



**Bakery Confectionery Food Manufacturing & Allied Workers Union  
(K) v Sameer Agricultural Livestock (K) Limited & another (Cause  
E346 of 2021) [2025] KEELRC 1976 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1976 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E346 OF 2021  
HS WASILWA, J  
JULY 3, 2025**

**BETWEEN**

**BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED  
WORKERS UNION (K) ..... CLAIMANT**

**AND**

**SAMEER AGRICULTURAL LIVESTOCK (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**HAGGAI MULTICARGO HANDLING SERVICES LTD ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Memorandum of Claim dated 20<sup>th</sup> April 2021 and prays for judgment against the Respondents for: -
  1. A declaratory order that the termination of the grievant herein through the actions of the respondents herein were based on invalid reasons and procedurally flawed hence illegal null and void.
  2. A declaratory order to issue that the outsourcing arrangement between the respondents herein violated the provisions of the Private Employment Agencies Convention, the Labour Institutions (Private Employment Agencies) Regulations, 2016, the same was unlawful, illegal and void and violated the grievant's constitutional rights under Article 41 on Fair Labour Practices.
  3. A declaration that the respondent's actions in singling out the grievant for termination of his services for engaging in union activities was discriminatory on the basis of the Claimant's trade union membership and in violation of the grievant's constitutional rights under articles 27(5), article 36 as read with article 41(1)(2)(c) of *the Constitution* of the Republic of Kenya.



4. A declaration that the grievant is entitled to compensation for violation of his constitutional rights under article 27(5), article 36 as read with article 41(1)(2)(c) of the Constitution of the Republic of Kenya.
5. An order for the award of terminal dues and benefits as computed under part F above in the sum of Kes 1,242,346.00.
6. An order for cost.

### **Claimant's Case**

2. The Claimant avers that it has a duly executed recognition agreement with the 1<sup>st</sup> Respondent executed on 19<sup>th</sup> February 2010, following a judgment delivered on 2<sup>nd</sup> February 2010 in ELRC Cause No. 469(N) of 2009.
3. The Claimant avers that there is an existing trade dispute with the 1<sup>st</sup> Respondent over refusal to negotiate a collective bargaining agreement in respect to unionisable employees at its employ.
4. For the purpose of these proceedings, the Respondents executed a labour provision contract where the 1<sup>st</sup> Respondent outsourced services of the 2<sup>nd</sup> Respondent for provision of labour including the grievant in these proceedings.
5. It is the Claimant's case that the grievant was employed by the 2<sup>nd</sup> Respondent effective September 2014 as a Dispatcher in the Dispatch Department earning a salary of Kes. 15,212. His main duties entailed loading of goods into the company's vehicles for transportation purposes.
6. The Claimant avers that the grievant was never issued with a letter of employment but he executed a form with the 2<sup>nd</sup> Respondent which he was not provided and neither was he provided an itemized payslip detailing the entitlements drawn at the end of every month.
7. The Claimant avers that the grievant among other unionisable employees joined the Claimant union on 5<sup>th</sup> October 2017 in order to benefit from union membership and for collective bargaining purposes. The union duly forwarded the form S containing the names and signatures of the employees who had joined it to the 1<sup>st</sup> Respondent for deduction of trade union fees.
8. The Claimant avers that in connivance and collusion with the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent purported to victimize, undermine, coerce and target employees for their affiliation with the union.
9. The Claimant avers that owing to the existence of a recognition agreement, it was duty bound to ventilate the concerns of trade union membership within the Respondents' employ. It therefore appointed interim trade union officials to coordinate trade union activities at shop level.
10. The Claimant avers that vide a letter dated 15<sup>th</sup> May 2018, it notified the 1<sup>st</sup> Respondent of a general meeting of all employees for purposes of conducting elections of the works committee on 25<sup>th</sup> May 2018 at 12.30 p.m. The grievant among other employees was tasked to distribute and inform fellow union members of the same in compliance with Labour Relations Act.
11. It is the Claimant's case that on 22<sup>nd</sup> May 2018, the grievant among other employees were denied entry into the workplace and accused of inciting employees to stage a strike which was not the case. The grievant was further denied access to the 1<sup>st</sup> Respondent's workplace by the night guard on 4<sup>th</sup> June 2018 when he reported to work during the night shift.



12. The Claimant avers that the grievant was constructively dismissed by virtue of the Respondent's actions in violation of the substantive and procedural provisions of the law vide a letter of termination dated 25<sup>th</sup> June 2018 authored by the 2<sup>nd</sup> Respondent.
13. The Claimant avers that the grievant was denied an opportunity to respond to any alleged acts of misconduct on his part and termination without recourse to the procedural safe guards set out in law as he was not subjected to a disciplinary hearing.
14. It is the Claimant's case that the grievant's termination was tied to his membership, involvement and participation in trade union activities as an interim union official of the Claimant in violation of Section 5(2)(c)(i)(ii) of the Labour Relations Act as well as articles 36 and 41 of the Constitution.
15. The Claimant avers that the 2<sup>nd</sup> Respondent is not an accredited/ registered outsourcing agent and the outsourcing arrangement between the Respondents was in violation of the provisions of the Private Employment Agencies Convention, the Labour Institutions (Private Employment Agencies) Regulations as well-established principles governing outsourcing agents and agencies in Kenya
16. The Claimant avers that mindful of the illegitimate outsourcing arrangement, the Respondents colluded and in connivance subverted the grievant's statutory and constitutional rights to associate, join and participate in the activities of a trade union as is evidenced by the course of events in order to obliterate any trade union activities at the 1<sup>st</sup> Respondent's premises by terminating the grievant and any other union members.
17. It is the Claimant's case that the grievant was discriminated upon on account of their trade union affiliation in open violation of Article 27(5) of the Constitution read together with Section 5(i) of the Employment Act and Sections 46, 4(1)(2) and 5 of the Labour Relations Act.

### **1<sup>st</sup> Respondent's Case**

18. In opposition to the Claim, the 1<sup>st</sup> Respondent filed a Statement of Response dated 9<sup>th</sup> July 2021.
19. The 1<sup>st</sup> Respondent avers that the grievant was never its employee and would therefore not be the proper party to deduct any union dues. The grievant was an employee of the 2<sup>nd</sup> Respondent, a separate entity which ran its own payroll.
20. The 1<sup>st</sup> Respondent admitted that was bound to ventilate concerns of employees within its employ, however, it avers that the employee in question was not its employee and the right party to engage was the 2<sup>nd</sup> Respondent to raise any such concerns.
21. It is the 1<sup>st</sup> Respondent's case that the grievant was terminated by his employer, the 2<sup>nd</sup> Respondent, vide a termination letter dated 25<sup>th</sup> June 2018
22. The 1<sup>st</sup> Respondent avers that it has a legal outsourcing agreement with the 2<sup>nd</sup> Respondent since the year 2010. As far as it is concerned, the 2<sup>nd</sup> Respondent is a licensed labour provider under any regulations; and if indeed the 2<sup>nd</sup> Respondent is not licensed, that does not void or illegitimize the binding contractual relationship between the two parties. The 2<sup>nd</sup> Respondent presented itself as a licensed labour provider and it is on the strength of this that the two parties contracted. The 1<sup>st</sup> Respondent need not involve itself in the internal affairs of the 2<sup>nd</sup> Respondent.
23. It is the 1<sup>st</sup> Respondent's case that it grievant's union never at any point tried to engage his actual employer, the 2<sup>nd</sup> Respondent. The only evidence before this court involves the union engaging the 1<sup>st</sup> Respondent which can only be described as an exercise in futility.



24. The 1<sup>st</sup> Respondent avers that the grievant was terminated by the 2<sup>nd</sup> Respondent for engaging in an illegal strike and not for any trade union affiliation as alleged.
25. The 1<sup>st</sup> Respondent avers that the grievant is not entitled to any compensation from it as there is no nexus between the 1<sup>st</sup> Respondent and the grievant and there exists no employer employee relationship between them. Therefore, the grievant cannot pray for compensation from the 1<sup>st</sup> Respondent.
26. The 1<sup>st</sup> Respondent avers that the grievant was employed by the 2<sup>nd</sup> Respondent and seconded to the 1<sup>st</sup> Respondent's premises where he was working in the dispatch department. He was seconded by virtue of an outsourcing agreement signed between the Respondents, therefore, there is no employer employee relationship between the Claimant and the 1<sup>st</sup> Respondent.
27. The 1<sup>st</sup> Respondent avers that there is no law that prohibits it from signing a valid labour outsourcing agreement for its non-core services from labour providers such as the 2<sup>nd</sup> Respondent.
28. It is the 1<sup>st</sup> Respondent's case that the Claimant's termination was legally and procedurally done as per his contract with the 2<sup>nd</sup> Respondent and all his dues paid and if there was any instance that the law was not followed, the guilty party would be the 2<sup>nd</sup> Respondent.
29. The 1<sup>st</sup> Respondent avers that the claim against it is incurably defective and it is not properly suited and it shall apply to be struck out from these proceedings.

#### **Evidence in Court**

30. The Claimant (CW1) adopted his witness statement dated 20<sup>th</sup> May 2021 as his evidence in chief and produced his filed documents dated even date as his exhibits 1-9.
31. During cross examination, CW1 testified that he was employed by the 2<sup>nd</sup> Respondent in 2014 and was sent to the 1<sup>st</sup> Respondent in the year 2016. During his period at the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent used to pay his salary.
32. CW1 testified that he was sacked for organising a strike, which was not true.
33. CW1 testified that he was given his termination letter by his supervisor from the 2<sup>nd</sup> Respondent.
34. CW1 testified that the union did not write to the 2<sup>nd</sup> Respondent but instead wrote to the 1<sup>st</sup> Respondent as he was in its compound. The union did not have recognition agreement with the 2<sup>nd</sup> Respondent.
35. The Respondent's witness (RW1) Paul Maina stated he is the 1<sup>st</sup> Respondent's Legal Officer and adopted his witness statement dated 28<sup>th</sup> March 2024 as his evidence in chief and produced the Respondent's filed list of documents dated even date as his exhibits 1-6.
36. During cross examination, RW1 testified that the grievant was employed by the 2<sup>nd</sup> Respondent and outsourced to provide services to the 1<sup>st</sup> Respondent
37. RW1 testified that the allegation that the grievant organised a strike came from the 1<sup>st</sup> Respondent as it reported the issue to the 2<sup>nd</sup> Responder. However, the 1<sup>st</sup> Respondent's HR did not dismiss the grievant.

#### **Claimant's Submissions**

38. The Claimant submitted on five issues: - whether the grievant's termination from employment was unfair; which party was responsible for the termination of the Claimant's Services; whether the



grievant's Constitutional rights were violated; what remedies are available to the grievant if any; and who is to bear the cost of the proceedings.

39. On the first issue, the Claimant submitted that the grievant was terminated through a letter dated 25<sup>th</sup> July 2018, on grounds that he was planning a strike and was disobedient and disrespectful to his supervisor at his place of work dispatch department. However, the 2<sup>nd</sup> Respondent being the author of the said letter neither filed a response nor presented any evidence to prove the reasons for termination of the claimant's services. The 1<sup>st</sup> Respondent on the other hand alleged that the grievant was terminated for engaging in an illegal strike. And RW1 in his witness statement stated that the 1<sup>st</sup> Respondent reported the grievant's disruptive conduct to the 2<sup>nd</sup> respondent which affected the 1<sup>st</sup> Respondent's daily operations. Upon conducting its internal review, the 2<sup>nd</sup> Respondent found the grievant guilty of misconduct by interfering with 1<sup>st</sup> Respondent's operations and proceeded to act against the grievant.
40. It is the Claimant's submission that RW1 testified that could not identify the disruptive behaviour the grievant was engaged in or accused of thus he could not justify the reasons for termination. Therefore, none of the respondents established the reason for termination and as such the grievant's termination from employment was premised on invalid reasons contrary to 43, 45(2) and 47(5) of the [Employment Act](#).
41. The Claimant submitted that the Respondents failed to adhere to due process set out under Section 41 (1) and (2) of the [Employment Act](#) prior to terminating the services of the grievant. The grievant was neither issued with a Show Cause letter setting out the particulars of the reasons the Respondents considered terminating his employment; nor was he invited to disciplinary hearing to make representations accompanied by an employee of his choice prior to the termination. The Respondent did not produce in court minutes of any disciplinary hearing demonstrate compliance with the provisions of the [Employment Act](#).
42. It is the Claimant's submission that termination of the Claimant's services fell short of both the substantive and procedural requirements of the [Employment Act](#) and his resultant termination from employment was therefore unfair, null and void.
43. On the second issue, the Claimant submitted that it is undisputed that the 1<sup>st</sup> Respondent had a labour provision contract with the 2<sup>nd</sup> Respondent where its non-core services were outsourced to. Ordinarily, where a labour provision contract is in place, the employees are deemed to be those of the contractor who is expected to exercise control of the employees in all aspects of employer-employee relationship including allocation and supervision of work among others. Further one critical element of an employer-employee relationship is the ability to exercise control and/or discipline an employee.
44. The Claimant submitted that based on RW1's testimony, the 1<sup>st</sup> Respondent initiated the disciplinary complaints against the grievant, by reporting to the 2<sup>nd</sup> Respondent that he was engaged in an unlawful strike and requiring action by the 2<sup>nd</sup> Respondent. Therefore, the 1<sup>st</sup> Respondent is jointly and severally culpable regarding the matters governed by the labour provision contract it executed with the 2<sup>nd</sup> Respondent and cannot insulate itself from liability citing lack of an employer employee relationship.
45. The Claimant submitted that the labour provision contract between the Respondents provides under Clause 13(i) that the company (1<sup>st</sup> Respondent) will be at liberty to expel any employee found misbehaving or engaging in acts of indiscipline while within the premises of the company, with the contractor (2<sup>nd</sup> Respondent) bearing responsibility for any loss or damage arising out of such misbehaviour or indiscipline acts. Additionally, clause 5 provides that the company reserves the right to subject any employee deployed to work with it by the Contractor to a security search for purposes of ensuring that company's property is not stolen and or sneaked out of its premises and any such



employee found in unlawful possession of the company's property in such instances or otherwise shall be liable to disciplinary action by the company including but not limited to criminal prosecution.

46. It is the Claimant's submission that it is evident that within the labour provision contract, the 1<sup>st</sup> Respondent reserved the right and sole responsibility to undertake disciplinary action against any outsourced employee including the grievant.
47. The Claimant submitted that having retained the power to take disciplinary action against an employee seconded to it, the 1<sup>st</sup> Respondent cannot be absolved of any responsibility for the consequences of its actions emanating from invoking disciplinary proceedings against an employee. The 1<sup>st</sup> Respondent retained a critical element of the employer-employee relationship by retaining the responsibility to undertake disciplinary action against an outsourced employee and is equally as culpable as the 2<sup>nd</sup> Respondent.
48. The Claimant relied in the Bakery Confectionery Food Manufacturing & Allied Workers Union (K)-Versus- Sameer Agriculture & Livestock Limited & Another (unreported) where the Hon. Mr. Justice Rika interpreted the provisions of the outsourcing agreement where he held as follows; -

“In the outsourcing agreement between the Respondents herein, it was the obligation of the 1st Respondent, to lay and set the minimum standards and qualifications of persons to be recruited by the 2<sup>nd</sup> Respondent; it would provide a conducive working environment and provide safe drinking water, proper dining facilities, changing room for each gender and sanitation to the employees.

Further control of the Employees by the 1st respondent was extended to disciplinary issues. The outsourcing agreement allowed the 1<sup>st</sup> Respondent to conduct security searches on the employees, and to subject the employees to disciplinary action, if found to be unlawful possession, of the 1<sup>st</sup> Respondent's property. The agreement states that such disciplinary action, would include institution of criminal proceedings by the 1<sup>st</sup> Respondent.

There is adequate evidence in the outsourcing agreement to lead the Court to the same conclusion, as was held in Maundu & 40 Others (citation above) that the Respondents, herein were co-employers to the grievant.”

49. It is the Claimant's submission that pursuant to the contract between the Respondents, the 1<sup>st</sup> Respondent was directly and vicariously liable for the actions of the 2<sup>nd</sup> Respondent as the agent. The 1<sup>st</sup> Respondent is equally as culpable as the 2<sup>nd</sup> Respondent in as far as the grievant's claim.
50. On the third issue, the Claimant submitted that Article 27 (5) of *the Constitution* safeguards the grievant's rights not to be subjected to discrimination; Article 36 makes provisions for the right to freedom of association which includes the right to form, join and participate in the activities of an association of any kind which includes a trade union; and Article 41 (2) (c) provides for fair labour practices by safeguarding the right to form, join or participate in the activities and programmes of a trade union.
51. It is the Claimant's submission that it said letter it called for a General meeting of all union employees for purposes of election of Works Committee vide a letter dated 15<sup>th</sup> May 2018. However, the 1<sup>st</sup> Respondent responded vide a letter dated 24<sup>th</sup> May 2018 stating that the planned union general meeting is misinformed, null and void, illegal and a distraction and that the same will not be allowed. Vide a letter dated the 24<sup>th</sup> May 2018, the Claimant protested the victimization of some of its members for organizing the said meeting within its premises. The Claimant observed that the Respondent had



- sought to suspend some of its employees on amongst other that they were planning a strike which allegation was unfounded.
52. Additionally, RW1 testified that the 1<sup>st</sup> Respondent reported the disruptive conduct to the 2<sup>nd</sup> Respondent for action. Although the 1<sup>st</sup> Respondent does not indicate what constituted the disruptive conduct, the conduct complained of was that of the grievant organizing for a strike which in fact was not the case.
  53. The Claimant submitted that the grievant was terminated on account of exercising lawful trade union activities, thus, the Respondents jointly and severally violated his constitutional rights under Article 36 and 41 of *the Constitution*. Further, the grievant was subjected to discrimination on account of his trade union affiliation and engaging in trade union activities in violation of section 27 (5) of *the Constitution*.
  54. On the final issue, the Claimant submitted that having demonstrated that the grievant's termination was unfair and that it was based on his engagement in trade union activities which was discriminatory and in violation of his constitutional rights, the Claimant is entitled to prayer 1 and 2.
  55. The Claimant submitted that the grievant was not paid his salary up to 25<sup>th</sup> June 2018 when he was terminated. The Respondents did not adduce evidence to counter the Claimant's averments and evidence in this respect, therefore, the Claimant urged the court to grant the sum of Kes.12, 675.00 as salary for days worked in June 2018.
  56. The Claimant submitted that having demonstrates that the grievant's termination from employment was unfair this court is therefore obligated to exercise its discretion and award compensation in line with the principles set out in section 49 of the *Employment Act*. The grievant was terminated for no valid reason and at the time of termination, he had served in employment for a period of approximately 4 years. The grievant's constitutional rights were violated in the process, therefore, the Claimant urged the court to consider granting the 12 months' salary as compensation as sought.
  57. On compensation for violation of the grievant's constitutional rights, the Claimant submitted that Article 23 of *the Constitution* grants this Court the power to grant redress for violation of constitutional rights through compensation. The Claimant seeks compensation to the tune of Kes. 1,000,000.00 which it contends is adequate in the circumstances to redress constitutional violations meted out against the grievant.

### **1<sup>st</sup> Respondent's Submissions**

58. The 1<sup>st</sup> Respondent submitted on five issues: - whether the 1<sup>st</sup> Respondent was the employer of the grievant; whether the 1<sup>st</sup> Respondent's conduct complied with the law; whether the 1<sup>st</sup> Respondent was improperly joined in the instant claim; whether the 1<sup>st</sup> Respondent violated the grievant's constitutional rights and or unfairly dismissed the grievant; and whether the grievant is entitled to reliefs sought against the 1<sup>st</sup> Respondent.
59. On the first issue, the 1<sup>st</sup> Respondent submitted that it is settled law that an employment relationship is not presumed and must be clearly pleaded and proved by the party alleging its existence, as per Section 107 of the *Evidence Act*. In *Monica Kanini Mutua v Al-Arafat Shopping Centre & Another* [2018] eKLR, the Court emphasized that a claimant must first establish the existence of an employment relationship before pursuing claims of unfair termination.
60. The 1<sup>st</sup> Respondent submitted that the Labour Outsourcing Agreement dated 1<sup>st</sup> August 2010 entered into between the Respondents, was a legitimate commercial arrangement through which the 2<sup>nd</sup> Respondent undertook full responsibility for recruitment, supervision, remuneration, and



disciplinary processes of outsourced personnel. Pursuant to this agreement, the grievant was hired and paid by the 2nd Respondent under a contract of service, a fact expressly admitted in the Claimant's pleadings. Under the doctrine of judicial estoppel, the Claimant cannot now contradict that admission.

61. It is the 1<sup>st</sup> Respondent's submission that uncontroverted evidence shows that the 2<sup>nd</sup> Respondent retained exclusive control over the grievant's employment, including hiring, placement, supervision, and termination. While the grievant worked at the 1<sup>st</sup> Respondent's premises, he remained under the management and control of the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent had no contractual or supervisory authority over the grievant sufficient to constitute an employment relationship.
62. The 1<sup>st</sup> Respondent submitted that the Claimant's reliance on Clause 13 of the agreement is misplaced. That clause merely permitted the 1<sup>st</sup> Respondent to request disciplinary action by the 2<sup>nd</sup> Respondent; it did not confer any independent authority. All investigations and disciplinary actions concerning the grievant were executed solely by the 2<sup>nd</sup> Respondent. No evidence has been presented to challenge this position.
63. The 1<sup>st</sup> Respondent submitted that employment relationship is best assessed using the control, integration, and economic reality tests, as affirmed in *Everret Aviation Ltd v Kenya Revenue Authority* [2013] eKLR and *Omusamia v Upperhill Springs Restaurant* [2021] eKLR. Applying these principles, the evidence demonstrates that the 2<sup>nd</sup> Respondent, not the 1<sup>st</sup> Respondent, controlled the grievant's work and employment terms. The mere presence of the grievant at the 1<sup>st</sup> Respondent's premises does not create an employment relationship. Secondment or deployment of staff through outsourcing does not equate to employment by the host entity as underscored in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, where the Court affirmed the legitimacy of outsourcing as a business strategy.
64. The 1<sup>st</sup> Respondent submitted that the Claimant's reliance on a recognition agreement and attempts to extend the benefits of a Collective Bargaining Agreement to the grievant, who has no employment relationship with the 1<sup>st</sup> Respondent, are legally unfounded. Membership in a trade union does not confer rights under CBAs negotiated with unrelated third parties, and such a proposition would undermine principles of contractual privity and certainty.
65. It is the 1<sup>st</sup> Respondent's submission that the Claimant has failed to produce any employment contract, pay slip, or documentation evidencing direct instruction or control by the 1<sup>st</sup> Respondent over the grievant. The record, comprising pleadings, witness testimony, and documentary evidence confirms that the grievant was employed solely by the 2<sup>nd</sup> Respondent.
66. On the second issue, the 1<sup>st</sup> Respondent submitted that the 1<sup>st</sup> Respondent's role was limited to receiving outsourced services and reporting any misconduct observed. In this case, the 1<sup>st</sup> Respondent merely notified the 2<sup>nd</sup> Respondent of the grievant's disruptive conduct. This action was consistent with Clause 13(i) of the outsourcing agreement, which permits the 1<sup>st</sup> Respondent to request the replacement of an unruly worker, not to discipline or terminate.
67. The 1<sup>st</sup> Respondent submitted that it did not exercise any disciplinary authority and did not breach any statutory or constitutional right of the grievant. There is no evidence before the court to suggest otherwise. Its inclusion in this suit appears strategic, intended to shift liability from the actual employer, the 2<sup>nd</sup> Respondent, therefore, it is improper attempt to saddle a non-employer with responsibilities it neither assumed nor legally bears.



68. On the third issue, the 1<sup>st</sup> Respondent submitted that there exists no employment relationship or contractual nexus between itself and the grievant. The 1<sup>st</sup> Respondent's recognition agreement with the Claimant Union pertains solely to its own employees, the grievant not being its employee, he is a stranger to that agreement and cannot invoke any rights arising therefrom.
69. The 1<sup>st</sup> Respondent submitted that if the grievant is a member of a union, any associated rights or obligations are exercisable only in the context of his actual employer, the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent has no legal obligation to recognize or facilitate union-related entitlements for individuals outside its employment.
70. The 1<sup>st</sup> Respondent submitted that its inclusion in these proceedings is both unjustified and improper, and appears intended merely to secure a basis for enforcing any adverse judgment that may be issued against the 2<sup>nd</sup> Respondent. It relied in the case of *Abyssinia Iron & Steel Limited v. Kenya Engineering Workers Union* [2016] eKLR, which affirmed that the obligation to enter into a recognition agreement in relation to outsourced employees' rests with the outsourcing entity, not the client company. The Court held:
- “In the instant case, the outsourced employees entered into express contractual relationships with Jokali, which in turn contracted with Abyssinia to provide employees to perform various duties. The employees, though working in Abyssinia's premises, remained under Jokali's management and control. Faced with these facts, we find that, bar the fulfillment of the mandatory legal requirements, it was Jokali, and not Abyssinia, that was obliged to recognize the Union in respect of Jokali's employees. We therefore disagree with the learned judge that the employees outsourced to Jokali remained employees of Abyssinia.”
71. On the fourth issue, the 1<sup>st</sup> Respondent submitted that the grievant's termination was undertaken by the 2<sup>nd</sup> Respondent following disciplinary proceedings triggered by misconduct affecting the 1<sup>st</sup> Respondent's operations. The 1<sup>st</sup> Respondent merely reported the disruptive behaviour in its premises, an action consistent with any client-service provider relationship.
72. It is the 1<sup>st</sup> Respondent's submission that from the evidence adduced by both parties on record, there is no indication that the 1<sup>st</sup> Respondent or its officers participated in or influenced the 2<sup>nd</sup> Respondent's investigations, disciplinary proceedings, or the eventual termination of the grievant. The 1<sup>st</sup> Respondent maintained that if the 2<sup>nd</sup> Respondent had either found the grievant blameless or, if found culpable, opted to transfer him to another employer rather than dismiss him, it would have been a party to this suit.
73. The 1<sup>st</sup> Respondent submitted that the Claimant's reliance on clause 5 of the contract between the Respondents that permits the 1<sup>st</sup> Respondent to take disciplinary action in cases involving employee theft following a body search. This clause is narrowly tailored and only applies to theft-related incidents where the 1<sup>st</sup> Respondent may refer the matter directly to the police, bypassing the outsourcing company. It does not contemplate general disciplinary procedures under the *Employment Act*. Importantly, the Claimant has not been accused of theft, and therefore this clause is inapplicable to the present case.
74. On the final issue, the 1<sup>st</sup> Respondent submitted that it had neither the authority nor obligation to discipline or terminate the grievant. The only entity with such authority was the 2<sup>nd</sup> Respondent as the contractual employer in accordance with section 41 of the *Employment Act*. The 1<sup>st</sup> Respondent owes no duty under the *Employment Act* or *the Constitution*, nor did it participate in any procedurally



or substantively unfair disciplinary process. The 1<sup>st</sup> Respondent cannot legally and in this instance be said to bear liability or responsibility for the 2<sup>nd</sup> Respondent's actions.

75. The 1<sup>st</sup> Respondent submitted that the Claimant's allegations of constitutional violations fail to meet the standard of reasonable precision established in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR. During cross-examination, the grievant admitted to joining the union in 2017 and paying union dues personally, however, he paradoxically based his constitutional claim on an alleged denial of union membership in 2018. This contradiction renders the claim both illogical and unsubstantiated.
76. The 1<sup>st</sup> Respondent submitted that the Claimant has broadly cited various constitutional provisions but has failed to specify the nature, manner, and extent of the alleged violations, or provided supporting evidence. It cited the Court of Appeal's decision in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, and emphasized that the Claimant's pleadings are vague, lacking the necessary particularity to enable a meaningful response.
77. I have examined all evidence and submissions of the parties herein. The claimant has averred that they have a recognition agreement with the 1<sup>st</sup> respondent herein. The claimant also aver that the grievant was terminated for engaging in union activities.
78. The grievant testified before court and indicated that he was employed by the 2<sup>nd</sup> respondent to perform duties for the 1<sup>st</sup> respondent. The termination letter is dated 25/6/2018 and is written by the 2<sup>nd</sup> respondent. The reason given therein are that the grievant engaged in planning a strike and was also disobedient to his supervisors. It was also indicated that he was guilty of gross misconduct and was thus terminated.
79. There is no indication that the grievant was subjected to any disciplinary process before the termination. The grievant has admitted in his evidence that he was an employee of the 2<sup>nd</sup> respondent but was never issued with any employment contract or payslip.
80. In view of this admittance and in view of the fact that the grievant was terminated by the 2<sup>nd</sup> respondent and without due process, I find that the grievant was unfairly and unjustly dismissed by the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent however was the grievant's supervisor. They are the ones who reported the grievant indicating he was engaged in an illegal strike. It is therefore true that the 1<sup>st</sup> respondent contributed to the grievant's termination.
81. It is my finding that the grievant's termination was unfair and unjustified and I therefore find for him and award him:
1. Compensation for unfair termination equivalent to 10 months salary given the non adherence to procedure =  $10 \times 15,212 = \text{kshs } 152,120/-$ .
  2. 1 month salary in lieu of notice =  $\text{kshs } 15,212/-$ .
  3. Unpaid salary for days worked upto 25<sup>th</sup> June 2018 =  $25/30 \times 15,212 = \text{kshs } 12,677/-$ .
  4. Leave not paid in the last year of service =  $\text{kshs } 15,212$   
Total=  $\text{kshs } 195,221$  less statutory deductions
  5. The respondents will pay costs of this suit plus interest at court rate with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF JULY 2025.**

**HELLEN WASILWA**



**JUDGE**

