<sup>th</sup> June, 2014 and had never been to work since 9<sup>th</sup> December, 2015. That is to say for almost four years when the matter came up for trial. Employment is not servitude. It can be brought to an end through normal termination, dismissal or through natural causes such as death or incapacity or an employee making it impossible for such employee to continue working.

This seems to be the situation before the Court. It does not make business sense to consider the Claimant still as an employee of the respondent yet he is not performing any duties. On the other hand, it would be unreasonable on the part of the Claimant to insist on working for the respondent yet as a result of his injuries the respondent is unable to identify suitable duties for him.

In the circumstances the Court will not make any finding on whether there is any unfair termination of service as sought by the Claimant but would instead direct that the Claimant



and the respondent with the assistance of Counsel in the matter undertake a joint medical examination of the Claimant with a view to ascertaining his suitability to continue working for the respondent in the position he was employed. If not suitable, parties are hereby directed to discuss exit arrangements between the parties to the employment contract including payment of appropriate and commensurate terminal dues to the Claimant.

The matter is set for mention 60 day from the date of this judgement (that is to say on the 30<sup>th</sup> day of September, 2021 for further directions and or recording of final orders.

10. In further directions of the court issued on 8<sup>th</sup> June, 2022 the court observed as follows:

The Court in its Judgment delivered on 11<sup>th</sup> June, 2021 came to the conclusion among others that no finding would be made that there was unfair termination of the claimant's service considering that after sustaining injuries in the course of his employment he was unable to perform the duties he was hired to perform due to epileptic seizures that made it dangerous for him to operate any machinery. The Court therefore directed that the claimant undergo a joint medical examination with a view to ascertaining his suitability to continue working for the respondent in the position he was employed. If not, the parties were to discuss exit arrangements including payment of appropriate and commensurate terminal dues. The Court has been informed that the joint medical team has stated the nothing has changed in their assessment done on 28<sup>th</sup> January, 2016 and captured in their report dated 16<sup>th</sup> February, 2016. In that report the team recommended that the claimant was fit to work but should avoid operating any form of machinery. The respondent informed the Court that they had been unable to identify lighter duties the claimant can perform. In the circumstances the Court will order that:

1. The services of the respondent be terminated as if he was declared redundant and payment formula under Section 40 of the *Employment Act* or relevant CBA if any be applied in calculating the claimant's terminal dues. The claimant shall further be entitled to his pension and terminal benefits payable to an employee who works up to normal retirement.
2. The matter to be mentioned on 4/7/2022 for further directions.

11. Section 40 of the *Employment Act* provides for 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;
  - e. the employer has not placed the employee at a disadvantage for being or not being a member of the trade union; 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.
12. The CBA for the parties for the relevant period provided for redundancy as follows:
- a. In the event of redundancy, the Company shall inform the union of the reasons and the extent of the intended redundancy.
  - b. The principle of "last in First out" shall be followed in the particular category of employees affected subject to all other factors such as skill, relative merit, ability and reliability being equal.
  - c. The redundant employee/s shall be given notice or pay in lieu in accordance with clause 14 of this agreement below.
  - d. An employee declared redundant shall, in addition receive severance pay at the rate of 18 days pay per each completed year of service, on pro-rata basis.
13. Clause 14 of the CBA further provided:
- a. After the probationary period, employment may be terminated by either party as follows:
    - i. For employees with up to five years Service – one months' notice or pay in lieu.
    - ii. For employees with over five years' service three months' notice or pay in lieu.
  - b. The notice prescribed in paragraph (a) of this clause shall not apply to an employee who is guilty of gross misconduct as defined by the law. For the purpose of this paragraph, an employee who is guilty of gross misconduct shall be liable to instant dismissal.
  - c. The law with regard to sue the Company in Court – No private lawyer shall be entitled to represent a unionized employee in Court of law apart from the authorized lawyer by the Union. An employee who takes the Company to court for any cause shall be accorded normal termination of service.
14. The CBA provided for better terms on redundancy than section 40 of the [Employment Act](#). The Claimant is awarded as per orders of the court based on the CBA as follows:
- a. Pay in lieu of notice as per clause 14 of CBA after 19 years' service – 3 months' notice x12,398 - Kshs. 37,194
  - b. Severance pay 18 days per year worked 12,398/26x18x19 – Kshs. 163,081.40
15. In addition to the above the Claimant is entitled to pension and other terminal dues.
16. The Respondent shall issue a Certificate of service to the Claimant in terms of Clause 15 of the CBA.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 9TH DAY OF MAY 2025**



**MAUREEN ONYANGO**  
**JUDGE**

