



Kenya Engineering Workers Union v Met-Al Master Engineering Limited (Cause E627 of 2022) [2024] KEELRC 13566 (KLR) (19 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13566 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E627 OF 2022
B ONGAYA, J
DECEMBER 19, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
MET-AL MASTER ENGINEERING LIMITED RESPONDENT**

JUDGMENT

1. The claimant union filed the statement of claim dated 09.03.2022 claiming unfair, unlawful and unprocedural redundancy and refusal to pay redundancy or terminal benefits to Josephat Kioko, Stephen Musembi, Jacob Musau, Francis Mutiso, Luka Musembi, Kelvin Gwandanya and Henry Mwaka (hereinafter “the grievants”). The union made the following prayers:
 1. That the Honourable Court be pleased and find the respondent action against the grievants herein to be unfair, unlawful and unprocedural and declare it null and void.
 2. That the Honourable Court issue Orders against the respondent herein to reinstate all the seven (7) grievants herein unconditionally without loss of any benefit.
 3. That in the alternative, the Honourable Court do issue an Order against the respondent herein to pay each grievant, one month notice, 15 days’ severance pay for each completed year of service, accrued leave, worked overtime but not paid and 12 months’ compensation to each of the grievants for unfair and unprocedural redundancy or termination with immediate effect as enumerated in the Memorandum of Claim.
 4. That the Honourable Court to issue the grievants with certificate of service.
 5. That the respondent to meet the costs of this suit.
 6. Any other relief the Honourable Court may deem fit to grant.



2. The claimant's case was that:
 - a. The claimant first recruited the respondent's employees in 2005. While the dispute was ongoing at the Ministry of Labour over refusal to sign the recognition agreement, the respondent terminated the entire unionisable workforce.
 - b. On 07.07.2019, the claimant recruited 14 employees of the respondent, including the grievants herein, and forwarded the original check-off forms and recognition agreement as per the law. When the respondent declined to effect deduction and remittance of union dues and to sign the recognition agreement, the claimant moved to court in ELRC Cause No. 773 of 2019. Subsequently, the claimant obtained orders restraining the respondent from victimizing the claimant's members on grounds of union membership or activities by way of termination of employment, redundancy or dismissal.
 - c. The seven (7) grievants were engaged on various dates between 1999 and 2017 and were on implied permanent contracts, which can be confirmed by bank statements and NSSF statements.
 - d. On 29.09.2019, after the grievants had been paid their salaries for September 2019, the respondent asked them to withdraw from the claimant union. When they declined, they were asked not to enter the premises the following day and it was without explanation. The claimant thus reported a trade dispute to the Ministry of Labour and a conciliator was subsequently appointed. The conciliator invited parties to two conciliatory meetings both of which the respondent failed to attend. However, the conciliator issued parties with a certificate of recommendation despite there having been no meeting.
 - e. The respondent's action on redundancy or termination of employment violates the Court Orders issued on 15.11.2019 in ELRC Cause No. 773 of 2019. The respondent is in further breach of the law on redundancy and notification on hearing before termination of employment. In addition, the respondent has breached the constitutional freedom of association, freedom to form or belong to a trade union of one's choice and the right to fair administrative action.
3. The claimant's witness swore an affidavit of Josephat Kioko Nzube on 11.10.2024 with authority of the other grievants and was filed through the claimant union. It was stated that the grievants were not issued with employment letters but were rather engaged verbally on implied permanent contracts. After they refused to withdraw from the claimant union on 29.09.2019 and asked not to enter the respondent's premises, they were neither issued with any termination letters nor paid any accrued benefits without any reasons. The respondent did not accord them any opportunity to defend themselves before locking them out. They urged the Court to therefore grant the relief sought herein as termination of their employment was unwarranted.
4. It was further stated that at the time of the lock-out or redundancy, the grievants were earning different salaries as follows: Josephat Kioko – Kshs. 30,115/=; Stephen Musembi – Kshs. 28,000/=; Jacob Musau – Kshs. 19,000/=; Luka Musembi – Kshs. 670 per day; Kelvin Gwadenya – Kshs. 600 per day; Henry Mwaka – Kshs. 34,000/=; and Francis Mutiso – Kshs. 34,284/= per month.
5. The respondent's statement of defence dated 03.10.2022 was filed through Njenga Sang & Company Advocates. It was prayed that the claimant's suit be dismissed with costs and for any other relief the Court deems fit to grant.
6. The respondent's case was as follows:



- i. The claimant has never taken any steps to fix the matter for hearing in ELRC Cause No. 773 of 2019 to enable the Court make a determination on the same. Further, the respondent was only served with the Court Order made in the said suit and not the pleadings therein for it to file a response.
 - ii. It engaged the grievants on temporary basis. Their contracts contained expiry clauses with the provisions of renewal being only upon review and satisfaction by the employer. There was no requirement for automatic renewal in the said contracts, which were terminated by lapse of time, as they were fixed term contracts.
 - iii. Despite the grievants absconding duty, regularly and intentionally frustrating the duties assigned to them by delaying projects and resulting in client losses, it allowed them to continue working and only wrote them warning letters.
 - iv. Regarding the dispute reported to the Ministry of Labour, it informed the Ministry that the respondent's submissions were not considered.
 - v. There are no lawful dues owed to the grievants or employees or any claims to be paid whatsoever. The claim should be struck out with costs. It is incompetent, contra-law and has flouted the well laid down procedures of pleadings. Furthermore, the prayers sought are misconceived and an abuse of court process.
7. The respondent's witness statement was made by Sukhvinder Singh Kundi and dated 01.02.2023. Mr. Kundi asserted as follows:
- a. The respondent employed the grievants as driver, welders and general workers earning a gross monthly salary as follows:
 - i. Stephen Musembi – Kshs. 28,780/=;
 - ii. Francis Mutiso Matheka – Kshs. 34,284/=;
 - iii. Josephat Kioko – Kshs. 30,000/=;
 - iv. Henry Mwaka – Kshs. 32,750/=; and
 - v. Jacob Musau – Kshs. 16,625/=.
 - b. The service contracts of the grievants varied between six (6) and 12 months depending on the needs of the company and each contract was signed by both parties on mutual understanding. In addition, statutory deductions including NSSF were duly remitted to the relevant authorities.
 - c. The remaining two grievants, Luka Musembi and Kelvin Gwadenya, were engaged as casual labourers from time to time and similarly paid all their dues as and when they fell dues.
 - d. The grievants have always been paid for work performed as evidenced from the salary vouchers duly signed by each of them.
 - e. The grievants were jointly and severally involved in serious ethical issues, which actions amounted to gross violation of the claimant's contractual terms. Their actions caused the company loss of a colossal amount of work with some of its valuable clients. They were therefore issued with several verbal warnings as the company's business revenue was negatively affected with a dip in the percentage of work issued to the company.



- f. Stephen Musembi, Josphat Kioko, Henry Mwaka and Francis Mutiso had requested for loan facilities from the company, which were subsequently disbursed to them. However, the said grievants have since breached their respective loan agreements and left without paying off or issuing any indication on repayment of the said loan facilities.
 - g. The grievants have neither been declared redundant nor unfairly terminated from employment as alleged, as they voluntarily absconded from work. The respondent has all along complied with the law in its relationship with the alleged grievants and therefore denies any wrongdoing.
 - h. The severance pay indicated on the grievants' payment vouchers relate to sums the company used to pay to them annually to reduce the lump sum payable for their services when an employee leaves employment.
8. The parties recorded a consent order that the suit is determined on documents filed for the parties and final submissions.
 9. The parties filed their respective submissions. The Court has considered the pleadings, the documents, pleadings, and returns as follows.
 10. First, there is no dispute that parties were in a contract of service. The conciliator found as per the certificate of the unresolved trade dispute dated 14.09.2021 that the employees worked for the employer on monthly or weekly contracts, which were continuous depending on the volume of work. The Court finds that the employment relationship was on the basis of term contracts running on weekly or monthly or such other agreed term basis especially that the respondent has pleaded as much and exhibited some of the term contracts.
 11. Second, on 29.09.2019 the respondent paid the grievants for the days worked and told them that their services would no longer be required. In absence of any other evidence, the Court finds that on a balance of probability, the separation was because of lapsing of the term contracts. In making that finding, the Court has considered that in any event the grievants did not allege that the respondent owed them any unpaid salaries. The necessary implication is that the term contracts lapsed and then parties separated.
 12. Third, the Court returns that the claims of redundancy and payment on the headings of severance, notice payment, leave and 12 months salary in compensation will collapse. While making that finding, the union has relied on the conciliator's certificate of unresolved trade dispute dated 14.09.2021 which shows that the term contracts were as well based on volumes of work available – suggesting that on some occasions there were breaks in the purportedly continuous contract especially when the volumes of work declined.
 13. Fourth, the Court finds that the claims will therefore fail. The respondent has as well exhibited vouchers showing that it advanced the grievants some monies. In that consideration and while the grievants are entitled to certificate of service per section 51 of the *Employment Act*, 2007, each party to bear own costs of the suit.
 14. The issue of victimization of staff on account of joining the union appear to be subject of another suit as pleaded and the Court will not delve into that issue. In any event, the claimant's case was that the employees were declared redundant but the Court has found on the material before Court, their respective term contracts must have lapsed by effluxion of time.

In conclusion, the suit is hereby determined with orders:



- a. The respondent to deliver within 30 days the grievants' respective certificates of service per section 51 of the [Employment Act](#), 2007.
- b. Each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

