



**Kenya Union of Commercial, Food and Allied Workers v Yako Supermarket (K) Ltd  
(Cause 332 of 2017) [2022] KEELRC 3957 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3957 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 332 OF 2017  
S RADIDO, J  
SEPTEMBER 21, 2022**

**BETWEEN**

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

**AND**

**YAKO SUPERMARKET (K) LTD ..... RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Commercial, Food & Allied Workers (the union) sued Yako Supermarket (K) Ltd (the respondent) on July 20, 2017, and it stated the issue in dispute as:  
Unlawful and unprocedural termination of
  - (1) Seylus Khendah
  - (2) Victoria Wanyonyi
  - (3) Rodgers Kakali
  - (4) Ann Shiviza Ojiami
  - (5) Mercy A Wekesa
  - (6) Geoffrey Wamalwa Masinde
  - (7) Irene Lumumba
  - (8) Godwin Wamalwa.
2. The respondent filed a response on October 5, 2017, and the cause was heard on October 8, 2019 when one of the grievants testified and on May 16, 2022 when a manager with the respondent testified.



3. The union filed its submissions on June 3, 2022, and the respondent on September 19, 2022.
4. The court has considered the pleadings, evidence, and submissions.

### **Unfair termination of employment**

5. The 8 grievants separated from the respondent on different dates. Therefore, it was improper to litigate their actions under the same Cause.
6. The union's case was that the respondent terminated the grievants' contracts because they decided to join and participate in union activities.
7. The union produced copies of letters written by the respondent to the grievants informing them of the termination of their contracts.
8. The general ground or theme in the letters was the lapse of contract.
9. The respondent produced copies of the grievants' contracts of employment. The contracts indicate that the grievants were on fixed-term contracts, which were renewed at the respondent's discretion.
10. Sections 9(1) and 10(2)(e) of the *Employment Act*, 2007 recognise fixed-term contracts, and since the contracts lapsed and were not renewed by the respondent, the court is unable to find unfair termination of employment.
11. In the court's view, it is of no legal significance under the circumstances herein that the contracts issued to the grievants were referenced Casual Employment Form since the court has held that they were on fixed-term contracts.
12. The remedies of compensation and pay in lieu of notice do not, therefore, become available to the grievants.

### **Breach of contract**

#### **Underpayment of wages**

13. The union, relying on Legal Notice No 197 of 2013, contended that the grievants were underpaid.
14. The union asserted that the grievants were earning at the material times, Kshs 12,540/- instead of Kshs 14,012/-.
15. The grievants were serving the respondent within Bungoma municipality.
16. Under the Legal Notice relied on by the union, the prescribed minimum wage (excluding house allowance) for municipalities was Kshs 9,024/-.
17. The respondent produced copies of the grievant's pay slips. The pay slips indicate that the grievants were earning a basic salary of Kshs 9,024/- and a house allowance of Kshs 1,354/- during the material period.
18. The court finds that the union did not prove underpayments.

### **Accrued leave**

19. The union pleaded that the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grievants had accrued leave ranging from 1 year to 3 years.



20. An evidential foundation to these heads of the claim was not outlined in the witness statement, which was filed in court and adopted or during oral testimony.
21. With no evidence of whether the grievants applied for leave or were denied or that they carried forward the leave days with the approval of the respondent as contemplated by section 28(4) of the [Employment Act](#), 2007, the Court declines to award any relief as prayed.

### **Certificate of Service**

22. A Certificate of Service is a statutory entitlement, and the respondent should issue the same to the grievants.

### **Conclusion and Orders**

23. Flowing from the above, save for an order directing the respondent to issue the grievants with Certificates of Service within 21-days, the court finds no merit in the cause, and it is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 21ST DAY OF SEPTEMBER 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For union Mr Nyumba, Industrial Relations Officer

For respondent Walunya Indimuli & Co Advocates

Court assistant Chrispo Aura

