



**Kenya Petroleum Oil Workers' Union v Skyman fuels Limited(Kenol Bamburi Service Station)  
& another (Cause 7 of 2019) [2022] KEELRC 1138 (KLR) (13 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1138 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 7 OF 2019  
B ONGAYA, J  
MAY 13, 2022**

**BETWEEN  
KENYA PETROLEUM OIL WORKERS' UNION ..... CLAIMANT  
AND  
SKYMAN FUELS LIMITED(KENOL BAMBURI SERVICE STATION) .... 1<sup>ST</sup>  
RESPONDENT  
MR. NICHOLAS WANGAMATI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on 25.02.2019 in person. The claimant appointed Onyony & Company Advocates on 08.09.2021, to act in the suit. On 17.02.2022 the claimant filed a notice to act in person through its officer Rose Nehondo. The claimant's case is that at the material time Nicholas Wangamati trading as Skyman Fuels Limited operated Kenol Bamburi Service Station at Sanlam Insurance Building Mikindani Road. The issue in dispute is stated as wrongful redundancy of David Simiyu and 11 others (grievants). The claimant's case is that the respondent employed the grievants on diverse dates from 2012 and at different salaries. The claimant's further case is that the grievants are its members at all material times.
2. The claimant's further case is as follows. The respondent closed his operations at the petrol station on 14.06.2018 without notice. On 25.06.2018 the grievants reported the dispute to the claimant. On 20.08.2018 the claimant wrote to respondents to resolve the dispute. On 30.08.2018 the respondent refused to discuss the dispute with the claimant. On 18.09.2018 the claimant reported the dispute to the Cabinet Secretary for labour who appointed a conciliator on 18.10.2018. The conciliator wrote on 24.10.2018 inviting parties to conciliation meeting fixed for 13.11.2018. The claimant attended but the respondent did not attend but on 07.11.2018 the respondent's advocate had written stating that the grievants had been paid all their terminal dues. On 15.11.2018 the conciliator invited parties for a meeting on 27.11. 2018.The respondent objected to the grievants being members of the claimant



union. The conciliator's report was dated 25.01.2019 and referring the dispute to Court per section 69 (a) of the *Labour Relations Act*, 2007.

3. The claimant's case is that the respondent declared the grievants redundant without due procedure as per section 40 of the *Employment Act*, 2007 and did not pay the grievants the redundancy dues as provided in the section. It is pleaded that the employees were not notified per section 40 (1) (b) of the Act, accrued leave was not paid per section 40(1) (f), severance pay was not paid per section 40(1) (g), and that the grievants were not paid house allowance and minimum wages per prevailing wage order.
4. The claimant prayed for judgment against the respondent for:
  - a) The declaration that the termination of the 12 grievants on account of redundancy was wrongful, unlawful, unprocedural and unfair.
  - b) The respondent to pay the grievants notice pay, pending leave days, severance pay, accrued house allowance, public holidays, and 12
  - c) months' maximum compensation to be deposited in the union's Bank Account No. 01285089057500, National Bank of Kenya, Nkrumah Road, Mombasa.
  - d) Costs.
  - e) Any other order deemed favourable to the grievants.
5. The respondent filed the memorandum of response on 08.05.2019 through S. Ruwa & Company Advocates. The respondent prayed that the reliefs sought be declined and the claimant's suit be dismissed. The respondent pleaded as follows. The respondent admitted employing the grievants after 27.01.2015 when he executed a dealership agreement with Kenol Kobil to operate Bamburi petrol station as a licensee. The grievants reported at work on diverse dates between 27<sup>th</sup> and January and 27<sup>th</sup> February 2015. On 05.03.2018 at 4.30pm the respondent convened a meeting with all its employees when Kenol Kobil served the respondent with a final notice to terminate the dealership contract because the respondent had failed to meet terms of the licence agreement. The failure of meeting the terms of the dealership had been due to declining business after the 2017 general elections where by the customers whose trucks travelled to Uganda had declined in trips. The respondent informed the employees about the ending dealership licence. The respondent issued a letter to the Labour Officer at Mombasa dated 14.03.2018 and received on 20.03.2018. To each grievants the respondent addressed and delivered a letter dated 10.04.2018 being a two months' notice on redundancy to take effect on 14.06.2018 and a copy received by the labour officer on 13.04.2018. The respondent requested the new dealer to absorb the grievants and that was done so that each continued in employment. The respondent's case was that section 40 of the Act had been fully complied with. NSSF had been fully deducted and remitted and per section 35(6) of the Act, the grievants would not be entitled to service pay. The claimants had been paid minimum wages per the prevailing wage orders and claims for underpayment were unfounded. Further, the grievants had not been members of the claimant union at all material time and there existed no recognition agreement with the union per section 54(4) of the *Labour Relations Act*, 2007 so that the claimant union lacked standing to sue for the grievants. Some of the grievants had joined the union long after the termination in issue. The grievants had also paid union service charge and not union dues and in terms of rule 4.0 of the claimant's constitution thus,

“There shall be a service charge to be paid by any unionisable employee who for accepted reasons has had not enrolled as a union member and would require representation by union. The service charge shall be entrance fee paid once and monthly subscription for twenty-four months paid in advance...”



6. The claimant's witnesses were two of the grievants Michael Baya Thoya (CW1) and David Simiyu Sakari (CW1). The respondent company's managing director one Nicholas Wanjala Wangamati (RW) also named as respondent testified to support the claimant's case. The Court has considered all the material on record and final submissions filed for parties and returns as follows.
7. To answer the 1<sup>st</sup> issue, the Court returns that the respondent employed the grievants when the respondent took over the dealership licence agreement for the petrol station as pleaded for the respondent. The employment relationships started on diverse dates between 27<sup>th</sup> and January and 27<sup>th</sup> February 2015 as pleaded for the respondent. The claimant's case that the grievants were employed by the respondent on diverse dates from 2012 and at different salaries is found not trustworthy. The respondent has exhibited the dealership licence agreement dated 26.01.2015 and there is no reason to doubt the account on the formation of the contracts of service as urged for the respondent.
8. To answer the 2<sup>nd</sup> issue, the Court finds that the claimant had recruited some of the grievants before the effective date of the redundancy and others after the effective date and as per rule 4.0 of the claimant's constitution referred to by the respondent. In that regard the claimant had standing to bring the suit for the grievants upon terms and conditions of service of the grievants' individual contracts of service including the minimum statutory provisions in section 40 of the Employment Act, 2007. The Court holds that recognition under section 54 of the Labour Relations Act, 2007 is for purposes of collective bargaining and not representation generally.
9. To answer the 3<sup>rd</sup> issue, the Court returns that the termination was not unfair, wrongful or unlawful as urged for the claimant. There is no reason to doubt the evidence by RW that the grievants were notified in a meeting about the looming redundancy, they were served the redundancy notices, and the labour officer received the notices as pleaded for the respondent and exhibited accordingly. The claimant union had never been notified to the respondent as having recruited the grievants as at the time of the declaration of redundancy and it is found unjustified that the respondent would be obligated to serve the redundancy notice upon the claimant purportedly under section 40 of the Employment Act, 2007. The Court further finds that the respondent has established that the reason for the redundancy was valid and existed as at the time of the redundancy and per section 43 of the Act. In particular, there is no reason to doubt that the dealership licence agreement lapsed and the respondent had to quit the business. The respondent has exhibited the warning letter dated 05.03.2018 about failure by the respondent to meet the terms and conditions of the dealership licence. The testimony by CW2 confirmed that position thus, "I was terminated on 14.06.2018. On that day boss said we were unable to run station and he was handing it back to the owner. So we left and lost our jobs." RW testified that the arrangement was that the grievants continue in service of the new petrol station manager and he had paid them salary up to 14.06.2018 plus one-month salary in lieu of notice. RW also testified that he had taken over staff from the previous manager of the station and taken over the staff such as CW2. Further, it was a good practice in that enterprise to retain old staff when station management changed and he had introduced his staff to the new station manager though some may have thereafter left voluntarily. The Court finds that testimony to be credible on a balance of probability because, CW2 testified on the issue and in a rather contradictory manner thus, "When respondent left, the new management did not employ me. I do not work for Kenol or current manager. I say I continued to render my service. It (respondent) did not link me to one who took over from respondent" The Court returns that the termination by way of redundancy was not unfair in procedure and substance. The termination was not unfair or unlawful and the claimants have not established a case for compensation under section 49 as read with section 50 of the Employment Act, 2007.
10. To answer the 4<sup>th</sup> issue, the Court finds that the claims made for the grievants will collapse for want of strict pleading and proof as is required for liquidated damages. The Court has found that the claimant



has not pleaded a trustworthy date for the commencement of the employment of the grievants with the respondent. The evidence of the exact amount paid to each grievant was not pleaded and strictly proved. The public holidays worked and not paid were not specifically pleaded and the amounts claimed were at large. The specific outstanding leave days were not pleaded and the amounts due could not be computed at all. The Court finds that it was not enough to merely file a computation by the claimant, plead it by way of reference in the prayers and not provide the specific evidence and particulars to enable the Court to arrive at just payments as may have been available to the grievants under section 40 of the *Employment Act*, 2007. CW1 testified that the respondent employed him in February 2012 but which the Court has found not to be true. The Court has perused the witness statements by CW1 and CW2 but there is no explanation on the claims made on the headings of notice pay, unpaid leave, severance pay, and underpayment. How then should the Court arrive at a fair redundancy package for the grievants? It must be that proper pleadings with particulars are made and then established by way of relevant evidence. It is the Court's finding that the claimant failed to particularise the claims and to strictly prove the same. The grievants are entitled to a certificate of service and in that consideration, each party to bear own costs of the suit.

11. In conclusion the suit is hereby determined with orders the respondent to deliver the grievants' respective certificates of service by 31.05.2022 and each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 13<sup>TH</sup> MAY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

