



**Kenya Union of Commercial Food and Allied Workers v Rutuma
Amalgamated Farmers Co-operative Society Limited (Cause
E026 of 2023) [2024] KEELRC 2413 (KLR) (4 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2413 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E026 OF 2023
ON MAKAU, J
OCTOBER 4, 2024**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

**RUTUMA AMALGAMATED FARMERS CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

JUDGMENT

1. The claimant is a registered trade union and brings this suit on behalf of its fourteen members (hereinafter called “the grievants”). The suit seeks the following reliefs: -
 - i. That the Respondent’s action of declaring 15 employees redundant is unfair and unlawful.
 - ii. That the redundancy letters dated 31st July 2023 which were issued to fifteen employees be and are hereby withdrawn.
 - iii. That the fifteen employees to be reinstated back to their position and continue working without loss of benefit.
 - iv. That the cost of the claim be provided for in favour of the claimant.
 In the Alternative
 - i. Three months’ Notice as per the CBA clause No.3.
 - ii. Accrued leave days if any
 - iii. Severance pay as per clause No.5 of the CBA.
 - iv. Compensation for unlawful redundancy.



Beatrice Mumbi Kabugara 1 St Grievant	.	.
Three months' notice=42,900 x 3	=	128,700.00
Severance	=	371,250.00
pay=35,750.00/26x15x18 years	=	74,088.00
Arrears for 2022/2024 CBA	=	514,800.00
Maximum compensation=42,900.00 x 12 months	=	1,088,838.00
Total		
George Maina Muraguri 2 Nd Grievant	.	.
Three months' notice=14,520.00 x 3	=	43,560.00
Severance pay=14,520.00/26 x15 x 8	=	67,015.40
Arrears for 2022/24 CBA	=	41,472.00
Maximum compensation= Kshs.14,520.00 x 12	=	174,240.00
Total		326,287.00
Michael Mundia 3 Rd Grievant	.	.
Three months' notice Kshs.14,520.00 x 3	=	43,560.00
Severance pay=14,520.00/26 x 15 x 11	=	92,146.15
Arrears for 2022/2024 CBA	=	41,472.00
Maximum compensation = Kshs.14,520.00 x 12	=	174,240.00
Total		351,418.15
Stephen Munyi 4 Th Grievant	.	.
Three months' notice Kshs.14,520.00 x 3	=	43,560.00
Severance pay=14,520.00/26 x 15 x 7	=	58,638.50
	=	174,240.00
	=	41,472.00



Maximum compensation = Kshs.14,520.00 x 12 Arrears for 2022/2024 CBA Total	= = = =	315,910.50
Patrick Muriithi Kamau 5 Th Grievant Three months' notice Kshs.14,520.00 x 3 Severance pay=14,520.00/26 x 15 x 8 Maximum compensation = Kshs.14,520.00 x 12 Arrears for 2022/2024 CBA Total	. = = = = = = =	. 43,560.00 67,015.40 174,240.00 41,472.00 326,287.40
Patrick Maina Kabaru 6 Th Grievant Three months' notice Kshs.14,520.00 x 3 Accrued Annual leave days 2023=14,520/26x26 days Severance pay=14,520.00/26 x 15 x 8 Maximum compensation = Kshs.14,520.00 x 12 Arrears for 2022/2024 CBA Total	. = = = = = = =	. 43,560.00 14,520.00 67,015.40 174,240.00 41,472.00 340,807.40
Geoffrey Weru 7 Th Grievant Three months' notice Kshs.20,592.00 x 3 Severance pay=17,160.00/26 x 15 x 18 Arrears for 2022/2024 CBA Maximum compensation = Kshs.20,592.00 x 12 Total	. = = = = = =	. 61,776.00 178,200.00 60,768.00 247,104.00 547,848.00
Mary Waturi Mwiga 8 Th Grievant	.	.



Three months' notice Kshs.20,592.00 x 3	=	113,721.00
	=	49,570.70
Accrued Annual leave days=37,907 x26X 34 days	=	348,403.80
	=	110,592.00
Severance pay=33,550/26 x 15 x 8	=	454,884.00
Arrears for 2022/2024 CBA	=	1,077,170.70
Maximum compensation = Kshs.37,907 x 12		
Total		
Francis Waheire 9 th Grievant	.	.
Three months' notice Kshs.28,644 x 3	=	85,932.00
	=	247,880.00
Severance pay=23,870.00/26 x 15 x 18	=	83,289.60
	=	343,728.00
Arrears for 2022/2024 CBA	=	760,829.00
Maximum compensation = Kshs.28,644.00 x 12		
Total		
Robert Gichuru 10 th Grievant	.	.
Three months' notice Kshs.28,644 x 3	=	85,932.00
	=	33,050.80
Accrued Annual leave=28,644.00 /26 x 30	=	247,880.80
	=	83,296.00
Severance pay=23,870.00/26 x 15 x 18	=	343,728.00
	=	793,886.00
Arrears for 2022/2024 CBA	=	
Maximum compensation = Kshs.28,644.00 x 12		
Total		
Harun Mwangi Irura 11 th Grievant	.	.
Three months' notice Kshs.14,520.00 x 3	=	43,560.00
	=	117,276.90
Severance pay=14,520.00/26 x 15 x 14	=	41,472.00
	=	174,240.00
Arrears for 2022/2024 CBA	=	376,548.90



Severance pay=14,520.00/26 x 15 x 18	=	41,472.00
Arrears for 2022/2024 CBA	=	174,240.00
Maximum compensation = Kshs.14,520.00 x 12	=	459,055.40
Total		

(V) Cost of the suit in favour of the claimant.

- The respondents admit that it employed the grievants and terminated their services on 31st July 2023 without notice. However, it averred that it paid the grievants one-month salary in lieu of notice and as such the termination in accordance with terms of their contract. Therefore, it prayed for the suit to be dismissed with costs.

Facts of the case

- The grievants were employed by the respondent on diverse dates and they were issued with appointment letters detailing the terms of their contract including a termination by a notice of one month. Thereafter the claimant and the respondent signed Recognition agreement and negotiated a Collective Bargaining Agreement (CBA) which provided for a termination notice of three (3) months for employees who serves above three (3) years. The applicable CBA herein is dated 6th June 2023 and it covered the period commencing 1st October 2022 to 30th October 2024.
- All the grievants had served above three years, the shortest period being 7 years and the longest being 18 years. Consequently, it is the claimant's case that each grievant was entitled to three months' notice before termination of the contracts. Besides, they were entitled to be informed of the reason for the termination and be accorded an opportunity to be heard.
- Accordingly, the claimant contended that since no sufficient notice was served, no reason was cited for the termination, and a hearing accorded to the grievants, the termination of their services was unlawful and they are entitled to the reliefs sought in the claim. To support the claim, the grievant called the 1st grievant (Miss Beatrice Mumbi) as its witness. Her evidence was basically an adoption of the facts in the claim as contained in her written statement and buttressed the by a bundle of documents.
- She clarified that the separation herein was not through redundancy but termination without prior notice or reason. She further clarified that the termination letters offered to pay terminal dues to all the fifteen (15) grievants but the same was never paid including accrued leaves.
- The respondent, on the other hand called its honorary secretary (Mr.Moses Maina) who testified as RW1. He admitted his written statement and produced a bundle of documents as exhibits. He admitted that the grievants were employed by the respondent and there was a CBA governing their employment which commenced on 1st October 2022. He admitted that the CBA provided for three months termination notice but the grievants were paid one-month salary in lieu of notice as per their appointment letters.
- He further stated that Patrick Kabaruru and Mary Waturi were not entitled to leave as prayed and contended that they had utilized all their leave days. He further added that the CBA did not award the grievant salary arrears backdated to the commencement date of the CBA. Finally, he contended that the grievants were paid all their terminal dues as indicated in the termination letters.



Submissions

9. The claimant submitted that the termination was unlawful and unfair because the grievants were not issued with three months' notice before the termination and there was no reason cited for the termination. Consequently, it prayed for the terminal benefits sought contending that the termination has occasioned on the grievants financial embarrassment due to loss of income due to the abrupt termination.
10. The respondent, on the other hand submitted that the grievants were not victims of unfair termination and averred that the grievants were paid one-month salary in lieu of notice in accordance with their employment contracts. In view of the foregoing, it was submitted that the alleged redundancy does not hold any water. It further submitted that the separation was through termination letters dated 31st July 2023 indicating termination of service as opposed to redundancy.
11. On the basis of the payment of salary in lieu of notice, the respondent submitted that the claimant is not entitled to the reliefs sought including reinstatement which was deemed untenable due to the strained relationship between it and the grievants. It reiterated that the greivants had exhausted all their leave days.
12. On the other hand, it submitted that the grievants' appointment letters provided for a termination notice of one month and therefore the CBA cannot supersede the said contracts between it and the grievants. It further submitted that the grievants are not entitled to salary arrears under the CBA and contended that if the parties to the CBA intended to do so, they would have expressly provided for the same under the CBA.
13. Finally, it submitted that severance pay is not payable to the claimant since the separation was not through redundancy under section 40 of the *Employment Act*, 2007. Besides, it was submitted that no compensation is payable to the grievant because the claimant has not proved the alleged unlawful redundancy.

Issues for determination

14. There is no dispute that the grievants were employed by the respondent until 31st July 2023 when their employment was terminated by the respondent without prior notice but upon offer to one-month salary in lieu of notice. Section 45 (1) & (2) of the *Employment Act* provides as follows:

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
- (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”



15. The above section requires that for termination of employment to pass the test of fairness, the employer must prove that it was grounded on a valid and fair reason, and that a fair procedure was followed. Therefore the issues for determination in this suit are: -
- a. Whether the termination was grounded on a valid and fair reason.
 - b. Whether a fair procedure was followed.
 - c. Whether the claimant is entitled to reliefs sought.

Reasons

16. I have considered the termination letters dated 31st July 2023 and noted that they are similar in every aspect. No reason was cited. Section 43 of the [Employment Act, 2007](#) provides that: -
- “1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) 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.”
17. In this case, I find that the termination was unfair within the meaning of section 45 of the [Employment Act](#) because no valid reason for the termination was cited in the termination letter or proved before this court.

Procedure

18. The termination letter ended the grievants’ employment abruptly and offered to pay one-month salary in lieu of notice. One month was shorter than the three months indicated in the CBA. Under section 59 (3) of the [Labour Relations Act](#), the terms of a CBA are inserted into the employees contract upon registration by this court. Consequently, the termination without giving three months’ prior notice or payment of salary in lieu of notice amounted to breach of their contracts and also unfair termination since fair procedure was not followed.
19. Besides, payment of salary in lieu of notice does not sanitize unfair termination since section 45 above requires that an employee must be accorded fair procedure before termination of their employment. I gather support from Court of Appeal decision in [Kenfreight EA Limited v Benson K. Nguti](#) [2016] eKLR, thus: -
- “Apart from issuing proper notice according to the contract (or payment in lieu of notice as provided) an employer is duty bound to explain to the employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, the employee is entitled to be heard and his representations if any, considered by an employer before the decision to terminate his contract of service is taken.”
20. In view of the foregoing, I find that the termination was tainted with procedural impropriety and that rendered the termination unfair. While making the above conclusion, I must hold that the facts of the



case do not support the allegation that the grievants lost employment through redundancy contrary to section 40 of the [Employment Act, 2007](#).

Reliefs

21. I have already made a finding of fact that there was no redundancy declared against the grievants and therefore the primary reliefs which are grounded on redundancy are declined. Accordingly, I award the alternative prayer of salary in lieu of notice and compensation for unfair and unlawful termination.
22. All the grievants served for over seven (7) years and therefore under clause 3 (a) (ii) of the CBA they were all entitled to a termination notice of three months or payment of three months' salary in lieu of the notice.
23. As regards compensation for unfair termination, I have considered the fact that the grievants' employment was abruptly terminated for no fault on their own and that they served for fairly long periods. The 1st, 2nd, 7th, 8th, 9th, 10th and 13th grievants served for 18 years, the 3rd, 12th and 14th grievants served for periods between 11 and 14 years while the rest served between 7 and 9 years. I have also considered that the grievants were not paid any severance pay upon termination. Consequently, I award all the grievants' who served for 10 years and above 12 months salary compensation, while the rest are awarded ten (10) months salary compensation for the deliberate unfair termination on the part of the respondent.
24. I have also considered the claim for salary arrears. The CBA came into force on 1st October 2022 and therefore the new salary commenced that date. Since the CBA was signed on 6th June 2023, the grievants are entitled to payment of salary arrears from 1st October 2022. The claimant has attempted to bring in a new grievant in its submissions by the name Winfred Waigera and quantified her claim. However, that person is a stranger and cannot benefit from this suit.
25. The claim for leave for Patrick Kabaru has not been substantiated and it is declined. I say so because the respondent has demonstrated by D.Exhibit 45 that the grievant exhausted his leave before the termination. However, I award leave of 34 days to Mary Waturi based on clause 11 (b) (iii) of the CBA since D.Exh.50 confirms that she took leave for 2021/2022 and not for 2022/2023. Her basic salary was Kshs.33, 550 x 34/30 = Kshs.38,023.33
26. The claim for severance fails because the grievants were not declared redundant. The correct prayer should have been gratuity under clause 4 (b) of the CBA but as can be noted throughout the claimant's pleadings, the grievants were not given the best representation. Even where a termination letter was issued to the grievants, the claimant pleaded that they were declared redundant.

Conclusion

27. I have found that the grievants' services were not terminated on account of redundancy but through deliberate breach of the contracts of employment. Consequently, I enter judgment for the claimant in the following terms: -

- i. Beatrice Mumbi Kabugara
Notice..... Kshs.371,200.00
Salary arrears..... Kshs.74,088.00
Compensation Kshs.514,800.00
Kshs.960,088.00



- ii. George Maina Muraguri
 - Notice Kshs.43,560.00
 - Arrears..... Kshs.41,472.00
 - Compensation..... Kshs.174,240.00
 - Kshs.259,272.00
- iii. Michael Mundia
 - Notice..... Kshs.43,560.00
 - Arrears..... Kshs.41,472.00
 - Compensation Kshs.174,240.00
 - Kshs.259,272.00
- iv. Stephen Munyi
 - Notice..... Kshs.43,560.00
 - Arrears..... Kshs.41,472.00
 - Compensation Kshs.145,200.00
 - Kshs.230,232.00
- v. Patrick Muriithi Kamau
 - Notice..... Kshs.43,560.00
 - Arrears..... Kshs.41,472.00
 - Compensation Kshs.145,200.00
 - Kshs.230,232.00
- vi. Patrick Maina Kabaru
 - Notice..... Kshs.43,560.00
 - Arrears..... Kshs.41,472.00
 - Compensation Kshs.145,200.00
 - Kshs.230,232.00
- vii. Geoffrey Weru
 - Notice..... Kshs.61,776.00
 - Arrears..... Kshs.60,768.00
 - Compensation Kshs.247,104.00
 - Kshs.369,648.00
- viii. Mary Waturi Mwiga
 - Notice..... Kshs.113,721.00
 - Leave..... Kshs. 38,023.33



	Arrears.....	Kshs.110,592.00
	Compensation	Kshs.454,884.00
		Kshs.717,220.33
ix.	Francis Waheire	
	Notice.....	Kshs.84,932.00
	Arrears.....	Kshs.83,289.00
	Compensation	Kshs.343,728.00
		Kshs.511,949.00
x.	Robert Gichuru	
	Notice.....	Kshs.85,932.00
	Arrears.....	Kshs.83,296.00
	Compensation	Kshs.343,728.00
		Kshs.512,956.00
xi.	Harun Mwangi Irura	
	Notice.....	Kshs.43,560.00
	Arrears.....	Kshs.41,472.00
	Compensation	Kshs.174,240.00
		Kshs.259,272.00
xii.	Anne Njeri Karuri	
	Notice.....	Kshs.85,932.00
	Arrears.....	Kshs.83,296.00
	Compensation	Kshs.343,728.00
		Kshs.512,956.00
xiii.	Peter Kabui Wanjagi	
	Notice.....	Kshs.43,560.00
	Arrears.....	Kshs.41,472.00
	Compensation	Kshs.174,240.00
		Kshs.259,272.00
xiv.	Danson Gichinjiri	
	Notice.....	Kshs.43,560.00
	Arrears.....	Kshs.41,472.00
	Compensation	Kshs.145,200.00
		Kshs.230,232.00



28. The Above awards are subject to statutory deductions. The claimant is awarded costs and interest at court rate from the date hereof.

DATED, SIGNED AND DELIVERED AT NYERI THIS 4TH DAY OF OCTOBER, 2024.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

