



**Kenya Concrete, Structural, Ceramic Tiles, Woodplys and Interior Design Workers Union v
Mara Tea Limited (Cause E902 of 2022) [2024] KEELRC 1442 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1442 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E902 OF 2022**

**J RIKA, J
JUNE 14, 2024**

BETWEEN
**KENYA CONCRETE, STRUCTURAL, CERAMIC TILES, WOODPLY AND
INTERIOR DESIGN WORKERS UNION CLAIMANT**
AND
MARA TEA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed the Statement of Claim on 2nd December 2022.
2. The Claim is brought on behalf of 7 former Employees of the Respondent, who are members of the Claimant Union, Messrs. Fred Kengere, Benard Kamau, Tom Obadiah Nyamokanunda, Tom Nyandwaki, Nyabuto Momanyi and Danican Owiti, [hereinafter called the Grievants].
3. The Claimant states that the Respondent employed the Grievants on different dates, and in different positions.
4. The Grievants' contracts were terminated by the Respondent, due to financial constraints occasioned to the Respondent, by Covid-19 pandemic. The date of termination is not specified in the Statement of Claim or Documents availed to the Court by the Claimant.
5. The Claimant states that termination was unfair, unlawful and in violation of the Grievants' right to fair labour practices. The Grievants were denied their terminal dues.
6. The Claimant seeks on behalf of the Grievants, the following remedies: -
 - a. Declaration that termination was unfair and unlawful and hence null and void.
 - b. Reinstatement.
 - c. Adoption of the recommendations made by the Conciliator.



- d. In the alternative to [b] and [c] above, the Grievants be paid all their terminal dues.
- e. Costs and interest.
- 7. The Respondent did not enter appearance or file any response. The Claim was heard on 16th November 2023.
- 8. Evidence was adduced by Fred Kengere, one of the Grievants.
- 9. The dispute had been referred to the Ministry of Labour for conciliation, as indicated in one of the prayers to the Statement of Claim- that Judgment is entered in terms of the recommendations of the Conciliator.
- 10. Fred restated the contents of the Statement of Claim, as well his own Witness Statement, and exhibited the documents mainly relating to the conciliation process, in his evidence. He asked the Court to consider the conciliation report.
- 11. The Claim was last mentioned before the Court on 2nd February 2024, when the Claimant confirmed filing of its closing submissions.

The Court Finds: -

- 12. This dispute went before conciliation at the Labour Office in Narok County. The Respondent gave conciliation process, like the proceedings herein, a wide berth.
- 13. The Conciliator was persuaded that termination was based on a flawed redundancy process and recommended that: -
 - a. The Respondent stops categorization of drivers as a section of its management staff and benefits accorded to non-management staff be accorded to them.
 - b. The affected staff were illegally declared redundant and denied benefits stipulated by the law. It is therefore directed that management computes and pays the 5 Employees severance as agreed between the parties.
 - c. The management is further directed to pay Kshs. 5,600 illegally deducted to Fred Kengere as mutually agreed upon by all the Parties.
 - d. The affected Employees be compensated at the rate of 3 months' salary as prayed.
 - e. The sums be paid at the Narok County Labour Office on or behalf 31st July 2022.
- 14. The Respondent did not satisfy the recommendations as ordered, necessitating the filing of the Claim before the Court.
- 15. As the Respondent has not responded to the Claim, the Court upholds the findings and recommendations of the Conciliator, with some adjustments.
- 16. Firstly, the dispute was not a collective dispute, involving the terms and conditions of the Respondent's drivers, so as to warrant the first recommendation, that drivers shall cease, to be treated as management staff, and benefits accrued to them be paid immediately. The issue in dispute was unfair termination of the contracts of employment of specified Employees, the 7 Grievants herein.
- 17. Secondly, the Conciliator refers to 5 Employees in his recommendation. The reference and the memorandum to the Conciliator presented by the Claimant, referred to 6 Employees. Fred is the 7th



Employee, his dispute having been forwarded for conciliation separately. There are 7 Grievants, not 5, to this dispute.

18. Thirdly, is also not in consonance with the Conciliator's report, to grant the orders of reinstatement sought by the Claimant.

19. In the end the Court grants the Claim and Orders: -

- a. It is declared that termination on account of redundancy was unfair and unlawful.
- b. The Respondent shall pay each Grievant severance at the rate of 15 days' salary for each complete year of service, based on the last salary earned.
- c. Each Grievant to be paid by the Respondent 1-month salary in lieu of notice.
- d. Each Grievant to be paid equivalent of 3 months' gross salary in compensation for unfair termination.
- e. Certificates of Service to issue.
- f. Costs to the Claimant.
- g. Interest granted to the Claimant at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

