



**Ogango v Ellams Products Limited (Cause 1483 of 2017)  
[2025] KEELRC 2003 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2003 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1483 OF 2017  
K OCHARO, J  
JUNE 30, 2025**

**BETWEEN**

**JARED ONYANGO OGANGO ..... CLAIMANT**

**AND**

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

**JUDGMENT**

1. This suit was commenced through a Memorandum of Claim dated 28th July 2017, by the Claimant against the Respondent. The Claimant alleges that the termination of his employment by the Respondent was both unfair and unlawful. Accordingly, the Claimant seeks the following reliefs and orders against the Respondent.
  - a. A declaration that the termination of his employment was unfair and unlawful;
  - b. A declaration that the Claimant was underpaid;
  - c. A declaration that the differential treatment by the respondent was discriminatory.
  - d. Compensation to the Claimant as follows;
    - i. KShs. 21,009, being payment for the rest days from May 2007 to April 2011,
    - ii. KShs. 192,728, representing the difference in underpayment in the basic salary,
    - iii. KShs. 69,750, equivalent of underpayment in house allowance.
    - iv. KShs. 334,000 lump-sum allowance for nine years.
    - v. KShs. 162,000 -the =equivalent of bus fare allowance for nine years.
    - vi. KShs. 60,723 bonus amounts for 2011 to 2015.



- vii. KShs. 19,500 months' salary in lieu of notice.
  - viii. Damages for unfair termination.
2. The Respondent resisted the Claimant's claim through a Memorandum of Reply dated 6<sup>th</sup> February 2019, denying the Claimant's claim that his employment was unlawfully and unfairly terminated, and that he is entitled to the reliefs sought.
  3. Following the hearing of the parties' respective cases, this court directed them to submit their respective submissions. The Claimant complied with this directive, whereas the Respondent did not.

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

4. The Claimant stated that he initially commenced employment with the Respondent in June 2007 as a general labourer, earning a daily wage of KShs. 249.
5. He further argued that, since 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 until 2011.
6. He asserted that in July 2007, he was promoted to the position of a Machine Operator. Despite the promotion, the Respondent continued to pay him the aforementioned daily wage, contrary to the set minimum wage in force at the material time.
7. Resultantly, he signed a one-year fixed-term contract. Per the contract, his contract could automatically be renewed at expiration unless the Respondent otherwise advised.
8. Despite the stipulations of the contract, at the expiration of the fixed-term arrangement, the Respondent did not notify him of any intention to terminate the relationship. He continued working for the Respondent after the contract had lapsed. As a result, his contract converted into an indefinite contract of employment.
9. He claimed that at some point in 2010, he became a member of the Kenya Union of Printing, Publishing, Paper Manufacturers and Allied Workers Union. Therefore, his terms of employment were supposed to adhere to the negotiated Collective Bargaining Agreement between the Respondent and his union.
10. 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 continued to pay him, KShs. 8,434.
11. He had started earning the monthly remuneration of KShs 8,434 following the conversion of his employment into a fixed-term contract on 1st April 2011.
12. 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.
13. The Respondent, in policy, compensated all other employees working overtime with a lump sum allowance of KShs. 3,000 per month; however, the Claimant was not paid this amount for over nine years. Furthermore, the Respondent provided a bus fare allowance of Kshs. 50 daily to all employees, except for the Claimant.
14. Under the Collective Bargaining Agreement, he was entitled to a bonus payment equal to one month's salary, payable at year's end. Unjustifiably, the Respondent refused to pay this benefit for nine years.



15. 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.
16. On 31<sup>st</sup> March 2016, when he reported to work, the Respondent terminated his employment without giving any reasons for the same.
17. Prior to the termination of his employment, he was not accorded any opportunity to be heard.
18. At the time of termination, he was earning KShs. 16,450.
19. Cross-examined by Counsel for the Respondent, Ms. Kavagi, the Claimant testified that he had made two payments of union dues. However, he misplaced payment receipts.
20. The fixed-term contract had an appointed lapse day, 31<sup>st</sup> March 2016. After this day, the Respondent paid him KShs. 92, 907.
21. In his evidence under re-examination, the Claimant, though he received the payment, the Respondent didn't explain to him the purpose of the payment.

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

23. The Respondent called 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, along with the documents filed by the Respondent as its documentary evidence. As there was no opposition from the Claimant, these were adopted and admitted, respectively.
24. The witness stated that the Respondent first engaged the Claimant in 2007, as a casual labourer earning daily wages of KShs. 470 being the minimum daily rate, inclusive of house allowance as per the Regulation of Wages [General][Amendment Order].
25. He was subsequently employed as a Machine Attendant. He signed a fixed-term contract for one year, which was to run from 1 April 2015 to 31 March 2016. The agreed basic salary was KShs 11,450, plus a 15% housing allowance. This amount was higher than the minimum wage set at the time for a Machine Attendant.
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 deducts and remits union dues for all employees who are members of trade unions. No such deductions were paid to any trade union on behalf of the Claimant, nor was the Respondent informed of the Claimant joining a trade union. Consequently, 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. The Respondent availed the Certificate of Service to the Claimant, and the Claimant collected the same on 3<sup>rd</sup> June 2016.
29. The Claimant's contract automatically expired on 31st March 2016.
30. The Respondent paid the Claimant a sum of KShs. 92, 907 as his final terminal dues. He acknowledged receipt of the amount by signing a payment certificate.
31. Cross-examined by the Claimant's Counsel, the witness stated that the larger part of the final dues paid to the Claimant was gratuity, which was calculated based on a salary for 15 days for each year worked.



32. The Respondent dutifully remitted his National Social Security Fund contributions for the Claimant. Despite this, he received a gratuity owing to how he exited employment.
33. The salary under the terms of the Collective Bargaining Agreement was higher than what the Respondent was paying the Claimant.
34. The checklist that the trade union supplied to the Respondent did not have the name of the Claimant.
35. Whenever he worked overtime, the Respondent could compensate him at the end of every month as can be discerned from the payslips presented in evidence.

### **Analysis and Determination.**

36. 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.
37. The Claimant contended that his contract of employment was terminated at the initiative of the Respondent on 31<sup>st</sup> March 2016, without any notice and without any reasons for the same being accorded to him. Thus, the termination was unlawful and unfair.
38. There is no dispute that the Claimant last served under a fixed-term contract which had an appointed lapse date. It is on this date, 31st March 2016, that the Claimant alleges his employment was terminated without notice and without an opportunity being given to him to be heard.
39. Time and again, this Court has held that where a fixed-term contract of employment has a specific lapse date, such a contract therefore has an inherent termination notice. There is no requirement that the employer has to issue a termination notice unless the contract is being terminated before the lapse date.
40. In his submissions, Counsel for the Claimant contends that the Claimant had a legitimate expectation that his contract could be renewed. I am not persuaded that these submissions, in the circumstances of the instant matter, make sense. First, legitimate expectation was not pleaded by the Claimant. Second, no evidence was presented to establish the legitimate expectation. It is essential to note at this juncture that fixed-term contracts typically do not create a legitimate expectation of renewal, as they automatically terminate on the appointed date. Legitimate expectation cannot, therefore, be asserted successfully without evidence establishing the requisite conditions necessary.
41. Consequently, I hold that the Claimant's employment came to an end by effluxion of time. It was not terminated unfairly by the Respondent.
42. Section 49[1][c] of the *Employment Act* confers upon this court the authority to grant compensatory relief to an employee who successfully challenges their employer's decision to terminate their employment as unfair, amounting to twelve months' gross salary. However, it is crucial to recognise that the exercise of this authority is discretionary. The extent of the award varies depending on the circumstances of each case. Since such relief is only payable upon a successful claim for unfair termination, there is no basis for this Court to grant the same in this matter.
43. The Claimant sought compensation in lieu of notice. The Claimant was engaged under 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 before the predetermined date. I decline to make any award under this head.

44. The Claimant asserted that he was entitled to remuneration under the Collective Bargaining Agreement between the Respondent and the Union. In his pleadings, he stated that he was a member of the trade union. However, in his evidence under cross-examination, he admitted that he had nothing to demonstrate that the membership.
45. It is evident from his pleadings and evidence that his claim to benefits and protections under the CBA was solely based on the fact that he was a member of the trade union. Noting that the Claimant had failed to prove membership, his counsel, in his submissions, appears to have shifted from this stance and heavily argued that the entitlement was based on the premise that the Claimant was a unionisable employee.
46. Demonstrating 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.
47. 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].
48. 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. See also *Avenue Car Hire & another vs Slipha Wanjiru Muthegu* -Civil Appeal No. 302 of 1997.
49. In *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another* [2014] eKLR, where the Court of Appeal held;

Submissions cannot take the place of evidence. The 1<sup>st</sup> Respondent has failed to prove his claim. What appears in his submissions could not come to his aid. Such a course only militates against the law and will be unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence."
50. Therefore, this Court finds the Claimant's claim for underpayments, based on the assertion that his remuneration was not paid in accordance with the terms and conditions of the Collective Bargaining Agreement, to be without merit.
51. 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 paid by daily wages, and subsequently under a fixed-term contract for a monthly salary. This Court notes that the Claimant's claim relates to causes of action that arose during the period of both contracts.



52. By dint of Section 90 of the *Employment Act*, 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 conclude that none of them can be granted to him, as the causes of action were time-barred.
53. This Court hasn't lost sight of the fact that the Claimant's claim was essentially a special damage claim. The special damages needed to be specifically proved. They weren't.
54. 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**

