



**Muoki v Ellams Products Limited (Cause 1485 of 2017)  
[2025] KEELRC 1992 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1992 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1485 OF 2017  
K OCHARO, J  
JUNE 30, 2025**

**BETWEEN**

**JULIUS NZYOKI MUOKI ..... CLAIMANT**

**AND**

**ELLAMS PRODUCTS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This suit was initiated through a Memorandum of Claim dated 28<sup>th</sup> July 2017, by the Claimant against the Respondent. Alleging that the termination of his employment by the Respondent was unfair and unlawful, the Claimant sought against the Respondent the following reliefs and orders:
  - a. A declaration that the termination of his employment was unfair and unlawful.
  - b. A declaration that the Claimant's basic salary was underpaid.
  - c. A declaration that the differential treatment by the respondent in the payment of the lump sum, bonus, bus fare, leave travelling allowance and bonus was discriminatory.
  - d. A declaration that the Claimant is entitled to a certificate of service having diligently served the respondent for 8 years.
  - e. Compensation to the Claimant as follows;
    - i. KShs. 61,777, being payment for the rest days from June 2007 to April 2011,
    - ii. KShs. 288,000, representing the difference in underpayment of the basic salary of a machine attendant.
    - iii. KShs. 62,000, being the difference in the underpayment of the house allowance.
    - iv. KShs. 288,000 lump-sum allowance for eight years.



- v. KShs. 144,000 -the =equivalent of bus fare allowance for eight years.
  - vi. KShs. 15,600 -leave travelling allowance.
  - vii. KShs. 37,323 bonus amounts for 2011 to 2014.
  - viii. KShs. 19,500 months' salary in lieu of notice.
  - ix. Damages for unfair termination.
2. The Respondent entered appearance on the 14<sup>th</sup> May 2018 and, subsequently, filed a Response to the claim on 7<sup>th</sup> February 2019, denying the Claimant's cause of action against it and entitlement to the reliefs sought.
  3. . after hearing the parties on their respective cases, this court directed them to file their submissions. The Claimant did so, but the Respondent did not.

### **The Claimant's Case.**

4. The Claimant stated that he first came into the employment of the Respondent in July 2007 as a general labourer, earning a daily wage of KShs. 249. This amount was way below the KShs. 470, the minimum wage that the relevant Wage Order prescribed at the time.
5. He further asserted that, as he was earning a daily wage, he was entitled to payment on rest days. Despite this entitlement, the Respondent refused or neglected to pay him from June 2007 to 2011.
6. He asserted that at some point in 2010, he became a member of the Kenya Union of Printing, Publishing, Paper Manufacturers and Allied Workers Union. As such, his terms of employment were supposed to conform to the negotiated Collective Bargaining Agreement between the Respondent and his union.
7. According to the Collective Bargaining Agreement, he was entitled to a monthly salary of KShs. 19,500. However, in breach of the Agreement's provisions, the Respondent increased his salary to, and continued to pay him, KShs. 8,434. The increase occurred following the conversion of his employment into a fixed-term contract in April 2011.
8. The fixed-term contract lasted for a year. However, after it expired, he kept working for the Respondent. His employment contract then changed into an indefinite contract of employment.
9. The fact that his salary was not aligned with the terms of the Collective Bargaining Agreement affected his house allowance, leading to an underpayment of it.
10. The Respondent was to pay a lump sum allowance of KShs. 3,000 per month to all other employees working overtime, but the Claimant was never paid this amount throughout the nine years. Additionally, the Respondent would pay all employees Kshs. 50 per day as a bus fare, except for him.
11. Under the Collective Bargaining Agreement, he was entitled to a bonus equivalent to one month's salary, payable at the end of each year. Unjustifiably, the Respondent refused to pay him this benefit for eight years.
12. He asserted that the Respondent had a policy whereby all employees were entitled to a travel allowance, payable at the end of each year. Despite this policy, the Respondent failed to pay him in a discriminatory manner.



13. On 2nd March 2015, the Respondent issued him a letter terminating his employment due to redundancy. Surprisingly, despite the termination due to alleged redundancy, the Respondent immediately employed another person in the same position.
14. Neither he nor the trade union was notified of the impending termination of employment due to redundancy.
15. In the circumstances, the termination was unfair and unlawful. At the time of termination, he was earning KShs—16,450 per month.
16. Cross-examined by Counsel for the Respondent, Ms. Kavagi, the Claimant testified that the trade union membership card he presented in evidence neither bore the year nor the month of issue. He admitted that he had no receipt to show that he was paying union dues.
17. He further testified that he did not at any point inform the Respondent that he had joined the trade union.
18. Cross-examined further, the Claimant testified that he resigned via a resignation letter. In the resignation letter, he did not state the reasons for his resignation.
19. Upon resigning, the Respondent paid him his final dues, upon which he executed a final dues certificate.
20. He further stated that though his claim is anchored on a CBA, he had not tendered any in evidence.

#### The Respondent's Case

21. The Respondent presented Guyvira Nduma to testify on its behalf. The witness urged the Court to adopt the contents of his witness statement as part of his evidence in chief, and the documents filed by the Respondent as its documentary evidence. As there was no opposition from the Claimant, they were adopted and admitted, respectively.
22. The witness stated that the Respondent first engaged the Claimant on 18<sup>th</sup> May 2007, as a casual labourer earning daily wages of KShs. 249 being the minimum daily rate, inclusive of house allowance as per the Regulation of Wages [General][Amendment Order].
23. On 1<sup>st</sup> June, 2011, the Claimant was employed as a Machine Attendant. The contract was renewable annually. The agreed-upon salary was KShs 8,434, exclusive of a 15% house allowance. The amount was more than the set minimum wage at the time, KShs 7,643 for a Machine Attendant.
24. The Claimant later had his contract renewed, although he was still employed as a Machine Attendant with a contract that was due to expire on 31st May 2015. His salary was increased to KShs. 11,450 plus a 15% house allowance, an amount that exceeded the minimum wage set at that time.
25. His employment contract did not encompass provisions for an annual lump sum payment of KShs. 3000, leave travelling allowances, bonuses, or bus fares. None of the employees received these benefits.
26. The Respondent pays /deducts union dues monthly for all its employees who are members of trade unions. No such deductions were paid to any trade on behalf of the Claimant, nor was the Respondent informed of the Claimant joining any trade union.
27. Accordingly, the Collective Bargaining Agreement between the Respondent and the Kenya Union of Printing, Publishing, Paper Manufacturers and Allied Workers did not in any way affect the salary payable to the Claimant.



28. On August 5, 2015, the Claimant submitted a resignation letter dated August 5, 2015. He voluntarily resigned from his employment.
29. The Respondent calculated and paid the Claimant a sum of KShs. Twenty-three thousand, four hundred and forty-two, as his terminal dues. He acknowledged receipt of the amount by signing a Final Dues Settlement Certificate.
30. Cross-examined by Counsel for the Claimant, the witness stated that at the time of his resignation, the Claimant was working at the Packaging Department as a Machine Attendant.
31. He was earning Kshs. 11,450, an amount exclusive of the 15% house allowance.
32. He was not paid service pay because the Respondent was making NSSF remittances on his account.

### **Analysis and Determination.**

33. Having read the pleadings, evidence on record, and submissions by Counsel for the Claimant, the following issues emerge for determination;
  - i. How did the separation in employment occur?
  - ii. If at the initiative of the Respondent, was it unfair?
  - iii. Whether the Claimant is entitled to the reliefs sought.
34. The Respondent contended that the termination of the Claimant's employment was at his initiative. He voluntarily resigned from his employment via a letter dated August 5, 2015. In his evidence under cross-examination, the Claimant admitted that he had indeed resigned. With these, I am not persuaded that the end of the Claimant's employment was as a result of anything other than his own resignation.
35. Having found that the Claimant voluntarily resigned from employment, it isn't difficult for this Court to conclude that his claim for unfair termination is destitute of merit.
36. Section 49[1][c] of the *Employment Act* bestows upon this court the authority to award an employee who has successfully assailed their employer's decision to terminate their employment as unfair, a compensatory relief to the extent of twelve months' gross salary. However, it is essential to note that the exercise of the authority is discretionary. The extent of the award depends on the circumstances of each case. Since this is a relief awardable only when a claim for unfair termination succeeds, I find no reason on which I can grant the same to the Claimant in the instant matter.
37. The Claimant sought compensation in lieu of notice. Having voluntarily resigned, without the requisite notice under section 35 of the *Employment Act*, I am not persuaded that there could be a justification for this Court to award him notice pay.
38. The Claimant claimed he was entitled to remuneration under the Collective Bargaining Agreement between the Respondent and the Union. He stated in his pleadings that he joined the trade union in 2010. However, during cross-examination, his evidence did not convincingly support this claim. Instead, he appeared uncertain and not entirely truthful about this key point, showing a lack of candour. Despite asserting this, he admitted he had not informed the Respondent at any time that he had joined or was a member of the trade union. Moreover, the Respondent did not deduct any dues from his salary for remittance to the trade union. In my view, the Claimant failed to demonstrate that he was a union member, thereby failing to qualify for the benefits and protections under the Collective Bargaining Agreement.



39. Despite the explicit allegations in the Claimant’s pleadings, from which it is clearly discernible that his claim was based on the entitlement to payment in accordance with the Collective Bargaining Agreement due to his membership in the trade union, his Counsel submitted that the Claimant’s assertion was primarily founded on the fact that he was a unionizable employee.
40. The purpose of pleadings is to allow parties to define issues that are material to their dispute. Each party is required to set out in its pleadings a clear and concise statement of the material facts upon which it seeks to rely for its claim, with sufficient particularity for its opponent to reply.
41. Someone benefits from a Collective Bargaining Agreement either as a trade union member or as a unionisable employee, but not both. To benefit as a unionisable employee, one must prove different matters than those required of a union member, and vice versa. Thus, there is a need for a party claiming entitlement to benefits under a Collective Bargaining Agreement to plead clearly and specifically under which category it falls. Hence, where the employee pleads specifically that they were a member of a trade union, they cannot later change their position during the trial to argue and base their claim on the assertion that they were a unionisable employee.
42. The Claimant’s lengthy submissions on unionisability and that the Claimant should have benefited under the collective bargaining agreement don’t flow from his pleadings and evidence. They are therefore not helpful to his case. Submissions will never be a substitute for pleadings and evidence. Also see Daniel Toroitich Arab Moi V- Mwangi Stephen Muriithi & Another [2014]eKLR.
43. Section 49[1] of the *Labour Relations Act* provides,
- “ 1. A trade union that has concluded a collective agreement registered by the Industrial Court with an employer, group of employers or employers’ organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Minister to issue an order requiring any employer bound by the collective agreement to deduct an agency fees from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union.
  2. A request in accordance with sub-section [1] shall-
    - a. Be signed by the authorised representatives of the trade union and employer, group of employers or employers’ organisations;
    - b. Supply a list of all employees prepared by the employer in respect of whom a deduction shall be made;
    - c. Specify the amount of the agency fee, which may not exceed the applicable trade union dues; and
    - d. Specify the trade union account into which dues shall be paid.”
44. The process encompassed in the provisions comprises two vital aspects: a request to the Minister to issue an order to the employer, and the issuance of the order by the Minister. It was not demonstrated that permission was sought, and the order was granted.
45. In my view, a person who is not a member of a trade union can only benefit from a negotiated collective agreement if they pay the agency fees. No evidence was provided that the Respondent was remitting agency fees to the trade union, enabling the Claimant to benefit from the CBA.



46. By reason of the foregoing premises, this Court finds the Claimant's claim for underpayments, on the basis that his remuneration was not paid per the terms and conditions of the Collective Bargaining Agreement, without merit.
47. The Claimant contended that during the tenure of his employment as a general labourer [2007 to 2009], the Respondent continuously paid him way less than what the applicable Wage Order stipulated, and upon this premise, sought compensation for underpaid amounts. In my view, this claim must fail for two reasons. First, the Court isn't informed which Wage Order was applicable at the material time, as no evidence was presented on the matter or submissions made referencing the Wage Order.
48. Second, any cause of action that arose during the tenure of the initial employment contract could be, and became, time-barred three years after its date of accrual, or if it was a continuous injury, twelve months after the injury ceased. I have carefully examined the reliefs sought by the Claimant, which are claimed to be based on causes of action that arose during the tenure of the initial contract, and conclude that none of them can be granted, as the causes of action had been time barred under the provisions of section 90 of the *Employment Act*, at the time the current suit was being filed.
49. In conclusion, I find the Claimant's case lacking in merit. It is hereby dismissed.

**READ, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF JUNE 2025.**

**OCHARO KEBIRA**

**JUDGE**

