Sabonsi & 6 others v Sheer Logic Management Consultants (Employment and Labour Relations Cause E151, E153, E154, E156, E157, E158 & E159 of 2021 (Consolidated)) [2025] KEELRC 2422 (KLR) (4 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2422 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

EMPLOYMENT AND LABOUR RELATIONS CAUSE E151, E153, E154, E156, E157, E158 & E159 OF 2021 (CONSOLIDATED)

HS WASILWA, J

SEPTEMBER 4, 2025

BETWEEN

ZEPHANIA SABONSI ..... 1ST CLAIMANT

BENSON OTIENO OPIYO ..... 2ND CLAIMANT

FELIX ODUOR WASONGA ..... 3RD CLAIMANT

HAGGAI EVANS ..... 4TH CLAIMANT

LUCAS OCHIENG ..... 5TH CLAIMANT

ISAAC MBUGUA ..... 6TH CLAIMANT

BERNARD KARIUKI ..... 7TH CLAIMANT

AND

SHEER LOGIC MANAGEMENT CONSULTANTS ..... RESPONDENT

JUDGMENT

1. The Claimants instituted this claim separately vide Memorandum of Claims dated 17th December 2021. Vide a court order of 7th October 2024, this court ordered that Cause No. E151/ 2021, E149/2021, E156/2021, E157/2021, E159/2021, E153/2021 and E154/2021 be consolidated and heard together and the lead file shall be Cause No. E151/ 2021.

2. The Claimants herein pray for judgment against the Respondent for:

    a. A declaration that the Claimants' dismissal from the Respondent's service was unfair and unlawful;

b. The Respondent do issue the Claimants with a Certificate of Service;

c. An order for the Respondent to pay the Claimants their terminal dues and compensatory damages totalling as follows: Zephania Sabonsi - Kshs. 2,077,308; Benson Otieno Opiyo – 1,358,860; Felix Oduor Wasonga – Kshs. 1,620,528; Haggai Evans – Kshs. 1,368,162; Lucas Ochieng – Kshs.1,41,644; Isaac Mbugua – Kshs. 1,591,368;

d. Costs of this suit; and

e. Interest on (c) and (d) above.

Claimants' Case

3. The Claimants aver that they were employed by the Respondent as general workers to be deployed at any working station at the Respondent's choice based on the need of provision of services to its clients. The 1st, 2nd, 5th and 6th Claimants were employed on 1st May 2009 whereas the 3rd, 4th and 7th Claimants were employed on 7th February 2014.

4. The Claimants aver that they were deployed to work at the Kenya Breweries Limited and they discharged his duties at the work station strictly under the Respondent's control in every aspect of employment including remuneration.

5. The Claimants aver that they served the Respondent continuously, diligently and lawfully until 30th September 2019 when the Respondent summoned them among other employees and summarily terminated their employment without due procedure, just cause and/or explanation whatsoever.

6. The Claimants aver that the Respondent neither issued them any notice of intention to terminate their services nor paid their salary in lieu of notice thus the said termination was unfair.

7. The Claimants aver that at the time of the said termination, they were earning a monthly salary computed at 1st Claimant – Kshs. 79,902; 2nd Claimant – Kshs. 54,350; 3rd Claimant – Kshs. 76,440; 4th Claimant -Kshs. 64,539; 5th Claimant – Kshs. 63,156; 6th Claimant- Kshs. 61,212; and the 7th Claimant – Kshs. 60,479.

Respondent's Case

8. In opposition to the Memorandum of Claims, the Respondent filed a Memorandum of Response dated 28th February 2022.

9. The Respondent avers that it formally engaged the Claimants as logistics casuals attached to East African Breweries Limited (EABL) and earning on piece rate basis.

10. The Respondent avers that the terms of the Claimants' employment was that they would be paid monthly according to the amount of work done at East African Breweries as evidenced by the attendance schedule indicating how much work they had done per day and duly executed by the Claimants.

11. The Respondent avers that the Claimants were engaged in piece rate work in the form of arranging crates and or sorting bottles on the correct crates an exercise known as conversion and they were paid according to the number of crates or bottles handled per day.

12. Therefore, the Claimants' monthly salaries fluctuated as it was dependent on the amount of work done per day as evidenced by the copies of payslips.

13. It is the Respondent's case that by a letter dated 28th August 2019, EABL informed it that they would be descoping service related to logistics with effect from 29th September 2019. Subsequently, the Claimants and all their colleagues in piece rate work were summoned to a meeting on 12th September 2019 and they each executed an attendance sheet signifying that they indeed attended the meeting.

14. During the meeting, the Claimants were informed that the Respondent's contract with EABL was coming to an end and that their employment would consequently be terminated.

15. It is the Respondent's case that they then engaged EABL on the same and as a result the notice was extended up to November 2019 and in effect the Claimants had more than one month notice of termination.

16. The Respondent avers that Claimants were issued with a notice collectively in a staff meeting that their employment which was contingent with EABL contract would terminate and that the next service provider may absorb them into their employment, therefore, they were issued the requisite notice as per the provisions of Section 35 of the *Employment Act*.

17. On 1st November 2019, the Claimants were absorbed to the new company Q-Sourcing as a sign of good will.

18. The Respondent denies the particulars of the terminal dues claimed by the Claimants and aver that they were paid on piece rate therefore they did not have a specific salary.

19. It is the Respondent's case that the terminations were neither its fault nor the fault of the employees and that they were carried out fairly as the Claimants were given reasonable notice. Additionally, the termination was for a proper and justifiable reason and was procedurally sound thus there is no justification for payment of damages.

Evidence in Court

20. The 1st Claimant (CW1) adopted his witness statement dated 16th December 2020 as his evidence in chief and produced the filed list of documents dated even date as his exhibits 1-6.

21. CW1 produced a consent dated 11th March 2025 in which the other Claimants granted him authority to present their case on their behalf.

22. During cross-examination, CW1 testified that he has no employment contract to show he started working in 2009. He contends that they just started working and they all started working at different dates.

23. CW1 testified that the Claimants all signed the attendance sheet dated 12th September 2019 and they all attended the meeting held on that date which started at 9.15 a.m.

24. CW1 testified that the Claimants were indeed absorbed by Q- Sourcing Limited in October 2019.

25. CW1 testified that the Respondent gave them notice on 12th September 2019 and they were given the option to join Q-Sourcing and Felix Oduor is still an employee of Q-Sourcing.

26. CW1 testified that their payslips do not a similar salary; their salaries varied because they were piece rate employees.

27. CW1 testified that they were paid NSSF and as of October 2019, they were employees of Q-Sourcing.

28. The Claimant's second witness (CW2), Gordon Emodo adopted his witness statement dated 17th December 2021 as his evidence in chief.

29. The Respondent's witness Patman Otieno (RW1) testified that he works for the Respondent as the Human Resource Business Partner. He adopted his witness statement dated 27th February 2022 as his evidence in chief and produced the filed bundle of documents dated 28th February 2020 as his exhibits 1-5.

30. During cross-examination, RW1 testified that the Claimants were not casuals but they were employed on piece rate.

31. RW1 testified that the Claimants were not notified of the Kenya Breweries Limited's letter and its consequences.

32. RW1 testified that the Respondent later had a meeting with the Claimants on 12th September 2019 and gave them 18 days' notice which was adequate as they were piece rate employees.

33. RW1 testified that the meeting was to prepare the Claimants for the eventuality.

34. RW1 testified that the Claimants were called to work when work was available as they were on piece rate. Therefore, had no leave days as they worked for 2 days a week.

Claimant's Submissions

35. The Claimant submitted on three issues: whether the Claimant was an employee of the Respondent or a casual worker; whether the termination of the Claimant's employment was procedurally and substantively fair; and whether the Claimant is entitled to the reliefs sought.

36. On the first issue, the Claimant submitted that their engagement failed to meet the definition of a casual employee under Section 2 of the *Employment Act* as he was: engaged continuously from 1st May 2009 to 30th September 2019, a period of over 10 years; paid regular monthly basis; subject to structured work schedules, workplace policies, and managerial oversight by the Respondent; and duties were integral to the Respondent's deployment services at Kenya Breweries Limited and were not temporary in nature.

37. The Claimant submitted that Section 37(1) of the *Employment Act* provides that where a person works for more than one month or performs work that cannot reasonably be completed in a day, a contract of service is deemed to exist, and such a person becomes entitled to full protections under the Act. He further relied in the Court of Appeal decision in Rashid Odhiambo Allogoh & 245 others v Haco Industries Limited [2015] KECA 376 (KLR) that held:

> "With the enactment of the *Employment Act* 2007, considerable attention is paid to provisions of section 37 thereof which provides for conversion of casual service to permanent employment. In particular, subsection 37(5) provides that an employee whose contract of service has been converted (on account of a continuous service of three or more months like in the petitioners' case) and who has worked for two or more months from the date of employment as a casual employee, shall be entitled to such terms and conditions of s ervice as he would have been entitled to under the Act had he not initially been employed as a casual employee."

38. The Claimant submitted that having served the Respondent continuously for a decade, by law, his employment was converted into a regular contract, entitling him to full statutory protections. Accordingly, he was not a casual worker, but a regular employee of the Respondent entitled to the full range of rights and protections under the *Employment Act*, including fair termination processes.

39. On the second issue, it is the Claimant's submission that his employment with the Respondent was unlawfully and unfairly terminated, as he was summarily dismissed on 30th September 2019, without any prior notice, explanation, hearing, or disciplinary proceedings.

40. The Claimant further relied in the holding of the Court of Appeal in Postal Corporation of Kenya v Andrew K. Tanui [2019] KECA 489 (KLR) wherein it pronounced itself on procedural fairness as herein under:-

> " Four elements must thus be discernible for the procedure to pass muster:-
>
> i. an explanation of the grounds of termination in a language understood by the employee;
>
> ii. (ii) the reason for which the employer is considering termination;
>
> iii. (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made;
>
> iv. (iv) hearing and considering any representations made by the employee and the person chosen by the employee."

41. The Claimant submitted that he was not given reason for why his employment was being terminated this was and is in direct violation and contravention of Section 43 of the *Employment Act*. Section 43(2) clarifies:

> " The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee."
>
> Therefore, it is not enough for the employer to assert post-facto reasons during litigation. The reason must have existed at the time of termination, must be genuinely believed, and must be substantiated before this Court.

42. The Claimant submitted that his summary dismissal on 30th September 2019 was unlawful and unfair both procedurally and substantively. There was no reason given, no documentation presented, and no attempt to initiate any hearing or disciplinary process. The termination was sudden, blanket, and without justification.

43. The Claimant submitted that in violation of Section 45 of the *Employment Act*, the Respondent has declined to provide any records or oral testimony justifying the Claimant's termination. It has not demonstrated that it issued notice, conducted a hearing, or had a lawful reason for dismissal.

44. It is the Claimant's submission that the Respondent's actions not only amounted to unfair and unlawful dismissal and termination of his employment but equally amounted to the violation the Claimant's right to fair hearing and administrative action laced with malice and unfair labour practices.

45. On the third issue, the Claimant submitted that having established that he was a regular employee of the Respondent, and that his termination was both substantively and procedurally unfair under the *Employment Act*, he is entitled to the reliefs prayed for in his Statement of Claim.

46. The Claimant submitted that he was summarily terminated on 30th September 2019 without any notice, oral or written and that he was not paid any terminal dues or salary in lieu of notice. Accordingly,

he is lawfully entitled to one month's gross salary in lieu of notice under Section 35(1)(c) of the *Employment Act*. This is a liquidated entitlement and is not discretionary.

47. The Claimant submitted that Section 49(1)(c) of the *Employment Act* empowers the Court to award compensation of up to twelve (12) months' gross salary for unfair termination. This remedy is discretionary and must be guided by the factors enumerated under Section 49(4), including: The employee's length of service; The degree to which the employer complied with the Act; The manner of termination; The employee's legitimate expectation of continued employment; The availability of similar employment elsewhere; The conduct of both parties.

48. It is the Claimant's submission that he served the Respondent for over 10 years, with diligence, loyalty, and no history of misconduct or disciplinary infractions. His long and dedicated service was abruptly cut short without reason or hearing.

49. The Claimant submitted that he has demonstrated that he was the Respondent's employee whose termination was unlawful and unfair. The Respondent's casual employment argument is contradicted by the long duration of service, nature of work and the control exercised over the Claimant's employment.

Respondent's Submissions

50. The Respondent submitted on three issues: whether the Claimant was a piece rate worker; whether the termination of the Claimant's employment was wrongful and unlawful; and whether the Claimant is entitled to the reliefs sought.

51. On the first issue, the Respondent submitted that the Claimants were piece rate workers and not casual workers. Section 2 of the *Employment Act* defines piecework as follows: -

> " any work the pay, for which is ascertained by the amount of work performed irrespective of the time occupied in its performance."
>
> On the other hand, casual employee is defined as: -
>
> "a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time."

52. It is the Respondent's submission that the bundle of payslips produced show that the claimant was a piece-rated employee. The Claimant himself testified that he and his colleagues were piece-rated employees and his salary was not static, but changed from month to month depending on the work done. This was confirmed by RW1 who testified that the amount of salary payable to the Claimants depended on work done.

53. The Respondent submitted that if the Claimant was a casual employee, he would not have had varying amounts of payments each month. Consequently, the provisions of Section 37 of The *Employment Act* would have been applicable. As a piece-rate worker, he wasn't required to come to work daily, only when work was available which dues were always paid for the work done.

54. It is the Respondent's submission that the facts of the subject matter as well as evidence tendered during the proceedings are a clear indication that the claimant was a piece rate worker who was not obliged to report daily.

55. The Respondent submitted that under section 45 of the *Employment Act*, termination of employment of an employee is unfair if the employer fails to prove that it was grounded on a valid and fair reason and that a fair procedure was followed. Whereas the Claimant claims that his employment was terminated

without being given notice or reasons; the Respondent's client vide a notice dated 28th August, 2019 expressed its intention to terminate the outsourced labour contract it held with the Respondent, which triggered the notice 12th September, 2019 to the Claimant. Outsourcing of labour is allowed as held in Elizabeth Washeke and 62 Others v Airtel Networks (K) Ltd & another [2013] KEELRC 572 (KLR).

56. Additionally, the Claimant acknowledged he and his colleagues' presence at the meeting by appending their signatures. During cross examination, he also acknowledged that that they were briefed of the Respondent's contract coming to an end with Kenya Breweries Ltd, and they subsequently all cleared with the Respondent and joined Q-Sourcing Ltd in October, 2019.

57. It is the Respondent's submission that Sections 35 and 41 of the *Employment Act* provides that an employee should be issued with a termination notice giving reasons leading to such action, to allow the employee the benefit of addressing the notice in terms of Section 47(5) of the Act. The Claimant was issued with an 18days notice, in line with the two-week intervals within which the claimant was being paid as evidenced by the pay slips tabled in by both parties in documentary evidence, therefore, he was not unfairly dismissed.

58. On the final issue, the Respondent submitted that the Claimant was given sufficient notice thus the claim for one-month salary in lieu of notice is unfounded.

59. The Respondent submitted that the claim for October 2019 salary is unfounded and without merit because it has demonstrated through its evidence on record, in specific, the NSSF statement, that the claimant was an employee of Q-Sourcing Limited in October, 2019. Additionally, the Claimant did not earn a constant salary as demonstrated by the payslips filed by the Respondent. He was a piece rate employee who earned his salary after a fortnight.

60. The Respondent submitted that having demonstrated through these submissions that the claimant was a piece rate employee, the law is instructive that piece rate workers are not entitled to leave as a benefit. It relied on the Court of Appeal decision of Krystalline Salt Limited v Kwekwe Mwakele & 67 others [2017] KECA 717 (KLR) wherein the Court said:-

> " In a piece work or, as it is sometimes called, piece rate arrangement, the emphasis is on the amount of work and not the time expended in doing it. The decision to elect which form of employment to go for, either as an employee or employer will depend on a number of factors, but the dominant consideration is, for the employee, the earnings and other physical conditions of employment, and on the other hand, savings for the employer. An employee under piece work arrangement, though not entitled to all or some of the benefits of the other forms of employment, is at least entitled to minimum wage."

61. It is the Respondent's submissions that Claimant is not entitled to service pay having been put in the NSSF scheme as Section 35 (6) (d) of The *Employment Act* stipulates that it shall not apply where an employee is a member of the National Social Security Fund.

62. The Respondent submitted that it did not unlawfully terminate the Claimant's employment, its contract with East African Breweries Ltd came to an end which triggered end of the Claimant's employment based on the circumstances. The Respondent therefore urges the court to decline the award for damages as prayed for reason that the nature of the Respondent's business is that of outsourcing labour, therefore, mostly bound by its contractual obligations with the subject client and has no control over when the contract may come to an end. Compensation as prayed for will be an unjust enrichment at the Respondent's expense with regard to consideration of the 13 factors set out under section 49 (4) of the *Employment Act*.

63. I have examined all the evidence and submissions of the parties herein. The issues for this courts submission are (1) whether the claimants were casual labours or piece rate employees of the Respondents, (2) Whether the termination of the claimants was fair and justified, and (3) whether the claimants are entitled to the remedies sought.

64. On the first issue, the Respondents submitted that the bundle of pay slips produced show that the claimants were piece-rated employees. The CW2 testified that he and his colleagues were piece-rated employees and his salary was not static, but changed from month to month depending on the work done. This was confirmed by RW1 who testified that the amount of salary payable to the Claimants depended on work done. Having considered this position, it is evident that the relationship between the claimants and the Respondents was not a casual employment relationship but piece rated engagement.

65. On the second issue, it is clear that the employment of the claimants was based on work available and this work came to an end when the EABL terminated their engagement with the Respondent. It is therefore clear that the respondents didn't deliberately terminate their engagement with the claimants but this relationship was of a nature that it remained standing as long as EABL needed the services and this understanding was very clear. The issue of wrongful termination does not therefore exist.

66. On the remedies sought, the claimants sought to be paid terminal dues. The details of the terminal remedies have not been set out. That notwithstanding, it is also true that the Claimants were members of NSSF and so their terminal dues if at all were covered in their NSSF contributions and remittances. There are no any other dues they have explained were due to them.

67. The only other prayer sought is for issuance of their certificates of service which I grant them accordingly. Given the nature of the claim, I will not grant any order for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE