



Nyawanga v Kenya Plantation & Agricultural Workers Union (Employment and Labour Relations Cause E007 of 2024) [2025] KEELRC 1982 (KLR) (3 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 1982 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
EMPLOYMENT AND LABOUR RELATIONS CAUSE E007 OF 2024
MA ONYANGO, J
JULY 3, 2025**

BETWEEN

MOSES SIMWANA NYAWANGA CLAIMANT

AND

**KENYA PLANTATION & AGRICULTURAL WORKERS
UNION RESPONDENT**

JUDGMENT

1. The Claimant filed the claim herein dated 21st February 2023 in which he seeks the following reliefs against the Respondent: -
 - a. A declaration that his termination was contrary to sections 41(1)(2),43 and 45 of the *Employment Act* and Article 41 of *the Constitution*
 - b. Acting allowances as the branch secretary for Kitale Brach for 20 months
 - c. Prayers set out in paragraph 16 in his claim
 - d. Costs
 - e. Interests.
2. The Claimant's case is that he was employed by the Respondent on 11th November 2013 at a monthly salary of Kshs. 15,000 and was posted to Naivasha North Lake Office. That in the year 2021, he was transferred to Kitale where he was assigned the position of Branch Secretary in acting capacity.
3. The Claimant contends that on 1st December 2022, he received a call from the Respondent's agent at the headquarters summarily relieving him of his duties.
4. It is his case that he wrote a letter dated 1st December 2022 asking the Respondent to reconsider its position as the termination was unprocedural. The Claimant avers that in response to his letter, the



- Respondent served him with a letter dated 1st December 2022 alleging that it was closing the Kitale offices for non-performance by the Claimant leading to lack of sufficient members to sustain the office.
5. The Claimant further avers that upon transfer to the Kitale branch in an Acting capacity, he was not paid acting allowance for the 20 months he was acting as Branch Secretary and that his salary remained constant as no yearly increment was made for the seven years he was in the Respondent's employment.
 6. The Claimant termed his dismissal unlawful on grounds that: -
 - i. The initial termination was verbal as he was informed of his termination over a phone call
 - ii. No explanation was given
 - iii. No other employee or union official was present
 - iv. No notice was given
 7. At paragraph 16 of his claim, the Claimant prayed for: -
 - i. Reinstatement
 - ii. General damages for wrongful termination
 - iii. In the alternative, terminal benefits having served the Respondents for 9 years
 - iv. Compensation for underpayment for the 7 years he worked without a salary increment.
 8. In response to the Claim the Respondent filed a Memorandum of Defence dated 7th March 2023 wherein it denied the averments by the Claimant that it unfairly terminated the Claimant's employment. The Respondent avers that the Claimant was fully aware that he was offered employment on expected terms that he will build a formidable area office and recruit the requisite number of membership in accordance with the Respondent's Constitution. According to the Respondent, in spite of it fully supporting the Claimant and according him the necessary support including reviewing his salary severally, while the Claimant was the custodian of the branch office in Kitale Area, the union membership drastically dropped and he could not meet the objective of building a formidable area office with the requisite number of not less than one thousand members for purposes of establishing and registering a branch office in accordance with Rule 15(a) of the Union Constitution.
 9. The Respondent contended that it had a valid reason to terminate the Claimant's employment on the basis of non-performance. The Respondent maintained that the Claimant was paid his terminal dues in full including one month's salary in lieu of notice, days worked in December 2022, annual leave for the year 2022 and gratuity for the completed years of service.
 10. In the end, the Respondent termed the Claimant's suit as an afterthought, lacking merit, frivolous and an abuse of the court process. The court was urged to dismiss the suit with costs.
 11. The Claimant testified on 29th January 2025 as CW1. He stated that he was appointed in 2013 and was posted to Naivasha North Lakes office where he worked until 2021 when he was transferred to Kitale as the acting Branch Secretary. The Claimant stated that on 1st December 2022, he received a call from the Respondent's administrator who told him that the Kitale office was closed the previous day and that his position was no longer available. He stated that he was thereafter told to go to Nakuru on 15th December 2022 where he was issued with a letter closing the office. It was the Claimant's testimony that he appealed against the decision to terminate his employment on account of redundancy but his appeal was never considered by the Respondent.



12. The Claimant further stated that on 30th December 2022, the Administrator went to Kitale personally, took everything and closed the office for reason that the Respondent had lost 10% of its members.
13. The Claimant told the court that he was terminated from employment based on paragraph 4 of his letter of transfer which was to the effect that if he failed to grow membership within 6 months, he would be terminated. He also stated that he was accused that employees of Panocal lost their jobs and he did not intervene for them. In his defense, the Claimant averred that he improved membership from 200 to 500.
14. The Claimant contended that he was asking for a salary increase since Kitale is a branch and not an area office as averred by the Respondent. He averred that when he was in Naivasha, he was working under a branch secretary but in Kitale he was reporting to the head office.
15. On cross-examination, the Claimant stated that Kitale office was closed because of the drop in membership and also because he did not intervene to stop union members who were employees of Panocal International from being sacked.
16. On re-examination, the Claimant averred that during his tenure in Kitale the membership increased from 200 to 500 as the membership increased from 4 companies to 16 companies. He also stated that the employees of Panocal Company who he was accused of not intervening for were not terminated and were on unpaid leave and reported back to work after the 2 months leave.
17. On its part, the Respondent called Joseph Otwalo Aluoch who testified as RW1. He introduced himself as the Respondent's Administrative Secretary in charge of Human Resources and Office Management. RW1 adopted his witness statement recorded on 7th March 2023 as his evidence in chief.
18. In his testimony, RW1 stated that the Claimant while working in Kitale was earning a salary of Kshs. 20,000 and his performance was wanting as the membership in Kitale reduced to a level that was not sustainable. He testified that the Respondent's Constitution provides that every branch must have at least 1000 members. RW1 stated that he visited Kitale office and noted that the membership was not improving and that as a result, he reported to the union executive who decided that the branch be closed. He maintained that the Claimant was given a one-month notice vide a letter dated 1st December 2022 which was to take effect by 31st December 2022. He further stated that as a result of the Respondent's decision to close the Kitale Branch, the Claimant's terminal dues were computed which amounted to Kshs 150,000 but the Claimant declined to collect the cheque. It was his case that the Claimant was not dismissed unfairly as he alleged but the office was closed for non-performance necessitating the termination of his employment.
19. On cross-examination, RW1 stated that when the Claimant was transferred to Kitale, the Respondent had 288 members but when the office was closed, there were only 98 members.
20. On re-examination, the Respondent's witness stated that Kitale office was closed for non-performance and is currently managed under the Eldoret branch.
21. At the close of the Respondent's case, parties were directed to file written submissions. The Claimant's submissions are dated 24th April 2025 while the Respondent's submissions are dated 15th May 2025.
22. By and large, the submissions filed reiterate the evidence and pleadings of the parties herein and I need not replicate the same.



Determination

23. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are: -

- i. Whether the Claimants' termination by way of redundancy was fair and lawful
- ii. Whether the Claimant is entitled to the remedies sought.

Whether the Claimants' termination by way of redundancy was fair and lawful

24. The Respondent has attributed the termination of the Claimant's employment to non-performance leading to closure of its Kitale Branch. According to the Respondent, the Claimant failed to meet the target of 1000 members in Kitale as required by its constitution as the minimum membership for a branch office, necessitating the closure of the branch.

25. On the other hand, the Claimant asserts that his termination was unfair as it was made verbally and that no explanation was given by the Respondent. He further avers that he was not given notice prior to his termination which was on account of redundancy.

26. Section 2 of the *Employment Act* 2007 defines redundancy as follows: -

“Redundancy means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

27. Section 40 of the *Employment Act* sets out the minimum procedural and substantive requirements to be followed by an employer. It provides: -

“An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions:

- i. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy
- ii. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
- iii. the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- iv. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- v. the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- vi. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and



- vii. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.....”
28. In the instant case, the Claimant alleges that he was called by the Respondent’s administrator on 1st December 2022 and verbally informed of the intended termination of his employment on account of redundancy. The Claimant’s evidence was that he was served with the redundancy letter on 15th December 2022. The said notice was filed by the Respondent’s in its bundle of documents and it reads:
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KPAWUPF/209/11/2022 1st December, 2022 Mr. Moses Simwana Nyawanga,
Kenya Plantation and Agricultural Workers Union,
Box 2893-30200,
Kitale.
Dear Moses,
Re: Closure Of The Area Office.
The above matter refers.
When analyzing the union membership per se! as compared to each and every Branch office, we realized that Kitale Area office has drastically dropped in membership for the last one year to almost 10% compared to the first time when you were transferred there.
Kindly refer to our transfer letter Ref: KPAWU/PF/209/03/2021 dated 16th April, 2021 paragraph 4 that clearly indicated to you the terms and conditions under which you were transferred to Kitale office.
Since you have miserably failed in your performance to the extent that even Panacol Limited members who have enjoyed our protection for years have been laid off unlawfully under your watch without you raising a finger.
This union has been left with no option than to close the Area office, and terminate your Employment effective 31 December, 2022. The few remaining members will be transferred to Eldoret Branch office and will be served by the officers manning that office.
Kindly before you leave the office arrange with the Administrative Secretary to hand over the office keys and furniture to him. By a copy of this letter the National Treasurer is hereby asked to arrange and pay your terminal dues if any in due course.
Otherwise, we appreciate the time you have been with us and wish you success in your future endeavors.
I remain yours,
Signed
Dr, Francis Atwoli, NOM(DZA), CBS, EBS, MBS
General Secretary
29. As can be deduced from the above letter and from the evidence on record, the notice served on the Claimant on 15th December 2022 did not meet the mandatory statutory requirement of Section 40 of the *Employment Act*.
30. Further, as provided by section 2 of the *Employment Act* cited above, the reasons leading to an employee being declared redundant must fall within the above definition being that the loss of employment was involuntary and the employee. In the instant case the reason for closure of office being that the number



of members had not been grown by the Claimant to meet the minimum required by the Respondent's constitution was a valid reason for closure of the office which resulted in the Claimant's redundancy.

31. From the letter reproduced above the subject "Closure of the Area Office" means the Claimant was declared redundant and the reasons given that the Claimant had failed to recruit sufficient number of members to sustain the running of the branch office as per the Respondent's constitution was valid reason for redundancy.
32. The Respondent did not however comply with the procedure for redundancy as provided in section 40 of the *Employment Act*.
33. In *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others*(2014)KECA 404 (KLR), the Court of Appeal held that termination of employment through redundancy ought to be both substantially justified and procedurally fair.
34. Consequently, I find the termination of the Claimant's employment on account of redundancy was un-procedural and therefore unlawful within the meaning of Sections 40 of the *Employment Act*.

Whether the Claimant is entitled to the remedies sought

35. Having found that the Claimant's termination by way of redundancy was un-procedural, I declare it as so.
36. The Claimant in his Claim sought for general damages for wrongful termination. The Claimant's employment having been terminated by way of redundancy, he is entitled to payment of severance pay for the period worked which was 8 years.
37. The Claimant in his pleadings also sought for reinstatement. In view of the fact that the office where the Claimant was working was closed, it would not be possible to reinstate him. Further, the Claimant has not demonstrated any exceptional circumstances to justify reinstatement as provided in section 49(4)(c) and (d) of the *Employment Act*. The prayer is declined.
38. The Claimant's prayer for acting allowance was not proved and is declined.
39. In the final analysis, I allow the Claim and enter Judgment in favour of the Claimant against the Respondent as follows: -
 - i. The termination of the Claimant on account of redundancy was un-procedural and I declare it as so.
 - ii. The Claimant is awarded severance pay in the sum of Kshs. 88,000.
 - iii. The Claimant is further awarded one month's salary in lieu of the one month's notification under section 40(1)(b) and one months salary in lieu of notice under section 40(1)(vi) at Kshs. 42,000.
 - iv. The Respondent shall meet the Claimant's costs of this suit which I assess at Kshs. 20,000.
40. Orders accordingly.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 3RD DAY OF JULY, 2025.

M. ONYANGO

JUDGE

