



Amalgamated Union of Kenya Metal Workers v Pelican Signs Limited (Cause 317 of 2019) [2023] KEELRC 2568 (KLR) (5 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 317 OF 2019
MA ONYANGO, J
OCTOBER 5, 2023**

**BETWEEN
AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT
AND
PELICAN SIGNS LIMITED RESPONDENT**

JUDGMENT

1. The suit herein was instituted vide Memorandum of Claim dated and filed on 17th May, 2019. The Claimant filed an Amended Memorandum of Claim on 24th June, 2019.
2. In the Amended Memorandum of Claim the Claimant prays for orders as follows:
 - a. That, the honorable Court do find actions of the Respondent in locking out the claimant's members unprocedural as it is a contravention of section 76 of the [Labour Relations Act](#) 2007.
 - b. That, in the event of the honorable Court considering the summary dismissals, the honorable Court do find actions of the Respondent in dismissing their services summarily without a hearing, a contravention of Article 50 of [the Constitution](#) of Kenya 2010 and sections 41 and 43 of the [Employment Act](#) 2007.
 - c. That, the honorable Court do issue an Order of unconditional reinstatement of the grievant employees without loss of their benefits, privileges and status.
 - d. That, only if the honourable Court decides that reinstatement is not practically possible, then the Court do order payment of terminal dues as per the termination Clause of the CBA
 - e. That, the Honourable Court do consider awarding the grievants compensation of twelve (12) months salary for unprocedural and unfair loss of employment.
 - f. That the Court do order payment of the costs of this suit in favour of the Claimant.



- g. That, the Court do order any other relief the Court may deem fit.
3. The Claimant is a trade union registered under the *Labour Relations Act* to represent employees in the metal and motor trade sectors.
 4. The Respondent is a limited liability company whose core business consists of public and commercial display of information and entails to assemble, to design, to manufacture to supply to clean and to maintain signage.
 5. The Claimant and Respondent have a recognition agreement signed in May, 2002 which is valid and subsisting. The parties have negotiated several collective bargaining Agreements (CBA). The CBA relevant to the proceedings herein is dated 11th December, 2018 and covers the period 1st June, 2018 to 31st May, 2020, a period of 24 months. The CBA states at paragraph 30 thereof that the same would continue to be in force until it is mutually amended.
 6. The circumstances leading to the issues that led to the filing of the suit herein according to the Claimant is that by 16th May, 2019 the Respondent had not paid salaries for its employees who were members of the Claimant, for the month of April, 2019.
 7. That date about 3pm on that day the employees went to ask for their salaries for April, 2019. That this annoyed the Respondent who decided to lock out the employees.
 8. The Claimant states that other employees staged a sit in demanding that their salaries be paid.
 9. The Claimant states that when it learned about the situation at the company it informally invited the Ministry of Labour to assist in unlocking the statement and Mr. Asuma a labour officer, visited the Respondent's premises.
 10. That despite the presence of the Labour Officer the statement was not unlocked, prompting the Claimant to file the suit herein under certificate of urgency.
 11. That the salaries were eventually paid on 16th May, 2019.
 12. That on 16th May, 2019, the Labour Officer, Claimant's National officials and the works committee held a meeting at the Respondents premises.
 13. That the Claimant was surprised to learn that the Respondent delivered summary dismissal letters for 27 employees, the Grievants herein, to the Labour office, which letters were backdated to 15th May, 2019, even though the employees were at work on 17th May, 2019 at 3.45pm when the claimant served pleadings and count orders upon the Respondent's Human Resource Manager, Mr. Hezron Owalo, who acknowledged receipt thereof.
 14. The issue in dispute is therefore the lock-out of the following 27 employees.



Grievant Employees Names	Date Of Employment
Francis Miano	May, 1993
Francis Kinuthia	December, 1994
David Kariuki	September, 1998
Nicholas Musyoka	April, 2002
Benson Ochido	August, 2005
Gerald Kago	September, 2005
Isack Oduor	February, 2006
George Kamau	December, 2006
Meshack Matia	October, 2008
Antony Mwangi	December, 2009
David Kimani	April, 2012
Samuel Ywera	March, 1989
Aggrey Kidura	March, 1989
Francis Munguti	August, 2002
Nicholas Katumo	April, 2003
Chris Bolo	December, 2006
Francis Oyaro	February, 1994
Pascal Otieno	May, 1995
Alfred Amachi	November, 1987
Michael Chege	June, 1998
John Kamau	September, 2008
Joshua Mwithukia	November, 2012
Antony Maingi	July, 2012
Daniel Githinji	June, 2012



Francis Wokabi	July, 2012
Isumba Shitavi	July, 2012
Esther Adhiambo	April, 2014
TOTAL	27 Employees

15. The Respondent filed a Memorandum of Reply dated 21st August 2019 in which it denies the allegations in the Amended Memorandum of Claim.
16. According to the Respondent, from the beginning of the year 2019 some employees had been failing to complete their daily work reports either on time or at all. That this resulted in warning/caution letters being issued to defaulting employees on 14th March and 12th April, 2019.
17. The Respondent avers that a small number of employees persisted in the disobedience of the instructions. That for instance on or about 6th May, 2019 only 6 (six) reports were received for work done on 3rd May, 2019. This led the Respondent to issue show cause letters to the defaulting employees on 8th May, 2019 requiring the employees to respond by 9th May, 2019.
18. It is the Respondents case that all the 27 employees responded on 9th May, 2019 with similar wording in all the letters.
19. On 10th May, 2019 all the employees were issued with letters inviting them to attend disciplinary hearing on the same date and a disciplinary committee consisting of the shopsteward with 4 other persons representing management was constituted.
20. All the 27 employees attended the disciplinary hearing with a witness of their choice. All the employees stated that it was not their responsibility to prepare and compete daily work reports.
21. The disciplinary committee decided to dismiss all the 27 employees summarily for failure to obey a lawful command issued by a person placed in lawful authority over them by the Respondent.
22. The Respondent admits that there was a delay in payment of salaries for April, 2019 and explains that this was occasioned by an irregular overdrawal in its bank account which was communicated to the shopsteward on 30th April, 2019.
23. The Respondent avers that immediately after receiving the dismissal letters on 15th May, 2019 the 27 dismissed employees became rude and violent towards the Respondents Management causing it to shut down the factory. That the employees detained one of the senior managers in the company offices overnight, which incident was reported to Industrial Area Police Station. The workers salaries were released on 16th May, 2019.
24. The Respondent avers that contrary to the allegations by the Claimant's General Secretary the employees were served personally with their letter of dismissal on 15th May, 2019 at 8.30am at the Respondents Head Office on Uhuru Highway.
25. The Respondent prays that the claim be dismissed with costs.
26. On 10th June, 2019 when parties attended court for mention for directions, the court directed that parties attempt out of court settlement. The parties thereafter agreed to meet under the chairmanship of L.W Kariuki, the Manager, Industrial Relations at the Federation of Kenya Employers, as conciliator.



27. Two agreements were signed before the Conciliator, the first one undated but signed pursuant to a meeting held on 11th September 2019 and the second one dated 5th November 2019.
28. In the first agreement, the parties agreed that: -
- i. That the Employer shall pay the dismissed employees:
 - (a) Appropriate notice to each employee as per the existing CBA.
 - (b) Any outstanding leave affecting any of the 27 employees.
 - ii. The parties have further agreed that the issue of service benefits is negotiable and they have allowed Mr. L. W. Kariuki to explore ways and means of getting an acceptable settlement.
29. In the second agreement, parties agreed as follows —
- i. That the dismissal of Pelican employees shall be reduced to normal termination and that the employees should give the Union and the Employer time to negotiate their terminal dues and they shall be informed when the matter is finally concluded.
30. On 27th February 2020, when parties appeared before the Court for a mention to report progress in the conciliation proceedings, Counsel for the Respondent reported that parties had recorded a partial consent which declared that the termination was unfair. Counsel requested for a further mention in 60 days to finalize the negotiations.
31. The Representative of the Claimant however disagreed and reported to the court that the Respondent had not been keen on attending conciliation meetings to conclude negotiations and sought orders that parties dispose of the suit by way of written submissions.
32. The Court directed parties to submit their computation in line with the parties' consents within 30 days. The suit was fixed for mention to confirm compliance on 11th June 2020.
33. In the ruling the court directed as follows:-
- I find no merit in the application and dismiss it with costs to the Claimant. Parties are directed to file submissions on the terminal benefits due to the grievants based on the consents between the parties during conciliation. The suit will be fixed for mention to take date for judgment at the time of delivery of this ruling.
34. The Respondent tabulation is contained in its final submissions dated 21st June, 2022 while the Claimant decided to rely on its submissions dated 7th January, 2022 and submissions dated 7th June, 2021 as well as the replying affidavit dated 14th October, 2021.
35. I have considered the tabulations by each party. According to the agreements signed by the parties before L.W. Kariuki the conciliator, the, employees are entitled to:
- i. Notice as per CBA
 - ii. Outstanding leave
 - iii. Dismissal reduced to normal termination.
36. According to the CBA, Clauses 17, 20 and 22 provide for normal termination as follows:
17. Termination Of Service



The first three months with an employer shall be treated as probationary period C) during this period either party may terminate the contract by giving not less than seven (7) days notice in writing or otherwise by the payment of not less than seven (7) days wage.

Provided that:

- i. An employee who has completed probation period up to 6 years shall be terminable by one month's notice in writing or one month's payment in cash in lieu.
- ii. An employee who has served the accompany for over 6 years shall be terminated by two month's notice in writing or two (2) month's wages in cash in lieu. Notice of termination shall be given by either party.
- iii. An employee who resigns for lawful cause shall not be entitled to gratuity payment of 16 days per each completed year of service.

20. Certificate Of Service

Every employee shall be given a certificate of service by his / her employer upon departure from employment for whatever cause, unless such employment has continued for a period of less than four consecutive weeks

Every such certificate shall contain:

- a. The name of the employer and his address
- b. The name of the employee
- c. The date when employment commenced
- d. The nature and usual place of employment
- e. The date when employment ceased

22. Retirement / Termination Gratuity

An employee who dies while in employment or whose services are terminated shall be entitled to gratuity payment at the rate of 16 days consolidated wages for each completed year of service

An employee who retires after attaining the normal retirement age of 55 years shall be entitled to gratuity payment at the rate of 16 days consolidated wages for each completed year of service

37. I have noted that the tabulation in respect of notice, pro-rata leave and leave travelling allowance for both parties is the same. The Respondent has however not included gratuity which the Claimant has included in its tabulation.

38. The years of service for each of the grievants as per Respondents tabulation at page 10 of the further affidavit of Samuel Ngugi Ndinguri, the Chief Executive Officer of the Respondent sworn on 29th October, 2021 is as follows:-

39. Based on the foregoing the terminal dues for each grievant are as follows:-



1. Alfred Amachi	1,204,093.00
2. Aggrey Kigaro	599,662.00
3. Samuel Obala	485,811.40
4. Francis Miano	826,734.07
5. Pascal Otieno	505,208.40
6. Francis Ombori	558,957.00
7. Francis Kinuthia	633,134.67
8. David Kariuki	510,757.93
9. Michael Chege	410,086.00
10. Nicholas Musyoka	392,523.20
11. Francis Munguti	1,433,125.73
12. Nicholus Katumo	320,133.20
13. Benson Ochido	271,865.73
14. Gerald Kago	386,535.73
15. Issack Oduor	219,398.33
16. Crispin Bolo	249,549.67
17. George Kamau	268,095.00
18. John Kamau	246,712.20
19. Meshack Matia	564,500.20
20. Anthony Gathumbi	211,816.60
21. David Mung'ora Kimani	122,947.20
22. Daniel Githinji Njogu	125,630.20
23. Joseph Shitavi Isumba	103,188.40
24. Francis Wokabi Thagana	136,365.20
25. Anthony Kaitha Maingi	134,576.20



26. Joshua Mwithukia	101,801.80
27. Esther Adhiambo Odhiambo	84,443.80
Total	11,107,652.87

40. Judgment is therefore entered for the Claimant on behalf of the Grievants as set out in the attached tabulation in the total sum of Ksh. 11,107,652.87/=

41. Each party shall bear its costs.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 5TH DAY OF OCTOBER, 2023.

M. ONYANGO

JUDGE

