



**Kenya Union of Commercial, Food and Allied Workers v Equitorial Nut Processors Limited (Cause E046 of 2024) [2025] KEELRC 2059 (KLR) (11 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2059 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E046 OF 2024**

**ON MAKAU, J  
JULY 11, 2025**

**BETWEEN**

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

**AND**

**EQUITORIAL NUT PROCESSORS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant is a registered trade union and it brings this suit on behalf of its 9 members herein called the grievants. The grievants were all employed by the respondent on diverse dates and in various positions until August 2023 when they were verbally sent on thirty (30) days leave.
2. On the day the grievants were supposed to resume work, they all received SMS texts extending their leave by seven days. The leave kept on being extended until 26<sup>th</sup> September 2023 when they reported back to work. However, they were not allowed to resume work but rather, they were called for a meeting where the respondent told them to go back home until further notice by the HR Manager. Their salaries were also stopped.
3. The company had many employees but only the nine grievants were treated as highlighted above. They construed the said action by the respondent to mean termination of their employment for no valid reason and they reported to the claimant union on 27<sup>th</sup> September 2023. Attempts to reach amicable settlement failed since the respondent declined every invitation for meetings. The matter was referred to a conciliator but the claimant failed to agree with the conciliator’s report and the matter was referred to this court.
4. The claimant then filed a Memorandum of claim seeking the following reliefs: -



- i. That the Respondent's action of terminating the nine grievants was unfair and unlawful.
  - ii. That the nine employees to be reinstated back to their position they held prior to termination and continue working without loss of benefit.
  - iii. That the cost of the claim be provided for in favour of the claimant.
- In the alternative and where the court finds this termination should take place, then the claimant pray that the court order all the nine grievants to be paid their terminal benefits as follows: -

- i. One months' notice.
- ii. Accrued leave days if any
- iii. Underpayment of wages
- iv. Compensation for unlawful termination
- v. Certificates of services as provided in section 51 of *Employment Act*, 2007
- vi. Cost of the suit in favour of the claimant.

1. Nancy Nyambura Mukura-1<sup>st</sup> Grievant

- i. One-month notice=18,438.12
- ii. Underpayment of wages for 2010/2011=15,909.60
- iii. Underpayment of wages for 2011/2012=17,899.80
- iv. Underpayment of wages for 2015/2017=18,222.00
- v. Underpayment of wages for 2017/2018=15,249.60
- vi. Underpayment of wages for 2018/2022=98,630.40
- vii. Underpayment of wages for 2022/2023=64,484.80
- viii. Compensation for unlawful termination=221,257.20
- ix. Sacco savings refund=182,000.00

TOTAL KSH=652,091.50

2. Grace Wanjeri Mwangi 2<sup>Nd</sup> Grievant

- i. One-month notice =21,159.60
- ii. Underpayment of wages for 2018/2022=93,720.00
- iii. Underpayment of wages for 2022/2023=67,514.40
- iv. Service gratuity for 10 years (1995 to 2003)=91,998.80
- v. Compensation for unlawful termination=253,915.80

TOTAL KSH=528,307.80

3. Priscilla Gathoni Muturi 3<sup>Rd</sup> Grievant



- i. One-month notice =21,159.65
- ii. Underpayment of wages for 2018/2022=215,270.40
- iii. Underpayment of wages for 2022/2023=108,031.20
- iv. Service gratuity for 8 years (1996 to 2003)=82,798.65
- v. Compensation for unlawful termination=253,908.00
- vi. Sacco savings Refund=119,300.00

TOTAL KSH.772,868.35

4. Esther Mugechi Mukunya 4<sup>th</sup> Grievant
  - i. One-month notice=18,438.10
  - ii. Underpayment of wages for 2010/2011=15,909.60
  - iii. Underpayment of wages for 2011/2012=17,899.80
  - iv. Underpayment of wages for 2015/2017=18,222.00
  - v. Underpayment of wages for 2017/2018=15,249.60
  - vi. Underpayment of wages for 2018/2022=98,630.40
  - vii. Underpayment of wages for 2022/2023=64,484.80
  - viii. Compensation for unlawful termination=221,257.20

TOTAL KSH=470,091.50

5. Catherine Njoki Macharia 5<sup>th</sup> Grievant
  - i. One-month notice=18,438.10
  - ii. Underpayment of wages for 2018/2022=35,164.80
  - iii. Underpayment of wages for 2022/2023=43,329.60
  - iv. Service gratuity for 8 years (1996 to 2003)=64,132.40
  - v. Compensation for unlawful termination=221,257.20
  - vi. Sacco savings Refund=43,007.00

TOTAL KSH.425,339.10

6. Zipporah Mugure 6<sup>th</sup> Grievant
  - i. One-month notice=18,438.10
  - ii. Underpayment of wages for 2012/2013=33,810.00
  - iii. Underpayment of wages for 2013/2015=29,920.80
  - iv. Underpayment of wages for 2015/2017=64,086.00
  - v. Underpayment of wages for 2017/2018=37,811.88



- vi. Underpayment of wages for 2018/2022=188,877.60
- vii. Underpayment of wages for 2022/2023=93,847.20
- viii. Compensation for unlawful termination=221,257.20

TOTAL KSH.688,048.30

- 7. Mary Wanjira Mwangi 7<sup>th</sup> Grievant
  - i. One-month notice=18,438.12
  - ii. Underpayment of wages for 2010/2011=15,909.60
  - iii. Underpayment of wages for 2011/2012=17,899.80
  - iv. Underpayment of wages for 2015/2017=18,222.00
  - v. Underpayment of wages for 2017/2018=15,249.60
  - vi. Underpayment of wages for 2018/2022=98,630.40
  - vii. Underpayment of wages for 2022/2023=64,484.80
  - viii. Compensation for unlawful termination=221,257.20

TOTAL KSH=470,091.50

- 8. Caroline Njeri Wangai 8<sup>th</sup> Grievant
  - i. One-month notice=18,438.12
  - ii. Underpayment of wages for 2010/2011=15,909.60
  - iii. Underpayment of wages for 2011/2012=17,899.80
  - iv. Underpayment of wages for 2015/2017=18,222.00
  - v. Underpayment of wages for 2017/2018=15,249.60
  - vi. Underpayment of wages for 2018/2022=98,630.40
  - vii. Underpayment of wages for 2022/2023=64,484.80
  - viii. Compensation for unlawful termination=221,257.20

TOTAL KSH=470,091.50

- 9. Joyce Wangari Kinya 9<sup>th</sup> Grievant
  - i. One-month notice=18,438.12
  - ii. Underpayment of wages for 2010/2011=15,909.60
  - iii. Underpayment of wages for 2011/2012=17,899.80
  - iv. Underpayment of wages for 2015/2017=18,222.00
  - v. Underpayment of wages for 2017/2018=15,249.60
  - vi. Underpayment of wages for 2018/2022=98,630.40



- vii. Underpayment of wages for 2022/2023=64,484.80
- viii. Compensation for unlawful termination=221,257.20

TOTAL KSH=470,091.50

- 10. Cost of the suit.
- 5. The respondent was served with pleadings and summons but it never entered appearance or filed defence. Thereafter the matter was disposed of by adopting the pleading, witness statements and documents and written submissions.
- 6. I have considered the pleadings, evidence and submissions. The facts of the case stand uncontroverted. The grievants served the respondent for periods ranging between 11-25 years until 26<sup>th</sup> September 2023 when they were told to go home and salaries stopped until further notice.

### **Analysis**

- 7. The issues for determination are: -
  - a. Whether the grievants were constructively dismissed.
  - b. Whether the claimant is entitled to the reliefs sought.

### **Constructive dismissal**

- 8. Constructive dismissal is not provided for in any of our statutes but in a term established in case law. It occurs when an employee resigns due to the employers conduct that is intolerable, serious or breach of the employment contract by the employer. In the instant case, the employer was accused of sending the 9 grievants on leave from August 2023 and extending it severally up to 26<sup>th</sup> September 2023 when they were told to remain at home until further notice.
- 9. Having considered the uncontroverted pleadings and evidence adduced by the claimant, I find that the indefinite unpaid leave amounted to constructive termination. I say so because, there was no consent by the employees to proceed on the unpaid leave. Besides the failure to pay salary to an employee is a serious breach which entitles the employee to repudiate his contract of employment. I need not say more because the evidence before court is uncontroverted.

### **Reliefs**

- 10. The claimants prayed for reinstatement or in the alternative one-month lieu of notice, accrued leave, underpayment of salary, compensation for unlawful termination, certificate of service and costs of the suit. There is no evidence to prove that reinstatement is practicable considering the period separation from September 2023. Therefore, I will award the alternative prayer.
- 11. I see no big problem in awarding one-month salary in lieu of notice since that is provided under section 35(1)(c) of the *Employment Act*. The prayer for compensation for unfair termination is also allowed under section 49(1) of the *Employment Act* since constructive dismissal automatically amounts to unfair and unlawful termination within the meaning of section 45 of the *Employment Act*. The grievants served for periods between 11 years and 28 years. Those who served below 13 years I award each compensation of ten (10) months gross salary for the unfair termination but those who served above that period, I award them 12 months salary compensation for the unfair termination. Apart from the length of service, I have considered their clean record because no warning letters was issued against them and they were not dismissed for any misconduct on their part.



12. As regards the claim for underpayment of wages, I find it not well founded. The positions served by the grievants are not aligning with the General Wage Orders cited. The delay in claiming the same since 2010 until the grievants were dismissed has also not been explained. I therefore dismiss that claim as an afterthought which is not backed by evidence.
13. The claim for leave is also dismissed for lack of particulars and evidence. In fact, none of the grievants has specifically prayed for accrued leave in the claim.
14. Certificate of service is a right under section 51 of the [Employment Act](#) and therefore I grant the prayer.

### Conclusion

15. I have found that the grievants were constructively dismissed, which amounts to unfair and unlawful termination within the meaning of section 45 of the [Employment Act](#). I have further found that the claimant is entitled to prayer for one-month salary in lieu of notice, compensation for unfair termination, and certificate of service. Consequently, I now enter judgment for the claimant against the respondent as follows: -

- a. Nancy Nyambura Mukura (1<sup>st</sup> Grievant)
  - Notice.....Kshs.14,407.80
  - Compensation.....Kshs172,893.60
  - Kshs.187,301.40
  - Certificate of service
- b. Grace Wanjeri Mwangi (2<sup>nd</sup> Grievant)
  - Notice.....Kshs.16,940.00
  - Compensation.....Kshs.203,280.00
  - Kshs.220,220.00
  - Certificate of service
- c. Priscilla Gathoni Muturi (3<sup>rd</sup> Grievant)
  - Notice.....Kshs.14,407.80
  - Compensation.....Kshs.172,893.60
  - Kshs.187,301.40
  - Certificate of service
- d. Esther Mugechi Mukunya (4<sup>th</sup> Grievant)
  - Notice.....Kshs.14,342.85
  - Compensation.....Kshs.143,428.50
  - .Kshs.157,771.35
  - Certificate of service
- e. Catherine Njoki Macharia (5<sup>th</sup> Grievant)
  - Notice.....Kshs.14,407.80



- Compensation.....Kshs.172,893.60  
Kshs.187,301.40  
Certificate of Service
- f. Zipporah Mugure Githirwa (6<sup>th</sup> Grievant)  
Notice.....Kshs.12,527.65  
Compensation.....Kshs.125,276.50  
Kshs.137,804.15  
Certificate of Service
- g. Mary Wanjira Mwangi (7<sup>th</sup> Grievant)  
Notice.....Kshs.14,398.07  
Compensation.....Kshs.172,776.84  
Kshs.187,174.91  
Certificate of Service
- h. Caroline Njeri Wangai (8<sup>th</sup> Grievant)  
Notice.....Kshs.14,407.80  
Compensation.....Kshs.172,893.60  
Kshs.187,301.40  
Certificate of Service
- i. Joyce Wangari Kinya (9<sup>th</sup> Grievant)  
Notice.....Kshs.14,407.80  
Compensation.....Kshs.172,893.60  
Kshs.187,301.40  
Certificate of Service

16. The above awards are subject to statutory deductions but they will attract interest at court rates from the date hereof. The claimant is also awarded costs and interest.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 11<sup>TH</sup> DAY OF JULY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

