



Kenya Union of Commercial, Food and Allied Workers v K & A Self Selection Stores Limited (Cause E110 of 2022) [2025] KEELRC 2202 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2202 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E110 OF 2022
DKN MARETE, J
JULY 23, 2025**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
K & A SELF SELECTION STORES LIMITED RESPONDENT

JUDGMENT

1. This matter came to court by way of a Statement of Claim dated 15th February, 2022. The issue in dispute is therein cited as;
Non-payment of terminal benefits to Messrs; Joseph Gachora, Benson Wanjagi, and Elizabeth Njoki,
2. The matter is not defended, or at all. This is despite various service to the Respondent.
3. The Claimant's case is that the grievance were employee of the Respondent and member of the claimant's union. They were variously employed on divert dates in 1998, 1999 and 2010 and their last salaries were Kshs.33,169.00, 23,750.00 and 33,169.00 respectively.
4. On 30th March, 2021, the Respondent wrote to the claimant informing them they were closing their business and therefore declaring the three redundant. This was with a proposal for a meeting on 15th April, 2021 with a view to agreeing on how the grievant's redundant dues would met. Here, the parties agreed that the Respondent would compute these benefits and forward them to the claimant for verification and approval. This was later communicated to the claimant in the following terms; Joseph Gachora: Kshs. 414,804 Benson Wanjagi: Kshs. 592,415 Elizabeth Njoki: Kshs. 553,935
5. On 20th April, 202, the Respondent undertook to pay these monies in instalments, the first being Kshs.500,000.00 and payable in May of the same year. A meeting was proposed for 20th May for



- further discussion on the schedule of payment. This was not to be despite enquiry from the claimant. The Respondent went mute on the subject.
6. The claimant thereafter reported a trade dispute on 2nd June, 2021 with the appointment of a Conciliator but despite the parties forwarding their representations, nothing came out of it and the conciliator issued a certificate of un-resolved dispute with a recommendation that the redundancy benefits be paid out to the claimant within six (6) months of the date of report. This was not to be despite the party's engagement on the subject.
 7. The grievant continues to suffer due to the inaction on the part of Respondent which also amounts to unfair labour practices. They continue to withhold these terminal dues without recourse to any cause or reason.
 8. The claimant prays as follows;
 - i. Declare the respondent's actions as unfair/unlawful and unconstitutional.
 - ii. Order the Respondent to pay the grievants all their benefits within 30 days as follows; (as tabulated by the respondent)
 1. 1st grievant = Kshs.414,804
 2. 2nd grievant = Kshs.592,415
 3. 3rd grievant = Kshs.553,935
 - iii. Order the Respondent to pay the grievants 12 months gross pay as compensation for unfair/unlawful action of refusal to pay their terminal dues.
 - iv. Costs of the suit to the claimant.
 - v. Any other relief that the Hon. Court may deem fit to meet the ends of justice.
 9. This matter remains undefended *in toto*. This is despite service.
 10. The Respondent was served with the Statement of Claim, Mention Notices, and subsequent court documents via email, as confirmed by the Affidavits of Service sworn by Diffinah Mothaga Nyamwange on;
 - i. 9th May, 2024 - Mention Notice for 7th March 2024
 - ii. 31st January, 2025 - Mention Notice for 18th February 2025
 - iii. 17th March, 2025 - Mention Notice for 19th March 2025
 11. The Respondent failed to enter an appearance or file defence despite proper service as attested by the immutable email printouts attached to the Affidavits of Service. The matter therefore proceeded as undefended.
 12. The issues for determination therefore are;
 1. Whether the Respondent is owing of the grievant's terminal dues on redundancy.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this claim?
 13. The 1st issue for determination is whether the Respondent is owing of the grievant's terminal dues on redundancy. The claimant in support of their case relied on the Witness Statement of Joseph



Gachora, who detailed the Respondent's failure to pay the agreed redundancy benefits. His testimony corroborated the Claimant's submissions including the Respondent's initial commitment to pay subsequent refusal to engage and disregard for the conciliator's recommendations. The Claimant also produced correspondence and meeting records to demonstrate the Respondent's breach of agreement and unfair labour practices.

14. The *Employment Act*, 2007 and the *Labour Relations Act*, 2007 mandate the payment of terminal benefits upon redundancy. The Respondent's actions contravene Section 40 of the *Employment Act*, 2007 which outlines the procedure for termination on occasions of redundancy. Section 62 of the *Labour Relations Act*, 2007 equally mandates and binds parties to conciliator's recommendations.
15. This court's jurisdiction to enforce such payments is well-established in precedents such as *Kenya Airways Limited v Aviation & Allied Workers Union* [2014] eKLR where the court emphasized the employer's obligation to pay agreed terminal dues.
16. The court finds that the Respondent's failure to pay the redundancy benefits despite tabulating and agreeing to the amounts constitutes unfair labour practices under Section 45 of the *Employment Act*, 2007. Besides, this disregard for court processes and refusal to participate in proceedings demonstrates a lack of good faith. The claimant has presented an overwhelming case on a balance of probabilities and preponderance of evidence. The rights of employees and the sanctity of collective bargaining agreements must be upheld. The Respondent's conduct is a stark reminder of the consequences of disregarding contractual obligations as enshrine in the *CBA* and generally other legal instruments on contract by parties. I therefore find a case of owing by the Respondent to the claimant and hold as such.
17. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is Aggrieved by the denial of agreed terms of engagement on redundancy benefit by the Respondent, she becomes entitled to the relief sought.
18. I am therefore inclined to allow the claim and order relief as follows;
 - i. A declaration be and is hereby issued that the Respondent's conduct and actions of refusing to meet and pay the grievant's redundancy dues is wrongful, unfair, unlawful and unconstitutional.
 - ii. The Respondent is ordered to meet and pay the grievants their terminal benefits tabulated hereunder within 30 days.
 - i. Joseph Gachora: Kshs. 414,804
 - ii. Benson Wanjagi: Kshs. 592,415
 - iii. Elizabeth Njoki: Kshs. 553,935
 - iii. The Respondent shall pay each grievant six (6) months' gross salary as compensation for the unlawful withholding of benefits: that is; Joseph Gachora: Kshs.33,169.00 x 6.....Kshs.199,014.00 Benson Wanjagi: Kshs.23,750.00 x 6.....Kshs.142,500.00 Elizabeth Njoki: Kshs.33,169.00 x 6Kshs.199,014.00
Total of claimKshs.2,101,682.00
 - iv. The costs of this cause shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025.

D. K. NJAGI MARETE



JUDGE

Appearances:

Lilian Manene for the claimant union.

No appearance for the Respondent.

