



**Johnson & 134 others v Mega Garments EPZ Limited (Cause E087 of 2024) [2025] KEELRC 1257 (KLR) (5 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1257 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E087 OF 2024**

**M MBARŪ, J**

**MAY 5, 2025**

**BETWEEN**

**ALES SENZIGHE JOHNSON & 134 OTHERS & 134 OTHERS & 134 OTHERS & 134 OTHERS ..... CLAIMANT**

**AND**

**MEGA GARMENTS EPZ LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimants are adults and 135 in number. The issue in dispute is the alleged non-payment of salary on lieu of notice, leave allowance, and compensation for unfair termination of employment.  
The respondent is a limited liability company.
2. The claimants were all employed by the respondent on different dates and positions. Their wages were paid months ago. Employment was terminated on 4 July 2020, and the claim is that there was no due process or payment of terminal dues per section 41 of the *Employment Act* (the Act). The claimants seek the payment of Ksh. 46,017,550.76.
3. The claim is that the respondent breached the employment contract by reducing days worked in November, December 2019, and January 2020. Salary deductions were made without the claimants' consent.
4. The claim is that the respondent failed to pay a wage within the Minimum Wage Orders applicable from 2016, 2017, 2018, 2019, and 2020. The claimants claim the following:
  - a. That the respondent has failed to pay the claimant their benefits under the employment contract upon termination;
  - b. That there was no due process under section 41 of the Act;



- c. The respondent engaged in unfair labour practices;
  - d. The claim is allowed with costs.
5. Each claim has been particularised as required under Rule 23 of the Employment and Labour Relations Court (Procedure) Rules (the ELRC Rules). The claims relate to,
- a. Dedication of wages for November and December 2019;
  - b. Underpayments;
  - c. 3 months' salary for breach of contract.
- Some of the claimants include;
- 1<sup>st</sup> claimant Gabriel Kiarie
6. He was employed as a Garment and dress cutter on 17 November 2018 and claimed the following dues,
- a. Deductions for wages, November and December 2010  
November worked for 21 days and was locked out for 5 days  
 $24,040.63 \text{ For } 26 \text{ days} = 924.64 \times 5 = 4,623.19$   
December 2019 worked 21 days  
 $24,040.63 \text{ For } 26 \text{ days} = 924,641 \times 5 = 4,623.12 \times 2 = 9,246.40$
  - b. Underpayments  
2016 salary from May 2015 to 1 May 2017  
 $\text{Ksh. } 19,403.26 - 14,278 = 5,125 \times 17 \text{ months} = \text{Ksh. } 87,129.42$   
2018 from 1 May 2018 to 4 July 2020  
 $\text{Salary Ksh. } 24,040.63 - 20,905 = 3,135.63 \times 18 = \text{Ksh. } 56,441.43$
  - c. 3 months' salary for breach of contract  
Premature termination of contract  
 $24,040.63 \times 3 = \text{Ksh } 72,121.89$   
3<sup>rd</sup> claimant Esther Mbithee  
She was employed as an operator on 7 March 2016
  - d. Deductions for wages, November and December 2010  
November worked for 21 days and was locked out for 5 days  
 $24,040.63 \text{ For } 26 \text{ days} = 924.64 \times 5 = 4,623.19$   
December 2019 worked 21 days  
 $24,040.63 \text{ For } 26 \text{ days} = 924,641 \times 5 = 4,623.12 \times 2 = 9,246.40$
  - e. Underpayments  
2016 salary from May 2015 to 1 May 2017  
 $\text{Ksh. } 19,403.26 - 14,278 = 5,125 \times 14 \text{ months} = 71,753.64$



2018 from 1 May 2018 to 4 July 2020

Salary  $24,040.63 - 17,692 = 6,348 \times 18 \text{ months} = \text{Ksh.}114, 275.43$

f. 3 months' salary for breach of contract

Premature termination of contract

$24,040.63 \times 3 = \text{Ksh } 72, 121.89$

The claims are clustered similarly.

7. In evidence, the claimants called the first claimant, Ales Senzighe Johnson, who testified that the respondent employed him and that his salary was deducted without any reason in November and December 2019. The salary was below the minimum wage allowed under the Wage Orders.
8. The claimant was examined and testified that a letter of authority to represent all the claimants exists, but it is signed by only 74. Of the 144 claimants, only 74 have given him the authority to represent them in this case.
9. Senzighe testified that on 7 July 2020, the respondent terminated his employment. He had a contract ending on 4 July 2020. All other claimants and their contracts ending on 4 July 2020.
10. H testified that the respondents effected unlawful salary deductions in November and December 2019. In his case, he worked for 22 days and was paid in full. However, there was a deduction in January 2020.
11. Senzighe testified that the respondent underpaid the claimant below the Wage Orders. The claimants were general labourers in different departments. He had a contract that defined him as a general labourer. In 2017, he was paid Ksh. 14,866 per month, and in 2018, he was paid Ksh. 15,609. In 2018, the wage increased to Ksh. 16,409. Under the Wage Orders for 2018, the basic salary was Ksh. 13,000 plus a 15% house allowance, for a total of Ksh. 15,636, and the respondent paid him Ksh. 16,409 per month.
12. Gabriel Njanga was employed as a cutter and was underpaid. In 2017 and 2020, he was paid Ksh. 2,895 per month. The Wage Orders provided for payment of Ksh. 22,895 per month, and Gabriel was paid Ksh. 24,041 per month. In 2018/2020, the Wage Orders provided for Ksh. 21,041 per month.
13. Esther Mbithee was employed as a machinist. In 2017, she was paid Ksh. 16,849 per month. In 2018/2020, she was paid Ksh: 17,692, the rate under the Wage Orders. There was no underpayment.
14. The claimants, also called Ajanitar Kavete Nyerere, testified that the respondent was the employer and was a tailor/machinist. There was unfair wage deduction, underpayment, and unfair termination of the employment contract.
15. Upon cross-examination, the claimant admitted that he had no contract with the respondent and no contract was filed. He has no record to confirm employment with the respondent, including pay slips.
16. The claimant, Lucy Aluoch Opondo, testified that she worked closely with Ajantah Kavote Nyerere. They had their wages deducted, were underpaid, and were terminated unfairly. The witness admitted that no work records were filed to confirm employment.

## Response

17. In response, the respondent denies the allegations made by the claimants. The claimants were employed on fixed-term contracts with a start and end date and terminated by expiration of time. They



- worked for the periods indicated in their contracts and were fully paid. As alleged, no salary deductions were made for November, December 2019, or January 2020. Such claims are without proof.
18. The respondent paid the claimants the lawful wage based on their job title and under the prescribed Wage Orders from 2016 to 2020. The claims made are without merit and should be dismissed with costs.
  19. In evidence, the respondent called Duncan Kavita, the head of human resources and administration. He testified that the claimants were all employed by the respondent and served for various periods, the last contract from 6 January to 4 July 2020. Fixed-term contracts lapsed on their own without the need to issue notice. The respondent paid all the due salaries for the days worked.
  20. Kavita testified that each claimant was paid for the days worked. In the case of Kiarie Njanja, he was issued a pay slip for 10 days of work from 6 to 16 January 2020. There was no underpayment, as alleged. There was no payment when one was absent from duty or during public holidays. In December, the company closed on 16 until the following year.
  21. In the case of Esther Mbithe, payment was made from 6 to 16 November and 16 December at Ksh. 17,692. The Wage Orders provided a basic minimum for a machinist at Ksh 16, 724 in January 2018, and she was paid Ksh. 16,792. The claimant had a house allowance allocated at Ksh. 2,308 based on the due wage of Ksh. 15, 384.
  22. In the case of Francis Musyoka Peter, on 6 January 2020, his pay slip was for Ksh.10, 738 based on days worked. The respondent only opened the factory on 6 January 2020, and the payroll closed on 16 January 2020; hence, the payment for days worked. For this period, he worked for 8 days. The full pay is due upon working for 22 days in the month. Each employee was in the system that allowed the respondent to assess the number of days present at work, hence the basis of payments.
  23. At the close of the hearing, both parties agreed to file written submissions.
  24. The claimants submitted that there are two types of claimants;  
quote  
77 claimants with fixed-term contracts;  
66 claimants with no contracts.
  25. The 66 claimants did not submit their contracts since the respondent failed to file them for scrutiny.
  26. The claimants called 3 witnesses who confirmed that the respondent deducted Ksh. 9,000 from their wages. The pay slips for January 2020, which should cover December 2019, show a general deduction of Ksh. 9,000. 77 claimants with term contracts proved on a balance of probabilities that they were employed as machine operators, underpaid, and suffered an unfair wage deduction.
  27. The claims for wages deducted from November, December 2019, and January 2020 are due as claimed. The employment contracts do not indicate that there will be no payment for days not worked. There is a monthly wage provision, including public holidays, whether worked or not.
  28. In the case of Gabriel Kiarie Njanja, his basic pay was Ksh. 20,905, but he earned Ksh. 7,601.82 less Ksh 13, 303.18;
  28. In the case of Perice Kijala, the basic pay was Ksh. 15,384 but earned Ksh.5, 594.18 less Ksh.9, 789.81.
  30. In the case of Flora Mutheu Mbwika, the basic pay was Ksh. 15,384 but earned Ksh.5, 594.18 less Ksh.9, 789.81.



31. As machine operators, the claimants are entitled to the whole month's pay as claimed. Under section 48(1) of the *Labour Institutions Act*, the effect of underpayments is a sanction to the employer.
32. There was evidence that the employees without contracts were the respondents' employees. The employer must file work records. An employee is defined under section 2 of the *Employment Act*, and the evidence produced was not challenged. In the case of *Njoki t/an Aberdare Electronics v Ele*, [2024] eKLR, the court held that without documentary evidence to prove the existence of an employment contract, the employer should have called persons as witnesses. The claimants called witnesses from former employees to confirm they worked for the respondent.
33. The claimants submitted that there was an underpayment of wages. Under the Wage Orders for 2015 and 2017, a machine operator should earn;
  - From May 2015 to May 2017, a wage of Ksh. 19,403 instead of Ksh. 14,278 per month,
  - From May 2018 to May 2020, the wage will be Ksh. 24,040 instead of Ksh. 17,692 per month.
  - For the dress cutters;
  - From May 2015 to May 2017, a wage of Ksh. 19,403 instead of Ksh.14 278 per month,
  - From May 2018 to May 2020, the wage will be Ksh.24, 040 instead of Ksh.20. 905 monthly.
34. The respondent failed to pay the correct wages.
35. The claimants submitted that there was unfair termination of employment without valid reasons or notice. This contradicts section 41 of the *Employment Act* held in *Jessy Olukutukei v Feed the Children Kenya & another* [2014] eKLR. The respondent did not provide the reasons for terminating employment; hence, the remedies sought should be issued.
36. The respondent submitted that only 74 claimants have produced evidence of employment, indicating job titles and contracts as general labourers and mass production machinists. The term contract ended by expiration of time with full payments on 4 July 2020. In the case of *Masiga & 15 others v Menengai Farmers Limited* Civil Appeal No. In E069 of 2021, the court held that a fixed-term contract has a start and end date. There is no requirement to issue a notice or renew it.
37. The claimants whom the respondent employed were paid within the provisions of Wage Orders as general labourers, machine operators and cutters;
  - In 2017, the employees earned Ksh. 14,866, Ksh. 16,849, and Ksh 22. 895 respectively,
  - In 2018, the employees earned Ksh. 16,409, Ksh.157, 692, and Ksh. 22,895 respectively, and
  - In 2020, the employees earned Ksh. 16, 409, Ksh.17, 692, and Ksh.24, 041, respectively.
38. These wages were consolidated as allowed under the law and Wage Orders.
57. There was no unlawful deduction of wages, as alleged. The 74 employees were paid for the days worked each month. The case for *Ales Johnson's* November pay slip ran from 16 October to 17 November 2019. He was present for 19 days and was paid.
39. Gabriel Kiarie Njaja worked for 22 days from 17 October to 16 November 2019 and was fully paid. His December 2019 pay was for 21 days from 16 November to 16 December, and he was fully paid.
40. Francis Musyoki Peter's pay slips confirm the days worked and complete payment.



41. On the claims by Ajanctor Kavete and Lucy Oluoch, they were not employees as alleged.
42. The claims made are without merit and should be dismissed with costs.

### **Determination**

43. Indeed, as the claimants submitted, they are divided into two categories: those with contracts and those without employment contracts.

44. The issues which emerge for determination are;

Whether the claimants with written contracts were underpaid, suffered unfair pay deductions, and had their employment unfairly terminated.

Whether the respondent employed the claimants without contracts, and if so, whether there were deductions, underpayments and unfair termination of employment; and

Who should pay the costs?

45. The respondent filed 74 contracts for the claimants it asserts were employed as general labourers, machine operators and cutters. A random check of the filed contracts brings out the following facts,

Contract to Zipporah Bonareri dated 6 January, a mass production machinist;

Contract term – 6 January to 11 July 2020,

Place of work – Mega Garment K. EPZ,

Working hours – 8 hours Monday to Friday and 5 hours on Saturday,

Remuneration – Ksh. 15,384 plus a 15% house allowance of Ksh. 2,308.

Contract to Gabriel Kiarie Njanja dated 5 July 2017, employed as a cutter,

Contract term – 5 July to 22 December 2017,

Place of work – Mega Garment Industries K. Ltd.

Work hours – 8 hours Monday to Friday and 5 hours on Saturday,

Remuneration – Ksh. 19,909 and Ksh. 2,987 house allowance.

These are contracts with a start and end date. The wage to be paid is stated in the contract.

Under section 10(3) of the *Employment Act* (the Act), the employer can regulate employment under a term contract. It has a start and end date. There is no requirement to issue notice or give reasons for non-renewal of the term contract since it terminates on its terms.

46. In the cases of *Abdala & 9 others v Zhongmei & another* [2025] KECA 26 (KLR) and *Kenya Power and Lighting Company v Osiro* [2024] KECA 854 (KLR), the courts have held that a fixed-term contract terminates on its terms. Once there is a written contract, the court will seek to give it meaning, giving ordinary meaning to its terms in determining any issue that may arise.
47. In this case, the claim that there was unfair termination of employment is without justification. Employment started and ended as agreed by the parties to the term contracts.



48. On the claim that wages were unfairly deducted, the respondent's payment statements are required under section 20 of the Act. Each contract had a schedule of the days at work, and those days were remunerated in full.
49. Under section 19 of the Act, the employer is allowed to pay the employee for the days at work.
50. The employment contract agreed that the employee would work 8 hours from Monday to Friday and 5 hours Saturday. Under section 27 of the Act, the employee should rest for only one (1) day and be at work for 6 days. The total time for Saturday at work is not fully served. The day of rest in law is one (1); hence, the claim that there were unfair deductions for days not at work is to seek unjust enrichment.
51. On the claim for underpayment of wages, a general labourer, cutter, and mass machinist working at Mega Garments Industries K. Ltd EPZ situated in Mombasa earned as follows;
- In May 2017, basic pay for a general labourer was Ksh 12. 926.55?  
May 2017, basic for a cutter Ksh.13, 960.80,  
May 2017, Basic pay for a machine operator Ksh. 13,960.80.
52. In this case, a basic wage above the minimum provided under the Wage Orders for the period.
53. Under the Wage Orders applicable from May 2018 to April 2022 for a general labourer, cutter, and mass machinist, the provisions were that;
- May 2018 to April 2022, for a general worker ksh.13, 572.90,  
May 2018 to April 2022, a cutter Ksh 14 658.85,  
From May 2018 to April 2022, a mass machinist earned Ksh 15. 385.45.
54. On the records filed by the respondent, there were no underpayments of wages.
55. On the claimants without work records, employment contract or any evidence of employment by the respondent, the claimants called two witnesses. Ajanctor Kavete Nyerere and Lucy Aluoch. Ajanctor testified that she was employed as a machine operator at a Ksh.14, 278 wage in May 2017. In 2018, she was paid Ksh. 17,692.
56. Lucy testified that she worked as an operator with a janitor in a different department. Both had no record of employment.
57. Section 47 of the Act places the burden of proof on the employee over the alleged unfair termination of employment. An employee who believes that she has been wrongfully terminated, that terminal dues are not paid, or that there are employment-related dues has the right to challenge the same. The burden of proving the claim must be established first to shift the burden of justifying the grounds for the termination or dismissal, non-payment of terminal dues or other payments in employment on the employer.
58. In *Lockwood Girls High School v Wasike* [2024] KECA 360 (KLR), the court held that the burden of proof in employment matters starts with the claimant who alleges unfair termination before shifting to the respondent to demonstrate that the termination was lawful. In this regard, section 47(5) of the Act enumerates what an employer is expected to present for the termination of the employment to be held to have been fair.
59. In the case of *Bamburi Cement Limited v William Kilonzi* [2016] KECA 546 (KLR), the court held that under section 47(5) of the Act, the burden of proving a term of employment claim rests on the



employee, while the burden of justifying the grounds thereof rests on the employer. It is a shared burden.

60. The employee must first present a prima facie case for the claims made, which the employer will then be required to answer, upon the evidential burden shifting from the employee to the employer.
61. The obligation on the employee to raise a prima facie case in effect places the evidential burden on them to lay a factual basis that casts doubt on the lawfulness of the employer's action to shift the duty to justify the impugned action onto the employer. This position is affirmed in the case of *Oyuga & 46 others v Kenya Airways Company Limited* [2023] KEELRC 2913 (KLR) that while the employer bears the legal burden of proof to justify the impugned conduct, the employee shoulders the evidential burden of proof to raise sufficient evidence to cast aspersions on the employer's conduct.
62. In the Labour Court of South Africa, in the case of *Kholiwe Moses Janda v First National Bank*, Case No JS 511/04, the court held that;

... decisions do not burden the employee with the onus in the true sense, but merely with the 'evidential burden' in the sense of a duty to adduce evidence to combat prima facie evidence. [...] '[t]he onus proper' to prove that a dismissal is for fair reason lies with the employer.

...the employee must provide evidence to establish a prima facie case supporting the complaint that the dismissal is automatically unfair.
63. Similarly, in this case, the claimants without written contracts, based on the given practice of the respondent to issue its employees with written contracts for employment with a term limit, the evidentiary burden to apply similar standards became high. Basic tenets requiring them to file any record to prove employment, a payment statement, a single contract or any matter concerning payments of wages through Mpesa, bank or cash vouchers became imperative. The need to prove the employment relationship in the given circumstances from 2017 to 2020 was crucial.
64. This burden is not discharged. Without proof of employment relations, labour relations, or for connected purposes, the claims made against the respondent are not justified. Consequently, the claim is dismissed with costs to the respondent.
65. The claims on the question of costs are without merit. The orders sought cannot be issued in the circumstances, and therefore, the respondent is entitled to costs.
66. Accordingly, the claim is hereby dismissed with costs to the respondent.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 5TH DAY OF MAY 2025**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

