



Kenya Engineering Workers Union v Kenya General Industries Limited (Cause E001 of 2024) [2024] KEELRC 13550 (KLR) (19 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13550 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E001 OF 2024
M MBARŪ, J
DECEMBER 19, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
KENYA GENERAL INDUSTRIES LIMITED RESPONDENT**

JUDGMENT

1. The claimant is a registered trade union, and the respondent is a limited liability company. The parties have a Recognition Agreement and negotiated collective agreements (CBA).
2. The claim is filed by the claimant for Mwaava Menza, the grievant.
3. The respondent employed the grievant on 4 June 2006 on a daily wage of Ksh.285 and paid monthly. In 2016, he was elected the shop steward as the union representative on the shop floor, a position he held until he was declared redundant.
4. The grievant claims that he was declared redundant on 27 May 2023. He was earning a basic wage of Ksh. 22,382 and a house allowance of Ksh. 4, 622 per month.
5. The grievant worked for the respondent from 4 June 2006 to 27 May 2023. He was not paid his terminal dues under Section 40 of the *Employment Act*. Under the CBA, the matter was reported to the Minister, but no agreement was reached, and the claimant is seeking the following;
 1. 2 months' notice pay Ksh.56,008;
 2. Accrued leave for 3 years Ksh.72,911;
 3. Service gratuity Ksh.253,663;
 4. Severance pay for 23 days per year Ksh.291,712;



5. 12 months compensation Ksh.324,048;
6. Costs of the suit.
6. The grievant testified that he was appointed a shop steward to represent the employees and members of the claimant union on the shop floor. In a notice dated 27 May 2023, the respondent declared his position redundant, claiming it had been outsourced to another company.
7. Upon cross-examination, the grievant testified that he was initially employed on casual terms, earning a daily wage but being paid monthly. In 2009, he was issued his first contract of 3 to 4 months, each with a week's break. He remained in the galvanizing department.
8. The grievant admitted that in 2015, he was issued a warning letter.
9. In December 2018, the respondent permanently employed him. Under the contract, he was to earn 1.75 leave days monthly. During the COVID period, the respondent had a problem, and in the year 2022, the galvanizing department stopped operations. All employees in this department were laid off, and he was the only one left. From July 2022, the department had no work, and he was allocated general duties for 8 months with full payment of his wages. When he got the notice of redundancy, the entire department had closed operations.
10. The notice issued allowed the grievant two months' notice. He served the notice period. The claimant was copied to the notice, and he got a personal notice. He was paid his terminal dues but declined since these payments were below the CBA. The matter was reported to the labour officer, and the conciliator gave a report that indicated that the grievant was a casual employee from 2006 to 2016 and then retained on contract with breaks.
11. The grievant testified that when they appeared before the conciliator, he agreed that he had no wage arrears, overtime claimants, or pending leave days. He had taken all his earned leave days while under contract. The respondent admitted to paying severance, but there was no gratuity payment.
12. In response, the respondent admitted that the parties have a Recognition Agreement and CBA. The grievant worked as a casual employee on and off until 2009, when he was issued a three-month contract and allowed a one-week break between contracts. Each contract provided leave days at 1.75 per month. The contracts were not based on automatic renewal, as alleged.
13. In December 2018, the claimant advocated for the grievant to be employed permanently, which was done. In March 2023, the respondent shut down its galvanizing production line for over eight months, where the grievant worked due to harsh economic conditions after the COVID-19 pandemic.
14. On 29 March 2023, the grievant was issued a two month notice of termination on account of the respondent shutting down the galvanizing productions section with effect on 27 May 2023. The notice was copied on the claimant, and the respondent offered to pay terminal dues. There was no case of unfair termination of employment. At the time, the grievant was earning Ksh. 22,382 and a house allowance of Ksh.4, 622 per month.
15. The grievant had worked for the respondent from June 2006 to May 2023 under different arrangements. His terminal dues were tabulated, but he declined to accept the payment, claiming that there was a violation of the CBA. The matter was reported to the labour officer, and the conciliator recommended that severance pay be paid only when the grievant becomes a permanent employee. The due severance pay and gratuity were tabulated, and the respondent is ready to pay.



16. In evidence, the respondent called Mohamed Igbal Koraya, the manager since 2005. He testified that due to the effects of the COVID pandemic, the respondent was forced to close the galvanizing department where the grievant was working. He was issued with 2 months' notice taking effect on 27 May 2023, but when he was called to collect his terminal dues, he declined, stating that there were underpayments. The claimant reported the matter to the labour officer. Before the conciliator, the grievant admitted that he had been under different contracts and had no salary arrears, overtime or leave days owing. Severance pay and gratuity should be paid to the grievant who became a permanent employee. No gratuity was due since this was not a retirement. The claims made are not justified.
17. At the close of the hearing, the parties filed written submissions.
18. The grievant testified that he was appointed a shop steward to represent the employees and members of the claimant union on the shop floor. In a notice dated 27 May 2023, the respondent declared his position redundant, claiming it had been outsourced to another company.
19. Upon cross-examination, the grievant testified that he was initially employed on casual terms, earning a daily wage but being paid monthly. In 2009, he was issued his first contract, lasting 3 to 4 months. Each contract had a week's break. He remained in the galvanizing department.
20. The grievant admitted that in 2015, he was issued a warning letter.
21. In December 2018, the respondent permanently employed him. Under the contract, he was to earn 1.75 leave days monthly. During the COVID period, the respondent had a problem, and in the year 2022, the galvanizing department stopped operations. All employees in this department were laid off, and he was the only one left. From July 2022, the department had no work, and he was allocated general duties for 8 months with full payment of his wages. When he got the notice of redundancy, the entire department had closed operations.
22. The notice issued allowed the grievant two months' notice. The grievant served the notice period. The claimant was copied to the notice and got a personal notice. He was paid his terminal dues but declined since these payments were below the CBA. The matter was reported to the labour officer, and the conciliator gave a report that indicated that the grievant was a casual employee from 2006 to 2016 and then retained on contract with breaks.
23. The grievant testified that when they appeared before the conciliator, he agreed that he had no wage arrears, overtime claimants, or pending leave days. He had taken all his earned leave days while under contract. The respondent admitted to paying severance, but there was no gratuity payment.
24. In response, the respondent admitted that the parties have a Recognition Agreement and CBA. The grievant worked as a casual employee on and off until 2009, when he was issued a three-month contract and allowed a one-week break between contracts. Each contract provided leave days at 1.75 per month. As alleged, the contracts were not based on automatic renewal.
25. In December 2018, the claimant advocated for the grievant to be employed permanently, which was done. In March 2023, the respondent shut down its galvanizing production line for over eight months, where the grievant worked due to harsh economic conditions after the COVID-19 pandemic.
26. On 29 March 2023, the grievant was issued a 2-month notice of termination on account of the respondent shutting down the galvanizing productions section with effect on 27 May 2023. The notice was copied on the claimant, and the respondent offered to pay terminal dues. There was no case of unfair termination of employment. At the time, the grievant earned Ksh: 22,382 and a house allowance of Ksh.4, 622 per month.



27. The grievant had worked for the respondent from June 2006 to May 2023 under different arrangements. His terminal dues were tabulated, but he declined to accept the payment, claiming that there was a violation of the CBA. The matter was reported to the labour officer, and the conciliator recommended that severance pay be paid only when the grievant becomes a permanent employee. The due severance pay and gratuity were tabulated, and the respondent is ready to pay.
28. In evidence, the respondent called Mohamed Igbal Koraya, the manager since 2005. He testified that due to the effects of the COVID pandemic, the respondent was forced to close the galvanizing department where the grievant was working. He was issued a two-month notice taking effect on 27 May 2023, but when he was called to collect his terminal dues, he declined, stating that there were underpayments. The claimant reported the matter to the labour officer. Before the conciliator, the grievant admitted that he had been under different contracts and had no salary arrears, overtime or leave days owing. Severance pay and gratuity should be paid from when he became a permanent employee. No gratuity was due since this was not a retirement. The claims made are not justified.
29. At the close of the hearing, the parties filed written submissions.

Determination

30. The issues that emerge for determination in the pleading, evidence, and written submissions are whether there was an unfair termination of employment and whether the reliefs sought should be issued.
31. It is common cause that the respondent employed the grievant on 4 June 2006 on a daily wage. In 2016, he was placed under a 3-month contract with a week's break.
32. It is also agreed that the claimant negotiated the grievant employment terms and was placed under a permanent employment contract in December 2018.
33. Through notice dated 27 March 2023, the grievant was issued a redundancy notice since his galvanizing department had closed for over eight months, and everyone had been laid off. He had been left behind doing general duties.
34. Under Section 10(3) of the [Employment Act](#), an employer can employ an employee in various ways. This can be casual, contractual or permanent terms. However, each mode of employment event, defined as permanent, has a termination clause. Therefore, each mode of service is lawful and legitimate as held in the case of Tarmal Wire Products Limited v Munguti [2024] KEELRC 1559 (KLR), Ashton Apparels (EPZ) Limited v Mwoni & 15 others [2023] KEELRC 1201 (KLR) and Kenya Shipping Clearing & Warehouses Workers Union v Career Directions Limited [2023] KEELRC 1664 (KLR).
35. The written contract applies once causal employment is reduced to a term contract. Upon the change from a fixed-term contract to permanent employment, the employment relationship is thus regulated.
36. In this case, the grievant's employment was last regulated under the permanent employment terms negotiated by the claimant in December 2018. Previous contractual terms under the 3-month contract with a week's break commenced and ended on the agreed terms. Where the last such contracts changed in December 2018, the grievant is bound under Section 89 of the [Employment Act](#) and cannot make claims going back to the employment terms beyond the time limitation of 3 years.
37. Where accrued leave days exceeded the 1.75 per month provided under each contract, they should have been claimed as continuing injuries under each contract phase.



38. Through notice dated 29 March 2023, the respondent notified the grievant that his employment would be terminated on 27 May 2023. The reasons were that the company has ceased running its Galvanizing production line for the last 8 months, so your services are no longer required.
39. The grievant admitted he received this notice.
39. The grievant knew that the galvanizing department had closed operations, and all employees had been laid off, leaving him as the only one left.
40. A declaration of redundancy is lawful and regulated under Section 40 of the *Employment Act*. The parties do not disagree on applying the redundancy notice, save for the tabulation of terminal dues.
41. The grievant was under a permanent employment contract from December 2018. Under this phase, his employment was lawfully terminated due to redundancy. The tabulation of his terminal dues goes back to December 2018, not June 2006, as alleged.
42. The severance pay is due for each full year worked from December 2018 to May 2023, which is four full years. The gross wage comprises the basic salary plus the house allowance under Section 49(2) of the *Employment Act*; in this case, the gross is Ksh. 27, 004.
43. CBA clause 14 provided that upon a redundancy, a 2-month notice would be issued, and severance pay was calculated at 23 days' pay for every year worked.
44. The grievant was issued 2 months' notice, and he served to the end.
45. On the gross wage of ksh.27, 004, the due severance of 23 days for the four full years is ksh.82, 813.
46. Under clause 23 of the CBA, the parties agreed that gratuity is payable upon retirement, normal termination, and resignation.
47. Hence, gratuity and severance pay are regulated under different clauses. One is due upon normal termination of employment, and the other upon redundancy.
48. This is a case of redundancy and not a normal termination of employment.
49. On the claim for 3 years of leave pay, the respondent filed muster rolls and the payment statement from July 2019, September 2019, and January 2021, where the claimant was paid leave allowance. Further;
In January 2023, the grievant took several leave days;
February 2023, the grievant only worked for 5 days;

50. In these records, to seek leave pay is not justified.

51. Where the provisions of Section 40 of the *Employment Act* are adhered to in terms of due process and application of the payments thereof, the reasons leading to termination of employment are not contested; there is no case of unfair termination of employment, and no compensation is due.

52. Accordingly, the claim herein is without merit save for the payment of severance pay assessed at Ksh. 82, 813. These dues should be paid within 30 days, after which interest shall accrue at the correct rates.

Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA THIS 19TH DAY OF DECEMBER 2024.

M. MBARŪ

JUDGE



In the presence of:

Court Assistant: Japhet

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