



**Mutua & 9 others v Gokal Trading Kenya Limited (Cause E115 of 2023)  
[2024] KEELRC 425 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 425 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E115 OF 2023  
M MBARÚ, J  
FEBRUARY 29, 2024**

**BETWEEN**

**JOHN BOSCO MULWA MUTUA ..... 1<sup>ST</sup> CLAIMANT  
CHARLES MAINA MWANIKI ..... 2<sup>ND</sup> CLAIMANT  
KELVIN KAI NDAGO ..... 3<sup>RD</sup> CLAIMANT  
ABDUL MWAGONA CHULA ..... 4<sup>TH</sup> CLAIMANT  
HAGGAI ONYANGO OGOWO ..... 5<sup>TH</sup> CLAIMANT  
NDUNE MWACHIRO ..... 6<sup>TH</sup> CLAIMANT  
KENNEDY MALUSI KINYAMASYO ..... 7<sup>TH</sup> CLAIMANT  
DAVIS MWABILI FELIX ..... 8<sup>TH</sup> CLAIMANT  
CECILIA MARURA MAGHANGA ..... 9<sup>TH</sup> CLAIMANT  
10. PHEOBE MWAE HARON ..... 10<sup>TH</sup> CLAIMANT**

**AND**

**GOKAL TRADING KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimants filed the claim herein on 27 October 2023. Summons were served upon the respondent but no appearance or response were filed. On 22 January 2024 when the matter came up for mention, Ms Baraza held a brief for Ms Oruta for the respondent attended and asked for 7 days to file witness statements and documents. The court allowed 14 days but there was no compliance. On the allocated mention date to confirm compliance on 13 February 2024, the respondent was absent.



2. The claim is that the respondent employed the claimants on different dates until 3 October 2023, when their employment was verbally terminated by the directors who closed down the Mombasa office and relocated to Dubai. The claimants are seeking terminal dues on account of redundancy.
3. The claimants engaged the labour officer to follow up on their terminal dues and summary dismissal without success.
4. The claim is that the respondent's directors left the country in January 2023 leaving them under the supervision of Sanjay Manharial Anandji Pandit until 3 October 2023 when they found the office locked. The respondent had not paid salaries due for January to October 2023. The respondent also failed to make remittances to the NSSF or pay in place of notice.
  1. 1st claimant was employed on 19 August 2008 as a senior accountant earning Kshs. 280,500 per month;
  2. 2nd claimant was employed in the year 2014 as a senior tea tester earning Kshs. 38,000 per month;
  3. 3rd claimant was employed in February 2018 as a senior tea tester earning Kshs. 292,908 per month;
  4. 4th claimant was employed in the year 2006 as a tea tester earning Kshs. 95,000 per month;
  5. 5th claimant was employed on 19 August 2008 as a senior accountant earning Kshs. 56,500 per month;
  6. 6th claimant was employed in November 2012 as a tea department executive earning Kshs. 27,300 per month;
  7. The 7th claimant was employed in August 2011 as a tea department executive earning Kshs. 34,000 per month;
  8. The 8th claimant was employed in November 2012 as a company driver earning ksh. 40,000 per month;
  9. 9th claimant was employed in October 2008 as an administrator earning Kshs. 110,000 per month; and
  10. The 10th claimant was employed in the year 2015 as an office assistant earning Kshs. 20,000 per month.
5. The claim is that the claimants had not taken annual leave for 3 years and were unfairly dismissed without the due process of the law.
6. The claimants are seeking payment of terminal dues;
  - a. 12 months' compensation;
  - b. Notice pay;
  - c. Unpaid salaries;
  - d. Severance pay for years worked;
  - e. Annual leave pay;
  - f. Certificate of service; and



- g. Costs.
7. The 1st claimant testified for and on behalf of the claimant that despite serving the respondent diligently for many years, in January 2023 they discovered that the directors had left for Dubai and remained without payment of their monthly salaries until 3 October 2023 when they reported to work and found the office closed. the landlord informed them that the respondent had closed its offices. There was no prior notice or any information issued on the closure of the business. The claimants are entitled to the claims made in terminal dues due to the unfair termination of their employment by the respondent.
  8. Mr Mutua also testified that they discovered that the respondent had not been remitting their NSSF dues to the statutory body leaving them exposed.
  9. At the close of the hearing, the claimants filed written submissions. The claimants submitted that due to unfair termination of their employment by the respondent, they are entitled to the claims as pleaded. Notice pay and severance pay are due as this was a redundancy due to the involuntary termination of employment and closure of the office without notice or payment of terminal dues. The claimants relied on the following cases, *Janet Kaphiphe Ouma & another v Marie Stopes International (Kenya)* HCCC No.68 of 2007; [\*John Kebaso Mose v Uchumi Supermarket\*](#) Cause No.43 of 2017 (Kericho).

### **Determination**

10. The failure to attend and defend itself in these proceedings despite being served has left the court with a one-sided case. The absence of the respondent as the employer has also denied the court crucial work records about the claimants. The court is left with the claimants' words as the employees.
11. Closure of an office for whatever reason should not be done at the expense of the employees. The purpose of Section 40 of the [\*Employment Act\*](#), 2007 (the Act) is to secure an employer who is faced with an operational requirement calling for lay off of employees due to an operational matter. Abandoning employees is the worst form of unfair labour practice.
12. In this case, the claimant's case is that they woke up on 3 October 2023 and reported to work as usual only to find the offices locked. The landlord told them that the respondent had closed the shop. At the time, they had not been paid for 9 months.
13. Under the provisions of Sections 35, 41, 43, 45, and 49 of the Act, the claimants are entitled to notice pay, compensation for unfair treatment, severance dues, and the costs arising from lodging this claim.
14. Each claimant has outlined his/her claim in accordance with Rule 9 of the Employment and Labour Relations Court (Procedure) Rules, 2016. The lapse in fair procedure in termination of employment is hereby found unjustified and contrary to Sections 35, 41, and 45 of the Act. The claimants are entitled to compensation, each at one (1) month gross salary last earned.
15. The due salaries were earned and due at the end of employment in accordance with Section 18(5) of the Act. The claimants cannot be denied what was rightfully earned from the labours of their hands.
16. On the leave pay, each claimant has outlined the total leave dues. without any response or work records by the respondent, these are entitlements according to Section 28 of the Act.
17. Severance pay is due in a redundancy in accordance with Section 40 of the Act. For the layoff that was unprocedural, each claimant is entitled to the minimum allowed of 15 days' pay for every full year worked.



18. A certificate of Service should be issued at the end of employment for whatever reasons the employer finds necessary to end employment. this is a mandatory requirement under Section 51 of the Act.
19. The court finds the following claims justified;
  - a. Notice pay at one-month gross salary;
  - b. Salary arrears not paid;
  - c. Severance pay for 15 days for years worked;
  - d. Annual leave pay total due;
  - e. Certificate of service.
20. The submissions that there were no NSSF remittances, the claimants claimed for severance/service pay. Each applies in context and not either. The court has awarded severance pay arising from the redundancy upon closure of office without any due regard to the rights of the claimants.
21. Accordingly, the claimants are awarded as follows;
  - 1) John Bosco Mulwa Mutua
    - a) Compensation for unfair and unlawful termination Kshs. 280,500;
    - b) Salary arrears for 9 months worked Kshs. 2,524;
    - c) Notice pay in lieu of Kshs. 280,500;
    - d) Severance pay (Kshs. 140,250.00 x 15 years) Kshs. 2,103,750;
    - e) Annual leave not taken (280,500.00 x 3 years) Kshs. 841,500.00;
    - f) Certificate of Service.
  2. Charles Maina
    - a) Compensation for unfair and unlawful termination Kshs. 38,000;
    - b) Salary arrears for 9 months Kshs. 342,000;
    - c) Notice pay in lieu of Kshs. 38,000;
    - d) Severance pay (Kshs. 19,000 x 9 years) Kshs. 171,000;
    - e) Annual leave not taken (38,000.00 x 3 years) Kshs. 114,000;
    - f) Certificate of Service
  - 3) Kelvin Ndago
    - a) compensation for unfair and unlawful termination Kshs. 292,908;
    - b) Salary arrears for 9 months worked Kshs. 2,636,172.00
    - c) Notice pay in lieu of Kshs. 292,908.00
    - d) Severance pay (Kshs. 146,454.00 x 5 years) Kshs. 732,270.00
    - e) Annual leave not taken (292,908.00 x 3 years) Kshs. 878,724.00;



- f) Certificate of Service
- 4) Abdul Churâ
  - a) compensation for unfair and unlawful termination Kshs. 95,000;
  - b) Salary arrears for 9 months worked Kshs. 855,000.00
  - c) Notice pay in lieu of Kshs. 95,000.00
  - d) Severance pay (Kshs. 47,500.00 x 17 years) Kshs. 807,500.00
  - e) Annual leave not taken (95,000.00 x 3 years) Kshs. 285,000.00;
  - f) Certificate of Service
- 5) Haggai Onyango Ogowo
  - a) Compensation for unfair and unlawful termination Kshs. 56,500.00
  - b) Salary arrears for 9 months worked Kshs. 508,500.00
  - c) Notice pay in lieu of Kshs. 56,500.00
  - d) Severance pay (Kshs. 28,250.00 x 15 years) Kshs. 423,750.00
  - e) Annual leave not taken (56,500.00 x 3 years) Kshs. 169,500.00;
  - f) Certificate of Service
- 6) Ndune Mwachiro
  - a) compensation for unfair and unlawful termination Kshs. 27,300,00
  - b) Salary arrears for 9 months worked Kshs. 245,700.00
  - c) Notice pay in lieu of Kshs. 27,300.00
  - d) Severance pay (Kshs. 13,650.00 x 11 years) Kshs. 150,150.00
  - e) Annual leave not taken (27,300.00 x 3 years) Kshs. 81,900.00;
  - f) Certificate of Service
- 7) Kennedy Malusi
  - a) compensation for unfair and unlawful termination Kshs. 34,000;
  - b) Salary arrears for 9 months worked Kshs. 306,000.00
  - c) Notice pay in lieu of Kshs. 34,000.00
  - d) Severance pay (Kshs. 17,000.00 x 12 years) Kshs. 204,000.00
  - e) Annual leave not taken (34,000.00 x 3 years) Kshs. 102,000.00;
  - f) Certificate of Service
- 8) Davis Mwabili
  - a) Compensation for unfair and unlawful termination Kshs. 40,000.00



- b) Salary arrears for 9 months worked Kshs. 360,000.00
  - c) Notice pay in lieu of Kshs. 40,000.00
  - d) Severance pay (Kshs. 20,000.00 x 12 years) Kshs. 240,000.00
  - e) Annual leave not taken (20,000.00 x 3 years) Kshs. 60,000.00
  - f) Certificate of Service
- 9) Cecilia Maghanga
- a) Compensation for unfair and unlawful termination Kshs. 110,000.00
  - b) Salary arrears for 9 months Kshs. 990,000.00
  - c) Notice pay in lieu of Kshs. 110,000.00
  - d) Severance pay (Kshs. 55,000.00 x 15 years) Kshs. 825,000.00
  - e) Annual leave not taken (110,000.00 x 3 years) Kshs. 330,000.00
  - f) Certificate of Service
- 10) Pheobe Mwae Haron
- a) Compensation for unfair and unlawful termination Kshs. 20,000.00
  - b) Salary arrears for 9 months worked Kshs. 180,000.00
  - c) Notice pay in lieu of Kshs. 20,000.00
  - d) Severance pay (Kshs. 10,000.00 x 8 years) Kshs. 80,000.00
  - e) Annual leave not taken (10,000.00 x 3 years) Kshs. 30,000.00
  - f) Certificate of Service

**DELIVERED IN OPEN COURT AT MOMBASA THIS 29 DAY OF FEBRUARY 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet Muthaine

..... and .....

