



Kenya Union of Commercial and Food Allied Workers v Sai Electrical and Hardware Limited (Cause E021 of 2022) [2025] KEELRC 2120 (KLR) (11 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2120 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E021 OF 2022
MA ONYANGO, J
JULY 11, 2025**

BETWEEN

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

AND

SAI ELECTRICAL AND HARDWARE LIMITED RESPONDENT

RULING

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. Evans Otieno Owino, 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 2nd February, 2020. At the time of termination of his employment he was earning a monthly salary of Kshs. 8,400 per month.
6. It is the Claimant's case that on 24th August, 2020 at about 9.00 am while the Grievant was on duty he was injured by glass that he and other workers were loading onto a vehicle. The Grievant was rushed to Moi Teaching and Referral Hospital where he was admitted for two days. The Grievant was never



treated or admitted to Family Care Medical Centre as alleged by the Respondent. The Grievant was only sent to Family Care Medical Centre to pick some medication.

7. It is the Claimant's case that when the Grievant claimed for compensation from the Insurance Company he was informed that the compensation had already been paid to the Respondent. When the Grievant sought help from his advocate who sent a demand letter to the Respondent his employment was terminated.
8. The Claimant states that its attempts to engage the Respondent to resolve the dispute were not successful leaving it 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.
9. The Claimant avers that the Conciliator invited the parties for meetings on 23rd November, 2021 and 9th December, 2021 but the Respondent did not attend the said meetings. The Conciliator therefore issued a Certificate of Unresolved Dispute.
10. The Claimant prays for the following orders/remedies on behalf of the Grievant:
 - a. Declare that the Grievant was unfairly, unprocedurally and unlawfully terminated from employment by the Respondent.
 - b. Order the Respondent to pay the Grievant the following dues:-
 1. Notice in lieu 14,400.00
 2. 1 years leave $14,400 \times 21 \div 30$ 10,080.00
 3. 1 month pro-rata leave 840.00
 4. 5 days worked in March,2021 3,000.00
 5. 1 years public holidays worked 13,200.00
 6. 13 months' salary underpayment 67,200.00
 7. 1 year overtime (5.00pm-6.00 pm) 30,374.00
 8. Saturday overtime for 1 year 49,358.00
 9. 1 years severance $14,025 \times 15 \times 1 \div 30$ 6,265.00
 10. 12 months compensation 30 150,360.00Total 344,717.00
 - c. Certificate of service.
 - d. Cost of the suit to the Claimant.
 - e. Interest to accrue at court rate from the date of judgment to date of full settlement's.
 - f. Any other order the Honourable Court deems fit to address the cause of justice.
11. 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.
12. 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.
 13. 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.
 14. The Respondent avers that it never received any invitation to attend conciliation meetings at the Labour Office.
 15. The Respondent prays that the suit be dismissed with costs.

Evidence

16. The suit was heard on 29th February, 2024 when the Grievant testified as CW1. The Respondent's witness, Simon Alego Wamukoya testified on 16th April, 2024 as RW1. Parties thereafter filed and exchanged written submissions.
17. The Grievant testified that he was employed on 2nd February, 2020 as a glass cutter. The engagement was oral. He was paid Kshs. 8,400 per month. Payment was made weekly at the rate of Kshs. 1,800. He was paid in cash. He signed in the Register at the end of every month. On 24th August he was arranging glass to be delivered to a customer when a piece of glass broke and injured him on the right hand in the fore-arm. He showed the court the spot of injury which the court noted has a scar.
18. He was taken to Moi Teaching and Referral Hospital and was off duty for 2 months. When he resumed duty he worked for one month. He followed up compensation with the Respondent's insurance and was told that the compensation for his injury was paid to his employer. When he asked the employer he was told that the employer did not have any money for him. He went to a lawyer who wrote a demand letter. After that the Respondent told him that it could no longer work with the Grievant after he took the Respondent to a lawyer. That at the time of dismissal he had worked for 1 year and 2 months.
19. Upon cross examination by Mr. Oyaro, counsel for the Respondent, the Grievant stated reiterated that he was paid Kshs. 1,800 weekly, that he had no documents to prove the same or payment of statutory deductions. The Grievant denied that he affixed his thumb print to document 1 in the Respondent's bundle for settlement of final claims dated 26th May, 2021. He stated he worked up to March, 2022.
20. He stated he was taken to hospital by the Respondent who paid the hospital bills. He stated the insurance company he went to was APA who told him the employer had already been paid compensation for his injuries. He stated the Respondent paid him Kshs. 17,000. That he was dismissed after payment. He was told the money was for compensation. He left employment on 4th March, 2022.
21. The Grievant stated he was a member of the union and had a registration card which he left at home.
22. For the Respondent RW1 testified that he was a manager of the Respondent. He adopted his witness statement dated 15th May, 2022.
23. 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.



24. Under cross examination by Mr. Tacko for the Claimant RW1 stated that the Grievant was a loader of glass. That on 24th August, 2020 the Grievant was working when glass broke and injured him. He was taken to Family Care Hospital and not Moi Teaching and Referral Hospital. That the Grievant was away for 2 weeks. When he reported back he did not work. His friend told him to go to the union to assist him get compensation. Thereafter he stopped working. On being questioned further he stated these were rumors as he had no proof about the Grievant being advised to go to the union to help him get compensation.
25. When shown the letter at page 16 of the Claimant's bundle of Documents (demand letter from advocate dated 4th march, 2021) RW1 stated he had no knowledge of the letter. He further stated he had no knowledge of the letters at pages 17 to 21 of the Claimant's bundle. These are the reporting of dispute to the Minister, letters calling parties for conciliation meeting and certificate of unresolved dispute from the Conciliator.

Analysis and Determination

26. 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.
27. On the first issue whether the Claimant has locus standi to represent the Grievant it was the Respondents submission that the doctrine of privity of contract provides that the 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, the 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.
28. 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 it therefore reported a dispute to the Minister who accepted the dispute and appointed a conciliator.
29. 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
30. 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 unions. 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.
31. I find the Claimant has locus standi to represent the Grievant as the Claimant does not require a recognition agreement for purposes of representing the Grievant.



32. On the second issue the Grievant had worked for the Respondent for one year and two months from 2nd February, 2020. He testified that his employment was terminated on 4th March, 2022. He was not a casual in terms of the definition of casual employee in section 2 of the *Employment 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 was unfair in terms of section 45(2) of the Act.
33. The Claimant testified that after he resumed work following his sick off he went to the Respondent's insurers to ask for payment of his compensation and was informed that the Respondent had already been paid. That when he asked the Respondent for payment he was told there was no money for him from the Insurance Company following which he went to a lawyer who wrote a demand letter to the Respondent. That thereafter the Respondent paid him and then send away on grounds that it cannot work with him after the demand letter from the lawyer.
34. Section 46(h) of the *Employment Act* provides that an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where the complaint is shown to be irresponsible and without foundation, is not a valid ground for termination of employment.
35. The Respondent did not rebut the averments of the Claimant. The Respondent did not prove either valid ground for termination or that the Grievant was given an opportunity to be heard before termination. Having not been taken through any disciplinary process as set out in section 41 of the Act, the termination of the Grievant's employment was unfair.
36. 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.”
37. 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.”
38. From the foregoing I find that the termination of the Grievant's employment by the Respondent was unfair.

Remedies

39. Pay in lieu of notice

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. 14,400 which was the minimum wage for general labourer in Eldoret at the time of termination of the Grievant's employment.



40. 4 days Worked in March
- The Grievant testified that he worked up to 4th March, 2021. This was not contested by the Respondent. I award her 4 days pay at Kshs. 8,640.
41. Annual Leave
- The Grievant testified that he worked for one years and two months, a total of 14 months. There was no evidence adduced by the Respondent to prove that he took annual leave. I award him 24.5 days being 1.75 days per month as provided in section 28 of the Act. I award him Kshs. 13,570.
42. Public Holidays
- 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. 13,200.
43. Saturday Overtime
- The Claimant did not adduce any evidence to prove that the Grievant worked any overtime on Saturdays. The prayer is declined.
44. Compensation for Unfair Termination
- The manner in which the Grievant's employment was terminated, was a violation of his right to file complaint against his employer being one of the grounds expressly prohibited in section 46 of the Act. Taking into account the length of service, the grounds for termination and all relevant factors under section 49(4) of the Act, I award the Grievant 4 months salary as compensation in the sum of Kshs. 57,600.
45. Underpayments
- 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. 67,200.
46. The prayers that are not awarded are deemed to have been dismissed as they were not proved.
47. The Respondent shall pay the Claimants costs which I assess at Kshs. 50,000.
48. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 11TH DAY OF JULY 2025

MAUREEN ONYANGO

JUDGE

