



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odhiambo v Ellams Products Limited (Cause 1484 of 2017)  
[2025] KEELRC 2010 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2010 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1484 OF 2017  
K OCHARO, J  
JUNE 30, 2025**

**BETWEEN**

**PATRICK WYCLIFF ODHIAMBO ..... 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. 68,889, being payment for the rest days from June 2007 to April 2011,
    - ii. KShs. 185,400, 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. 11,450 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 respective submissions. The Claimant did, while the Respondent did not.

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

4. The Claimant stated that he first came into the employment of the Respondent in June 2007 as a general labourer, earning a daily wage of KShs. 249.
5. He further contended that since he was earning a daily wage, he was entitled to pay on rest days. Despite the entitlement, the Respondent refused and or neglected to pay him throughout the period from June 2007 until 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 was for a period of one year. However, after it expired, he continued working for the Respondent. His employment contract transitioned into an indefinite form 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 as a bus fare, except for him.
11. Pursuant to the Collective Bargaining Agreement, he was entitled to a bonus payment 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 discriminatorily.



13. On 2nd March 2015, the Respondent issued him a letter terminating his employment due to redundancy. Surprisingly, despite the termination on an alleged redundancy, the Respondent immediately employed another person in his 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.15,450.
16. Cross-examined by Counsel for the Respondent, Ms. Kavagi, the Claimant testified that he had nothing to show that he was a member of the trade union.
17. He further stated that he was making payments of trade union dues directly to the trade union. He never informed the Respondent at any point that he had joined the trade union.
18. Though in his pleadings he mentioned that his employment was terminated through a letter dated 2<sup>nd</sup> March 2015 on account of redundancy, in his witness statement he stated that his employment was terminated on 31<sup>st</sup> May 2015.
19. His fixed-term contract expired on 31st May 2015. He has no evidence that he worked after this date.
20. Contrary to what he stated in his pleadings, his contract was verbally terminated due to redundancy, not by letter.
21. At separation, the Respondent paid him KShs: 77,000, not KShs. Eighty-three thousand one hundred forty-eight reflected on the discharge document that he signed.

### **The Respondent's Case**

22. 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.
23. 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].
24. 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.
25. 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.
26. 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.
27. The Respondent availed the Certificate of Service to the Claimant, but he wilfully failed to collect the same.
28. The Claimant's contract automatically expired on 31st May 2015. The Claimant was not served with a termination letter prior to the date mentioned above.



29. The Respondent paid the Claimant a sum of KShs. eighty-three thousand, one hundred and forty-eight, as his terminal dues on 30th June 2015. He acknowledged receipt of the amount by signing a payment certificate.
30. Cross-examined by Counsel for the Claimant, the witness stated that the Claimant's contract of employment expired on 31<sup>st</sup> May 2015. On June 1, 2015, he didn't report for duty.
31. The attendance register tendered in evidence by the Respondent indicates that the Claimant reported to work on 2<sup>nd</sup> June 2015, at 8:00 am and left at 2:00 pm.
32. The Respondent wrote a letter to the Labour Officer notifying him that it intended to reduce its employees at the Punching section and other sections on account of redundancy. The Claimant was at the Punching section. The redundancy was to take effect on 30<sup>th</sup> March 2015. The Respondent did not present any list before the court to show those who were affected by the redundancy.
33. The Claimant received severance pay for 8 years. According to the witness, severance pay is granted in cases of normal termination. The Labour Officer assisted them in preparing the payment certificate.
34. The Claimant's name did not appear on the list of members of the union furnished by the union. The Respondent's practice was to pay union dues by a check-off system.
35. The salary stipulated in the Collective Bargaining Agreement was different from what the Claimant was earning.
36. In his re-examination evidence, the witness stated that employees report for work at various times. It is possible that on June 2, 2015, the Claimant may have visited the Respondent's offices, clocked in, and left. His supervisor didn't see him that day. The Human Resources Manager was not aware that he had reported to work on that day.
37. If he indeed reported for work on that day, he could have clocked out at around 6:00 p.m., as the Respondent's working hours are from 8:00 a.m. to 5:00 p.m.

#### **Analysis and Determination.**

38. 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.
39. The Claimant's Counsel submitted that the Claimant was serving under a contract of service that was to run from 1<sup>st</sup> June 2014 to 31<sup>st</sup> May 2015. However, on 15<sup>th</sup> January 2015, the Respondent informed the Labour Officer of an impending redundancy that was to take effect from 1<sup>st</sup> March, 2015. The Claimant's employment was terminated on 1<sup>st</sup> March 2015, on account of redundancy.
40. These submissions lack persuasiveness. The Claimant incorrectly provided conflicting accounts of how the separation occurred. The versions do not support the submissions at all. On the one hand, he claimed that after the fixed-term contract expired, he continued working for the Respondent, thereby his employment shifted to an indefinite contract. If that is the case, how can he argue that his contract was terminated three months earlier than the agreed expiry date due to redundancy? It simply does not



make sense. On the other hand, in his evidence under cross-examination, he admitted that he had never been issued with any termination letter or a letter ending his employment due to redundancy.

41. This Court has not lost sight of the fact that, during his cross-examination, the Claimant admitted that his employment ended on 31st May 2015, which was the expiry date of the fixed-term contract. He was not issued with any renewed contract afterwards.
42. The Respondent's witness admitted that the Claimant received a benefit that was described as severance pay on the payment certificate. He explained that severance pay is given to any employee whose employment has been normally terminated. The Claimant's Counsel argued that, since severance pay is a benefit earned by those whose employment is terminated due to redundancy, the fact that the Claimant received it clearly indicates his employment was terminated for redundancy.
43. Stating that severance pay is provided to employees whose employment has been terminated in a normal manner indicates a lapse on the part of the Respondent's witness in distinguishing between service pay [section 35 of the *Employment Act*] and severance pay [section 40 of the Act]. In my opinion, a mere description of a terminal benefit is insufficient to illustrate the nature of employment termination. The overall circumstances of the case must be evaluated comprehensively.
44. In light of the foregoing premises, I am not persuaded that the Respondent terminated the Claimant's employment on account of redundancy. I am, however, convinced by the Respondent's version that the Claimant's employment contract came to an end by effluxion of time.
45. On whether the termination was fair, I note that the Claimant's Counsel has heavily submitted on the provisions of Section 40 of the *Employment Act*, and how the stipulations thereunder were not met, thus rendering the termination of the Claimant's employment on the grounds of redundancy unfair. Having held that the contract ended by expiration of time, I find the submissions unhelpful and the assertion of unfair termination one embedded in moving sand.
46. 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.
47. The Claimant sought compensation in lieu of notice. The Claimant was engaged pursuant to a fixed-term contract. Such an agreement intrinsically encompasses a termination notice. During the period of employment under this contractual arrangement, both parties are cognizant of its fixed duration and the designated end date. Consequently, the employer is not obligated to serve a notice of termination unless the contract is terminated prior to the predetermined date. I decline to make any award under this head.
48. The Claimant asserted that 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 honest about this key point, indicating a lack of candour. Despite this claim, he admitted that he had not informed the Respondent at any point that he had joined or was a member of the trade union. Furthermore, the Respondent did not deduct any dues from his salary for remittance to the trade union. He claimed to have paid union dues directly; however, he was unable to provide any proof that he was a union member and that he had remitted



trade union dues. In my view, the Claimant failed to prove that he was a member of the union, entitling him to the benefits and protections under the Collective Bargaining Agreement.

49. In an attempt to avoid the impact of the debacle encountered during the presentation of the aforementioned narrative [that the Claimant was a member of the trade union and thus entitled to the benefits and protections under the CBA], the Claimant's counsel, demonstrating ingenuity, in his submissions, primarily argued based on the doctrine of unionisability. He asserted that the Claimant's claim to entitlement is founded on the fact that he was a unionizable employee of the Respondent, rather than on membership in the trade union.
50. 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.
51. Someone benefits from a Collective Bargaining Agreement either as a trade union member or as a unionizable employee, but not both. To benefit as a unionizable employee, one must prove different matters than those required of a union member, and vice versa. Thus, the need for a party that alleges to be entitled to benefits under a Collective Bargaining Agreement to plead with clarity and particularity under which category it falls, and the conclusion that where the employer pleads specifically that he was a member of a trade union, he cannot be allowed to change mid-trial to argue and base their claim on the assertion that they were unionizable employee[s].
52. 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.
53. 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.”
54. 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.



55. 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.
56. 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.
57. It is important to emphasise that the Claimant served the Respondent under two distinct types of employment contracts, at different times. Initially, as a general labourer compensated by daily wages, and subsequently under a fixed-term contract for a monthly salary. This Court observes that the Claimant's claim relates to causes of action that emerged during the tenure of both contracts. I have hereinabove rendered myself on those causes of action that purportedly arose during the tenure of the fixed-term contract.
58. Any cause of action arising from the initial employment contract could be, and became, time-barred three years after its date of accrual, and those classified as 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 I conclude that none of them can be granted to him, as the causes of action were time barred under the provisions of section 90 of the *Employment Act*, at the time the current suit was being filed.
59. 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**

