



**Kenya Union of Commercial and Food Allied Workers v Sai Electrical
and Hardware Limited (Employment and Labour Relations Cause
E020 of 2022) [2025] KEELRC 1760 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1760 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE E020 OF 2022
MA ONYANGO, J
JUNE 13, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL AND FOOD ALLIED
WORKERS CLAIMANT**

AND

SAI ELECTRICAL AND HARDWARE LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a trade union registered under the *Labour Relations Act* and is mandated in its constitution under Rule No. 5 to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company registered under the laws of Kenya operating a hardware in Eldoret City.
3. By virtue of its constitution the employees of the Respondent fall within the purview of the Claimant's membership and the Claimant is the right union to represent the employees of the Respondent in labour matters.
4. The Claimant and Respondent do not have a recognition agreement. The claim herein is filed on behalf of Mr. Ronald Tanui, a former employee of the Respondent who the Claimant states was its member paying union dues directly to the union, herein after referred to as the Grievant.
5. According to the Memorandum of Claim dated 9th September, 2022, the Grievant was employed by the Respondent as a general worker on 5th March, 2020. At the time of termination of his employment he was earning a monthly salary of Kshs. 11,700 per month.
6. It is the Claimant's case that on 8th March, 2022 the Grievant was informed by the Respondent's director that his services were no longer required and he should tabulate his terminal dues for payment.



That the Grievant reported to the union to help him tabulate his terminal dues whereupon the Claimant attempted to engage the Respondent without success.

7. It is the Claimant's case that it was left with no option but to report a trade dispute to the Cabinet Secretary Ministry of Labour and Social protection which it did. The Cabinet Secretary accepted the dispute and, through the Chief Industrial Relations Officer, appointed Mr. Timothy Kipruto of Eldoret Labour Office as Conciliator by letter dated 10th November, 2021.
8. The Claimant avers that the Conciliator invited the parties for meetings on 24th May, 2022 and 30th May, 2022 but the Respondent did not attend the said meetings. The Conciliator therefore issued a Certificate of Unresolved Dispute.
9. The Claimant prays for the following remedies on behalf of the Grievant:
 - a. Notice in lieu 11,700
2 years leave $14,400 \times 21 \times 2 \div 30$ 20,160
2 years public holidays worked (600x18) 10,800
2 years salary underpayment. $14,400 - 11,700 \times 24$ 64,800
Saturday overtime for 2 years 31,680
2 years severance $14,000 \times 15 \times 2 \div 30$ 14,400
12 month compensation 172,800
Total 326,340
 - b. Certificate of service
 - c. Cost of the suit to the claimant
 - d. Any other order the Honourable Court deems fit to address the cause of justice.
 1. The Respondent filed a Reply to Memorandum of Claim dated 12th October, 2022 in which it avers that the Claimant has no locus standi to bring this claim on behalf of the Grievant as the Respondent has never engaged the Grievant in a unionisable employment. It denied the allegations in the Claim in toto. It was the Respondent's further averment that if any employment relationship existed between it and the Grievant, the same was very casual as the Grievant was not employed on any permanent term.
 2. The Respondent further avers that the Grievant's employment was not terminated as "he was just but a mere casual worker who was paid at the end of the day when he turned up for duty...". That the Grievant failed to turn up for duty contrary to the allegations that he was dismissed.
 3. The Respondent further avers that it never entered into any agreement with the Claimant for union representation and never paid any subscription to the Claimant. That its employees are not members of the Claimant union.
 4. The Respondent avers that it never received any invitation to attend conciliation meetings at the Labour Office.
 5. The Respondent prays that the suit be dismissed with costs.



Evidence

15. The suit was heard on 26th October, 2023 when the Grievant testified as CW1. The Respondent's witness, Simon Alega Wamukoya testified on 16th April, 2024 as RW1. Parties thereafter filed and exchanged submissions.
16. The Grievant reiterated the averments in his witness statement dated 9th September, 2022 filed with the Memorandum of Claim, which he adopted as his evidence in chief. The same are as set out in the Memorandum of Claim as enumerated above.
17. Upon cross examination by Mr. Oyaro, counsel for the Respondent, the Grievant stated that he was never issued with a letter of appointment. He was paid salary and signed on a document whose copy he was not issued with. He was not issued with a pay slip. He was not issued with a letter of termination. He was told verbally to tabulate his terminal dues. He was not paying statutory deductions.
18. The Grievant further stated that he was a member of the union and authorized the union to represent him.
19. In re-examination the Grievant stated that he was employed verbally. He was a glass cutter and was paid in cash.
20. For the Respondent RW1 testified that he was a manager of the Respondent. He adopted his witness statement dated 15th May, 2022.
21. He testified that he knew the Grievant who was employed by the Respondent whenever it needed people to load or off-load as casuals paid for the day. He stated that the Respondent did not have any relationship with the Claimant.
22. Under cross examination by Mr. Tacko for the Claimant RW1 stated that the Grievant was employed on 5th March, 2020 and left on 8th March, 2022. That there were no documents to prove the Grievant's engagement for the entire period. That casuals do not sign anywhere. That the Respondent does not have any relationship with the union and that the Respondent did not receive any documents to go to Labour Office.
23. In re-examination he stated that the Respondent paid casuals by the day, most of the time in cash.

Analysis and Determination

24. I have considered the pleadings, the evidence adduced in court and the submissions as well as authorities cited and relied upon by the parties. The issues for determination are whether the Claimant has locus standi to represent the Grievant; whether there was any employment relationship between the Respondent and the grievant; whether the employment relationship was terminated unfairly; and finally, if the Claimant is entitled to the remedies sought on behalf of the Grievant.
25. On the first issue if the Claimant has locus standi to represent the Grievant it was the Respondents submission that the doctrine of privity of contract provides that only people who can enforce a contract are those who are a party to the contract. That even if the contract is for the benefit of a third party such as a union member that third party has no standing to enforce the contract. That collective agreements depend on the union being recognized by the employer for purposes of collective bargaining.
26. The [Labour Relations Act](#) provides for direct payment of trade union dues at section 52 as follows:
Direct payment of trade union dues.



52. Nothing in this Part prevents a member of a trade union from paying any dues, levies, subscriptions or other payments authorized by *the constitution* of the trade union directly to the trade union
27. The Grievant testified that he was a member of the union and paid union dues directly to the Claimant union. He further testified that when he was informed that his services were no longer required by the Respondent he went to the union to assist him tabulate his terminal dues. That the Claimant approached the Respondent to discuss the same but the Respondent was not cooperative. That that it therefore reported a dispute to the Minister who accepted the dispute and appointed a conciliator.
28. Reporting of disputes by trade unions is provided for in section 62 of the *Labour Relations Act*. membership of trade unions is distinct from recognition of trade union. Recognition is for purposes of collective bargaining while membership is for purposes of representation. An employee who is a member of a trade union is entitled to representation even where there is no recognition agreement between the union and his employer.
29. I find the Claimant has locus standi to represent the Grievant as it does not require a recognition agreement or engagement with the Respondent for purposes of representing the grievant.
30. On the second issue the Grievant had worked for the Respondent for two years from 5th March, 2020 to 8th March 2022 as confirmed by RW1. He was not a casual in terms of the definition of casual in section 2 of the Act. His terms of employment had converted to monthly contract as provided in section 37 of the Act. He was therefore entitled to be taken through the disciplinary process as set out in sections 41 and 43 of the Act failing which the termination of his employment would be unfair in terms of section 45(2) of the Act. having not been taken through the process, the termination was unfair. The Respondent did not prove either valid ground for termination of that the Grievant was given an opportunity to be heard before termination.
31. The Respondent denied that it terminated the employment of the Grievant, yet did not produce any records to prove that he had absconded duty as alleged. As was held in *Boniface Nkubi Karagania v Protective Custody Limited* [2019] eKLR, where an employer alleges that an employee absconded duty, there must be evidence that the employer took action in the manner provided in section 44(4) of the Act. in that case the court stated:
- “The absence must be accompanied by overt acts pointing to the fact that the employee simply does not want to work anymore and the burden of proof for the unjustified refusal to go to work rests on the employer.”
32. This was reiterated in *Ongayo v Everflora Limited* (Employment and Labour Relations Appeal 068 of 2023) [2025] KEELRC 242 (KLR) (31 January 2025) (Judgment) Neutral citation: [2025] KEELRC 242 (KLR) where the court held:
- “An employer relying on the ground of desertion of duty to justify a termination of employment must show that efforts have been made to get in touch with the deserted employee. At the very least, the employer must issue reasonable notice to the employee that the termination of employment is being considered.”
33. The Grievant testified that he was called and told to tabulate his terminal dues as his services were no longer required by the Respondent. From the foregoing I find that the termination of the Grievant’s employment by the Respondent was unfair.



Remedies

34. The Grievant is entitled to pay in lieu of notice in terms of section 35(1) as read with section 49(1) of the Act. I award him the same in the sum of Kshs. 11,700.
35. The Grievant worked for two years and there was no evidence adduced by the Respondent to prove that he took annual leave. I award him 42 days being 21 days per year as provided in section 28 of the Act. I award him Kshs. 20,160.
36. No evidence was adduced by the Respondent to prove that the Grievant did not work on public holidays as required by section 10(3) of the Act. I award him the same as prayed at Kshs. 10,800.
37. The Claimant did not adduce any evidence to prove that the Grievant worked any overtime on Saturdays. The prayer is declined.
38. The manner in which the Grievant's employment was terminated, being on grounds that there was no work for him, amounted to redundancy. I therefor award him 2 years severance pay at 15 days per year worked being Kshs. 14,400.
39. The Respondent did not deny that the Grievant was underpaid based on the Regulation of Wages (General) (Amendment) Order, 2018 which was applicable in 2020. I award the Grievant underpayments in the sum of Kshs. 64,800.
40. Having found the termination unfair I award the Grievant 2 months salary as compensation taking into account his length of service and relevant factors under section 49(4) of the Act at Kshs. 28,050.
41. The Respondent shall pay the Claimants costs which I assess at Kshs. 50,000.
42. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 13TH DAY OF JUNE 2025.

MAUREEN ONYANGO

JUDGE.

