



**Ojwang v Vectorcom Control and Supplies Limited (Appeal
E017 of 2025) [2025] KEELRC 2206 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2206 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E017 OF 2025**

**M MBARÚ, J
JULY 24, 2025**

BETWEEN

STANSLAUS NAMENYA OJWANG APPELLANT

AND

VECTORCOM CONTROL AND SUPPLIES LIMITED RESPONDENT

*(Being an appeal from the judgment of Hon. G Sogomo delivered
on 13 September 2024 in Mombasa CMELRC No. 595 of 2022)*

JUDGMENT

1. The appeal arises from the judgment delivered on 13 September 2024 in Mombasa CMELRC No. 595 of 2022. Aggrieved, the appellant is seeking that the judgment be set aside with a reevaluation and finding that there was no regard to the procedure used to terminate his employment and should be awarded 2 months' salary in notice pay, severance pay, house allowance, accrued leave days, leave travelling allowance for 6 years and compensation for unfair termination of employment.
2. The appellant's case was that he was employed under an oral contract by the respondent as a caretaker starting 1 September 2007 at a wage of Ksh. 000 per month. Through a contract extension dated 28 August 2008, his employment became permanent in the same position. The appellant worked until 30 April 2020 when his employment was unlawfully terminated. His claim was that, upon the emergence of the COVID pandemic, the respondent instructed him to proceed on compulsory unpaid leave from April 2020 to 30 November 2020. Upon returning to work on 1 December 2020, he was issued with a two-week contract, which he refused to sign. He was then sent on unpaid leave until he was ready to sign the contract. He reported the matter to the Kenya Chemical Workers Union, but the issue was not resolved. He has never been recalled to work; thus, he was declared redundant without due process. At the time his employment was terminated, the appellant was earning Ksh. 573 per month and therefore claims the following dues:



- a. 2 months' salary in notice pay Ksh.27,146,
 - b. Severance pay Ksh.327,752,
 - c. Unpaid house allowance Ksh.44,751.60,
 - d. Accrued leave for 6 years Ksh.44,617,
 - e. Leave travelling allowance for 6 years Ksh.15,000,
 - f. 12 months compensation Ksh.162, 876.
3. In response, the respondent merely denied the claim and stated that all procedures were followed and that stakeholders, including the Kenya Chemical Workers Union and labour offices acting on behalf of the appellant and other workers, were engaged in reaching the agreement dated 15 August 2021, which binds the appellant. The claims are unfounded.
 4. In the judgment, the learned magistrate held that the appellant had deserted duty following the COVID-19 pandemic and was only entitled to a month's notice pay and accrued leave pay, along with a certificate of service.
 5. Aggrieved, the appellant raises 23 grounds arguing that the trial court failed to recognise that he was placed on unpaid leave without justification at the time of redundancy and was not consulted in the social dialogue through his trade union before the redundancy was declared via unpaid leave. The suspension of his salary from 30 April 2020 during the COVID pandemic violated his employment rights, and there was no evidence that the respondent suffered a financial loss to justify placing him on unpaid leave. The trial court erred in failing to acknowledge the evidence that the reason for the employment termination was the refusal to sign a two-week contract from August 2021, which amounted to desertion.
 6. Other grounds of appeal are that the finding that he deserted employment was in error. The trial court failed to appreciate that he was declared redundant on 30 April 2020, and the requirement for reinstatement on an oral two-week contract in August 2021 was not justified. The learned magistrate failed to appreciate that the Kenya Chemical Workers Union was not a party to the tripartite MOU between the Ministry, COTU, and FKE, and hence the process used to terminate his employment was unlawful. Under the Union, there was a CBA that required two months' pay in lieu of notice, payment of service pay on redundancy, a house allowance, and a leave and travel allowance.
 7. Both parties filed written submissions, which were analysed.
 8. The issue of jurisdiction is apparent to this court because the parties and the trial court did not address it.
 9. The appellant submitted records to support the facts presented, specifically his payment statements, including those for union dues. He also filed letters and communications between his trade union, Kenya Chemical Workers Union and the respondent. He filed a copy of the CBA between his trade union and the employer. He also confirmed that upon his alleged unfair redundancy and termination of employment, his trade union reported a dispute to the Minister, but the matter was not addressed. Finally, upon the COVID pandemic, the Minister, COTU and FKE entered into an MOU under which there was an agreement on the terms and conditions to be applied by the tripartite.
 10. Despite these facts, the appellant filed his claim before the subordinate court.



11. Under Gazette Notice No. 6024 of 2018, the mandate to hear employment disputes excludes trade disputes from the trial court. As the appellant was unionised and his employment was regulated under the [Labour Relations Act](#), his case should have been filed with the court. The trial court is restricted to hearing employment disputes only.
12. The Notice is that;

Disputes arising from contracts of employment (excluding trade disputes under the [Labour Relations Act](#), 2007) where employees' gross monthly pay does not exceed Kshs. 80,000/= as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules 2016.
13. Under section 2 of the [Labour Relations Act](#), a trade dispute is defined to include:

“trade dispute” means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers' organization and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union;
14. In *Onyango v Ken Knit Kenya Limited* [2024] KEELRC 1569 (KLR) and *Kenga Equatorial Hotels t/a Mombasa Continental Resort v Chege* [2025] KEELRC 162 (KLR), the courts have emphasized that [Legal Notice No.6024 of 2018](#) conferred jurisdiction upon the magistrates concerning employment disputes only. The court retains original jurisdiction over all employment and labour relations disputes, including trade disputes.
15. The court has original jurisdiction in this case. The trial court proceeded without jurisdiction.
16. The appellant's case involves multiple threads on appeal. He contends that on 30 April 2020, he was sent on compulsory leave due to the COVID-19 pandemic. He resumed work on 1 December 2020 when he was issued a two-week contract, which he refused to sign. He also contests that his employment was terminated due to redundancy, as he failed to sign an oral two-week rotation reinstatement agreement in August 2021.
17. The appellant thus claims unlawful termination of employment and unfair dismissal due to redundancy.
18. As outlined above, this was a trade dispute because the appellant was unionised under the Kenya Chemical Workers Union. Being unionised grants the trade union authority to act on behalf of its members, including the appellant. This role is part of the mandate assigned to the trade union under the [Labour Relations Act](#). This position is reaffirmed in the case of *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] KECA 4 (KLR), which states that once an employee joins a trade union and it is recognised, a bilateral agreement exists between the union and the employer. This agreement forms the basis for the union's engagement with the employer regarding the terms and conditions of employment for its members. Consequently, the trade union represents the employee in matters related to employment terms and conditions, including termination, redundancy, or other issues arising under a collective agreement, CBA.
19. The appellant submitted the existing CBA with his Memorandum of Claim. The union, covered under COTU, had the mandate to negotiate his employment terms and conditions.



The fact of the COVID pandemic is not contested.

20. Arising from the COVID-19 pandemic, the tripartite, comprising the Minister, COTU, and FKE, representing all parties including the appellant, drew up an MOU dated 20 April 2020 to safeguard the shop floor and prevent further exposure. The Minister published this MOU, which applies to all affected parties. See *Kenya Union of Commercial, Food and Allied Workers v Eldoret Packers Limited* [2025] KEELRC 1365 (KLR).
21. Although the appellant was not on the shop floor at the time of the MOU on 20 April 2020, he was affected through his membership of the Kenya Commercial Workers Union. He testified that he was sent on compulsory leave.
22. It was a term of the MOU that:

If upon review of the CBA parties mutually agree to have employees work on alternate days, reduction of pay for the normal period of work or to proceed on unpaid leave for any duration of time, this shall not be construed to be a break in employment service of the employee.
20. The respondent filed notice to the appellant union, Kenya Chemical Workers' Union, dated 15 August 2021. The appellant testified that he refused to sign the agreement to resume work on a rotational basis. To him, this was not acceptable. His trade union thus presented his interests; his refusal to attend work frustrated his employment.
21. The appellant cannot claim redundancy or unfair termination of employment. This was not the case, given the COVID-19 pandemic and the MOU signed by the tripartite, as well as his option not to take up work.
22. The claim for notice pay, compensation or severance pay does not arise.
23. Regarding the claim for leave days over 6 years, the trial court awarded the leave days as claimed; however, it lacked jurisdiction.
24. Section 28 of the Act gives the right to annual leave. Under the CBA covering the appellant, clause 8 allowed 25 leave days each year. Under Section 28 of the Act, this could only be accumulated for 18 months, unless there was evidence to approve more days. For the 33 days of leave due, on the basic wage of Ksh. 13,573, the appellant is entitled to Ksh. 14,930.30 in accrued leave pay.
25. Under clause 12 of the CBA, there was a provision for a leave travelling allowance for Ksh. 2,500 for annual leave. This is a benefit under the CBA.
26. On house allowance, the payment statements filed by the appellant confirm the payment of a house allowance in addition to basic pay and other benefits. This is addressed under clause 5 of the CBA, which is to comprise 15 percent.
27. On the issue of costs, both parties proceeded in the lower court without raising the jurisdictional question. This has resulted in time loss, and each should bear its costs.
28. Accordingly, the trial court proceeded without jurisdiction, and the judgment in Mombasa MCELRC No. 595 of 2022 is hereby set aside. Judgment is entered for the appellant in the following terms;
 - a. Accrued leave pay Ksh.14,930.30
 - b. Leave travelling allowance Ksh. 2,500.



c. Each party bears its costs of the appeal and trial court proceedings.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 24TH DAY OF JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

