



**Kenya Engineering Workers Union v East Africa Spectre Limited (Cause E6587 of 2020) [2025] KEELRC 1994 (KLR) (4 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1994 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6587 OF 2020**

**AK NZEI, J  
JULY 4, 2025**

**BETWEEN  
KENYA ENGINEERING WORKERS UNION ..... CLAIMANT  
AND  
EAST AFRICA SPECTRE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant Trade Union sued the Respondent on behalf of the grievant herein, Gilbert Ooro Owuor, vide a Memorandum of Claim dated 20<sup>th</sup> November, 2020 and pleaded:-
  - a. that the Claimant and the Respondent had a Recognition Agreement and a valid CBA, duly negotiated and registered.
  - b. that a trade dispute was reported but parties did not agree, prompting the Claimant to invoke Section 62 of the *Labour Relations Act*.
  - c. that the grievant was employed by the Respondent as a general labourer from February 2014 upto 2019 when he was offered a one (1) year contract effective 1<sup>st</sup> January, 2019 to 31<sup>st</sup> December, 2019.
  - d. that the said contract was not renewed upon expiry, though the grievant continued working. That on 25<sup>th</sup> March, 2020, the grievant, together with other employees, were asked to fill in official leave forms for 14 days (effective from the same date due to the Covid-19 Pandemic.
  - e. that on 2<sup>nd</sup> May, 2020, the grievant, together with other employees, were called back to work by telephone; but on reporting back to work on 5<sup>th</sup> May, 2020, the grievant was given a notice of termination of employment. That the other employees were allowed to continue working as none of them had joined the Claimant union.



- f. that the grievant had worked diligently since 2014, without any warning letter pointing to under-performance.
  - g. that the Respondent's action was discriminative and contravened Article 36 of the Constitution of Kenya on freedom of association, Article 27 of the Constitution on discrimination and Article 41 on unfair labour practice.
  - h. that termination of the grievant's employment on ground of the union's activities/union affiliation contravened Section 46(2) of the Employment Act.
2. The Claimant sought the following reliefs:-
- a. Service ..... Kshs.190,080/=.
  - b. Three months' notice ..... Kshs.54,958.50/=.
  - c. Twelve months' compensation pay ..... Kshs.219,828/=.
  - d. House allowance in arrears ..... Kshs.42,500/=.
- Total = Kshs.507,464/=
3. Documents filed alongside the Claimant's Memorandum of Claim included an affidavit of the Claimant's General Secretary sworn on 20<sup>th</sup> November, 2020 in verification of the claim and an affidavit sworn on even date, the grievant's witness statement dated on 26<sup>th</sup> October, 2020, and a list of documents dated 20<sup>th</sup> November, 2020 listing 5 documents. The listed documents included copies of a CBA (signed on 27<sup>th</sup> July, 2018), the Claimant's letter dated 16<sup>th</sup> May, 2020 reporting a trade dispute, a letter by the Ministry of Labour dated 10<sup>th</sup> June, 2020 accepting the report, a letter of invitation by the Conciliator (dated 24<sup>th</sup> June, 2020) and a (conciliation) report dated 28<sup>th</sup> July, 2020.
4. The Respondent entered appearance and filed a statement of Response dated 16<sup>th</sup> March, 2021, denying the Claimant's claim and pleading:-
- a. that the grievant joined the Respondent as a casual labourer in June 2016, earning a daily wage of Kshs.530/=, and was engaged from time to time upto December 2018
  - b. that in January 2019, the grievant was engaged as a stamper on a one (1) year contract ending December 2019, earning a monthly basic salary of Kshs.18,319/= and a house allowance of Kshs.4,500/=. That the grievant worked from 8.00 a.m to 5.00 p.m from Monday to Friday, and from 8.00 a.m to 1.00 p.m on Saturdays, and was entitled to overtime if he worked on Sundays or on public holidays.
  - c. that the grievant's one (1) year contract could only be renewed upon satisfactory performance but his performance was found to be unsatisfactory upon review, hence his contract was not renewed upon expiry.
  - d. that the grievant was not an employee of the Respondent as on 5<sup>th</sup> May, 2020, and a letter had been issued informing him as much.
  - e. that the grievant's tenure at the Respondent company was marred with unresponsiveness, unreliability, absenteeism and underperformance, to the detriment of the Respondent.
  - f. that the Respondent did not, under any circumstance, exercise its managerial prerogative discriminatively against the grievant, and did not unfairly terminate the grievant's employment based on his union affiliation.



- g. that the grievant had been engaged by the Respondent for a fixed period of time, and that fixed term contracts bind parties to the fixed term specified in the contract and confer no right of renewal unless otherwise agreed by the parties.
  - h. that fixed term contracts do not carry any rights beyond their expiry dates; and employers are not obligated to issue notice of termination or reason for termination or non-renewal.
  - i. that Court's cannot infer renewal where none was intended by the parties. That the Claimant's assertions were speculative and lacked basis in law and fact.
  - j. that according to records kept by the Respondent pursuant to Section 74(1)(f) of the Employment Act, the grievant was paid his salary and house allowance for the entire contract period, including the months of May, June, July, August, September and October 2020.
  - k. that the grievant was a member and contributor of the National Social Security Fund (NSSF) and was, pursuant to Section 35(6) of the Employment Act, not entitled to service pay.
  - l. that the Claimant's claim is defective and barred in law, having been served contrary to Rule 11(2) of the Employment Act and the Employment and Labour Relations Court (Procedure) Rules 2016 which required that a statement of claim be served with summons.
  - m. that the Claimant did not have a registered CBA with the Respondent during the period of the alleged cause of action as the one produced by the Claimant expired on 31<sup>st</sup> December, 2019.
5. Documents filed alongside the Respondent's Statement of Response were a witness statement of Yvonne Odinga dated 15<sup>th</sup> July, 2024 and an evenly dated list of documents listing 14 documents. The listed documents included copies of payment schedule, the grievant's employment contract signed in February 2019, performance review dated 1<sup>st</sup> November, 2019, the grievant's letter dated 5<sup>th</sup> December, 2019 requesting for renewal of contract, a letter dated 28<sup>th</sup> April, 2020 informing the grievant that his 12 months' contract ending on 31<sup>st</sup> December, 2019 would not be renewed and that his last working day would be 30<sup>th</sup> April, 2020; a memo dated 5<sup>th</sup> December, 2019 on the grievant's absence from duty, the grievant's payslip for the month of May 2020 and a cheque for Kshs.23,710.85/= drawn in favour of the grievant, terminal dues form, a certificate of service, copies of payslips, CBA signed on 27<sup>th</sup> July, 2018 and certified copies of NSSF remittance forms.
6. The Court's record shows that trial commenced on 23<sup>rd</sup> July, 2024 when the grievant, Gilbert Ooro Owuor (CW-1) testified before Hon. Dr. Gakeri, J. He adopted his filed witness statement as his testimony and produced in evidence the documents filed by the Claimant (and referred to in paragraph 3 of this Judgment. Cross-examined, the grievant testified:-
- a. that he had been engaged on a one (1) year contract in 2019, earning a basic salary of Kshs.18,319.50/= and a house allowance of Kshs.4,500/=. That the contract expired but was not renewed, though the grievant wrote a letter requesting for renewal.
  - b. that the grievant continued working and was paid for services rendered; and received a letter dated 28<sup>th</sup> April, 2020 terminating his employment on account of poor performance.
  - c. that the grievant was terminated due to his affiliation to the Union (the Claimant); though he was not the only union member.
  - d. that the grievant was a member of, and a contributor to the NSSF, and that NSSF deductions were made monthly. That the grievant was paid his salary and house allowance for the month of May 2020; and was given a certificate of service.



7. Re-examined, the grievant testified that he worked until April 2020 when his employment was terminated; that his one (1) year contract had not been renewed, and that he had not been informed of the terms of his new engagement. That his employment was terminated on account of poor performance, that he had not been notified of poor performance, and was not invited for any hearing (meeting) regarding his termination.
8. The defence case opened before me on 4<sup>th</sup> March, 2025. The Respondent called one witness, Yvonne Odinga (RW-1), who adopted her filed witness statement as her testimony and produced in evidence the documents referred to in paragraph 5 of this Judgment.
9. Cross-examined, RW-1 testified:-
  - a. that the parties herein had a CBA, that the grievant was engaged by the Respondent as a general labourer from time to time between 2016 and December 2018, and that he was given a one (1) year contract from January 2019 to December 2019.
  - b. that upon expiry of the 1 year contract, the grievant continued working for the Respondent on the same terms on performance basis.
  - c. that parties herein had a CBA which covered all unionisable employees including the grievant, and that the witness (RW-1) was not aware that the terms and conditions set out in the CBA applied to employees on contract.
  - d. that during the Covid-19 period in 2020, the Respondent send almost a half of its employees on paid leave in compliance with the Government's directive on social distancing; and that the grievant was among those send on paid leave. That the employees send on paid leave were re-called, and that the grievant was among those who reported back; and was issued with a termination notice in compliance with the law.
  - e. that the Respondent issued the grievant with a certificate of service, and that the indication on it that the grievant had been engaged by the Respondent in 2014 was an error on the part of the Respondent as there were other documents, like the NSSF records, indicating that he had been engaged in 2016.
  - f. that the grievant was not discriminated against, but was issued with a termination notice in compliance with the *Employment Act*, and was informed of the reasons for termination of his employment.
10. Re-examined, RW-1 testified that the grievant's contract of employment was simply not renewed, and that this was the nature of the grievant's disengagement. That the Respondent's letter to the grievant dated 28<sup>th</sup> April, 2020 was not a termination notice. That the letter simply informed the grievant that his contract would not be renewed.
11. Having considered the pleadings filed and evidence presented by both parties, issues that fall for determination, in my view, are as follows:-
  - a. Whether the grievant's employment was terminated by the Respondent, and if so, whether the termination was unfair.
  - b. Whether the reliefs sought by the Claimant are deserved.
12. On the first issue, the Respondent asserted that prior to January 2019, the grievant was engaged by the Respondent as a general labourer from time to time, and was paid for services rendered. It was a common ground that the grievant was from January 2019 given by the Respondent a one (1) year



contract which ended on 31<sup>st</sup> December, 2019. That although the contract was not renewed, the grievant continued working for the Respondent on similar terms until 28<sup>th</sup> April, 2020 when the Respondent issued a letter terminating the grievant's employment with effect from 30<sup>th</sup> April, 2020. The said letter, which the Respondent produced in evidence, states in part:-

“ . . . This letter serves to inform you that the management has decided not to renew your contract. A salary of 30 days in lieu of notice will be paid as per your contract agreement. Your last working day with us will be 30<sup>th</sup> April, 2020.

You will be required to hand over any company property within your possession to your supervisor on or before close of business on 30<sup>th</sup> April, 2020.”

13. The Respondent (RW-1) did not tell the Court when the aforesaid letter was given to the grievant, but the grievant testified that the letter was given to him on 5<sup>th</sup> May, 2020 on reporting back to work from a paid leave which he and other employees had earlier been advised to take. The grievant is shown to have been paid his salary, inclusive of house allowance, for the month of April 2020. The Respondent produced in evidence a copy of the grievant's payslip for April 2020.
14. The Respondent further produced in evidence a copy of the grievant's payslip shown to be for the month of May 2020. This particular payslip shows a gross payment of Kshs.24,660.83/=, made up of salary in lieu of notice (Kshs.21,137.88) and leave days sold (Kshs.3,522.98/=); the net paid after deductions being Kshs.23,710.83/=. The Respondent also exhibited a copy of its cheque for the said net sum, dated 7<sup>th</sup> May, 2020 and drawn in favour of the grievant. The grievant did not deny having received the said sum.
15. Although, according to the evidence on record, the Respondent was not obligated to renew the grievant's one (1) year fixed term contract upon its lapse by effluxion of time on 31<sup>st</sup> December, 2019, its continued retention of the grievant in its employment after the said date, and for a continuous period exceeding three (3) months with salary being paid at intervals of one month, meant that termination of the grievant's employment could only be effected upon giving an appropriate notice. Section 35(1) (c) of the Employment Act addresses this kind of scenario, which the Respondent appears to have been aware of as it made some notice pay to the grievant.
16. It was a common ground that parties herein had a Collective Bargaining Agreement (CBA) signed on 27<sup>th</sup> July, 2018, copies of which both parties produced in evidence. Under clause 18 of the said CBA, employees of the Respondent who had worked for over 5 years were entitled to 3 months' written notice or an equivalent amount of wages in lieu of notice. According to the Claimant's pleadings, the certificate of service issued to the grievant by the Respondent on 28<sup>th</sup> April, 2020, and the evidence presented by both parties, the grievant had worked for the Respondent for a period exceeding five (5) years. The Court was not told how and why an employee shown to have been working for the Respondent for years without a written contract prior to January 2019 was in 2019 given a 1 year fixed term contract ending on 31<sup>st</sup> December, 2019. I will not pursue this issue beyond that point, and will leave it to lie. Only noting that based on the evidence on record, the grievant was entitled to 3 months' termination notice in accordance with clause 18 of the CBA signed by the parties herein on 27<sup>th</sup> July, 2018, which was in force as on 30<sup>th</sup> April, 2020 when the grievant's employment was terminated. Clause 40 of the CBA provides as follows:-

“ This agreement shall be effective 1<sup>st</sup> January, 2018 and shall remain in force for a period of two years from that date. Thereafter shall continue to be in force until amended by both parties.”



17. The CBA was not shown to have been amended, and was therefore in force at the time of termination of the grievant's employment. Failure by the Respondent to issue a 3 months' termination notice to the grievant in accordance with the CBA or to pay an equivalent of 3 months' salary in lieu of notice rendered the termination procedurally unfair.
18. Further, although the Respondent pleaded and testified that underperformance, absenteeism, unreliability and unresponsiveness were the reasons for termination of the grievant's employment, Section 41 of the *Employment Act* is not shown to have been complied with prior to termination. The grievant is not shown to have been given an opportunity to be heard on the accusations levelled against him, at least regarding the period of his employment between 1<sup>st</sup> January, 2020 and 30<sup>th</sup> April, 2020. This amounted to procedural unfairness. Validity of the alleged reasons for termination was not proved pursuant to Section 45(2)(a) of the *Employment Act*. Unfairness in terminating an employee's employment may be either procedural or substantive, or both.
19. As stated in the case of *Walter Ogal Anuro – vs – Teachers Service Commission [2013] eKLR*:-
 

“... For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”
20. I return a finding that termination of the grievant's employment was substantively and procedurally unfair, and I so hold.
21. On the second issue, and having made a finding that termination of the grievant's employment was unfair, I award the grievant the equivalent of two months' salary being compensation for unfair termination of employment. A copy of the grievant's payslip for the month of April 2020, produced in evidence by the Respondent, shows that the grievant was earning a gross salary of Kshs.22,819.50/= at the time of termination. The equivalent of two months' salary is Kshs.45,639/=, which I award to the grievant.
22. The claim for Kshs.42,600/= being house allowance arrears was not proved, and is declined. The evidence on record shows that the grievant's gross salary was inclusive of house allowance.
23. The claim for notice pay partly succeeds. As already stated elsewhere in this Judgment, the grievant was entitled to three months' termination notice. He was paid one month salary in lieu of notice as stated in paragraph 14 of this Judgment. He is entitled to Kshs.45,639/= being the equivalent of two months' salary to make up an equivalent of three months' salary in lieu of notice. I award the grievant the said sum of Kshs.45,639/= in that regard.
24. The claim for Kshs.190,080/= being service pay is declined. The evidence on record, particularly the documentary evidence produced by the Respondent, shows that the grievant was a member of, and a contributor to the National Social Security Fund (NSSF). The grievant testified as much in Court. Section 35(6)(d) precludes members of NSSF from earning service pay.
25. In sum, and having considered written submissions filed by both parties, Judgment is hereby entered for the Claimant against the Respondent as follows:-
  - a. Compensation for unfair termination of employment..... Kshs.45,639/=.
  - b. Payment in lieu of notice..... Kshs.45,639/=.

Total Kshs.91,278/=.



26. The awarded sum shall be subject to statutory deductions as applied to the grievant at the time of termination, pursuant to Section 49(2) of the *Employment Act*.
27. The Respondent shall pay to the Claimant Trade Union a sum of Kshs.40,000/= being reasonable reimbursement of money spent by the Trade Union in the course of litigation herein pursuant to Rule 70(4) of the Employment and Labour Relations Court (Procedure) Rules 2024.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

Order

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Araka for the Claimant

Miss Onyango for the Respondent

