
KENYA / JUDGMENT

Kyao & 111 others v Devki Steel Mills Limited [2025] KEELRC 1985 (KLR)

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COURT

Employment and Labour Relations Court

BEFORE

HS Wasilwa

CASE / FILE NUMBER

Employment and Labour Relations Cause 1324 of 2018

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Kyao & 111 others v Devki Steel Mills Limited (Employment and Labour Relations Cause 1324 of 2018) [2025] KEELRC 1985 (KLR) (3 July 2025) (Judgment)

Neutral citation:

[2025] KEELRC 1985 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nairobi

Employment and Labour Relations Cause 1324 of 2018

HS Wasilwa, J

July 3, 2025

Between

Joseph Mutuku Kyalo & 111 others & 111 others & 111 others

Claimant

and

Devki Steel Mills Limited

Respondent

Judgment

1. The Claimants instituted this claim vide a Statement of Claim dated 18th December 2018 and prays for judgment against the Respondent for:
 1. An order directing the Respondent to pay the Claimants unpaid severance pay, amounting to Kshs. 10,377,480. 45 as per the individual Claimants' Schedule of Reliefs attached to the Statement of Claim or determined by this Honourable Court.
 2. An order directing the Respondent to pay the Claimants notice pay amounting to Kshs. 2,555,201 as per the individual Claimants' Schedule of Reliefs attached to the Statement of Claim or as determined by this Honourable Court.
 3. An order directing the Respondent to pay the Claimants general damages amounting to Kshs. 15,423, 336 as per the individual Claimants' Schedule of Reliefs attached to the Statement of Claim or as determined by this Honourable Court.
 4. Interest on prayers (1) and (2) above at court rates from the date of filing the claim till settlement in full.
 5. Interest on prayer (3) above at court rates from the date of the judgment herein till settlement in full.
 6. An order directing the Respondent to promptly issue the Claimants with respective certificates of service.
 7. Such other and further orders that this Honourable Court deems just and expedient to grant.

Claimants' Case

2. The Claimants aver that at all material times, they were paid up members of a trade union called Kenya Engineering Workers Union that represents all unionisable staff working at the Respondent.
3. The Claimants aver that on 13th May 2009, the Claimants' union and the Respondent entered into a two-year Collective Bargaining Agreement (CBA) effective on 1st August 2008 to expire on 31st July 2010, which was duly registered.
4. The Claimants aver that upon expiry of the CBA, the union and the Respondent entered into two other CBAs for the period between 1st August 2010 to 31st July 2012; and between 1st August 2012 to 31st July 2014. Subsequently, they negotiated the CBA for the period between 1st August 2014 to 31st July 2016 which has not been sign at the time this claim was instituted, thus, unregistered.
5. It is the Claimants' case that they were locked out from work by the Respondent on 29th June 2015 in attempt to compel them into signing new employment contracts with an outsourcing company, Jokali Handlers Services Ltd without paying them accrued benefits before signing the new employment contracts.
6. The Claimants aver that aggrieved by the lockout, the union filed a claim in Kenya Engineering Workers Union v Devki Steel Mills Limited Nairobi ELRCC No 1197 of 2015 seeking a permanent injunction to restrain the Respondent from locking the Claimants from their workplace. Vide an order dated 10th July 2015, the court ordered the Respondent to unconditionally allow the Claimants to resume their duties pending the determination of the interlocutory application till the hearing and determination of the claim.

7. Subsequently, the court delivered its judgment on 20th December 2016. From this judgment, the Respondent declared the Claimants redundant by outsourcing all its labour from Jokali Handlers Services Ltd without requisite notice to the Claimants' union, the Claimants and the labour office; requisite notice pay; and requisite severance pay under the Employment Act.
8. The Claimants aver that clause 26(e)(ii) of the CBAs read together with Sections 26(2), 40(1)(d) and (g) of the Employment Act entitles the Claimants to severance payments upon termination of employment at the rate of 20 day pay per year worked for Claimants who worked between 1-5 years; 22 day pay per year worked for Claimants who worked between 6-10 years; and 27 day pay per year worked for Claimants who worked for over 10 years. The Respondent failed, refused and ignored to pay the Claimants their severance pay in breach of its contract with the Claimants.
9. The Claimants aver that the Respondent's declaration of redundancy on 20th December 2016 without requisite notice requisite notice to the Claimants' union, the Claimants and the labour office; requisite notice pay; and requisite severance pay was illegal, unjustified and offended the provisions of Section 40 of the Employment Act. Additionally, the Claimants are entitled to notice pay as stipulated under clause 26(e)(ii) and 19 of the CBAs read together with Sections 26(2), 3(6) and 35(2) of the Employment Act.
10. The Claimants aver that they are entitled to general damages stipulated in Section 49(1)(c) of the Employment Act at the rate of 12-month compensation.
11. Furthermore, the Claimants are entitled to be issued with certificate of service which the Respondent failed, refused and/or ignored to issue them in breach of its contract of service with the Claimants.

Respondent's Case

12. In opposition to the Claim, the Respondent filed an Amended Response to Claim dated 25th November 2022.
13. The Respondent avers the Claimants' suit against it is in bad in law, fatally defective and an abuse of the court process as it discloses no cause of action against the Respondent.
14. The Respondent avers that it already released payments of the Claimants' terminal dues amounting to Kshs. 17,253,060 in reference to the 2008 CBA to as guidance and in lieu of Section 40 the Employment Act to all the Claimants and that it has fulfilled its obligations as required by law.
15. The Respondent avers that the Claimants refused to resume work in June 2025 paralyzing its operations thus compelling it to outsource Jokali Handling Services Limited. Only a few workers reported and agreed to work under Jokali Handling Services Limited contracts and abandoned the Claimants unfair activities.

16. The Respondent avers that it gave notice to the Claimants' union together with the County Labour Officer, Machakos on 29th May 2015 within the month prior to the Claimants being rendered redundant in June 2015 and the communication was further copied to the Area Secretary of the Claimants' Union.
17. The Respondent avers that it informed the Claimants vide a notice dated 29th June 2015 that since none of them attended work, it had no choice but to outsource Jokali Handling Services Limited who would commence work on 1st July 2015.
18. The Respondent avers that there was no valid CBA between the parties at the time, therefore, it applied the 2008 CBA in lieu of Section 40 of the Employment Act as a guide when paying the Claimants' severance pay, for the reason that the said CBA provided for favourable terms for the Claimants.
19. It is the Respondent's case that it put necessary effort in negotiating the structure of the intended CBA's which in the end never got registered or agreed upon by the parties. Therefore, any claim based on the CBAs are unfounded and unsubstantiated.
20. The Respondent avers that the claim is time barred as the event leading to the Claimants' termination took place from 29th May 2015 and culminated in the outsourcing activities by Jokali Handling Services on 1st July 2015. Any further stay at the Respondent's premises by the Claimants up to 20th December 2015 was necessitated by an interlocutory order issued on 10th July 2015 vide Nairobi Employment & Labour Relations Court Cause No. 1197 of 2015- Kenya Engineering Workers Union v Devki Steel Mills Limited.
21. It is the Respondent's case that in the absence of the interim orders of the court, the Claimants would have never come back into the premises of the Respondent.
22. The Respondent avers that the court dismissed the suit filed by the Claimants' union on behalf of the Claimants thus the Claimants had no reason to continue being the Respondent's premises as the orders of 10th July 2015 had automatically been vacated with the dismissal of the main suit.
23. It is the Respondent's case that it did not undertake another dismissal exercise as it had already done so with the issuance of the notice dated 29th May 2015 and paid terminal dues to the Claimants on 29th June 2015.

Evidence in Court

24. The Claimant's witness, Joseph Kyalo (CW1) testified that all the 111 Claimants gave him authority to represent them in this case and he produced that as his evidence in court. He further testified that the other Claimants gave him authority to write the witness statement dated 18th December 2018 and supplementary witness statement dated 23rd February 2023 which he adopted as his evidence in chief.

25. CW1 produced the Claimants' list of documents 18th December 2018 and supplementary list of documents dated 23rd February 2023 as his exhibits.
26. During cross-examination, CW1 testified that the order to return to work issued on 10th July 2015 vide Nairobi Employment & Labour Relations Court Cause No. 1197 of 2015- Kenya Engineering Workers Union v Devki Steel Mills Limited, ended when the suit was dismissed
27. CW1 testified that he was neither paid severance pay nor pay in lieu of notice as they were not issued any notice.
28. CW1 testified that there was no money paid by the Respondent from ABSA Bank and the list of those alleged to have been paid is not true.
29. The Respondent's witness, Erastus Musyoka (RW1) testified that the works for the Respondent in Human Resources. He relied on the Respondent's amended memorandum of response dated 25th November 2022. He adopted his witness statement dated 25th November 2022 as his evidence in chief and filed list of documents and supplementary list of documents as his exhibits.
30. During cross-examination, RW1 testified that the Respondent had CBAs of 2008-2010 and 2011 to 2013 which provides for redundancy under clause 26.
31. RW1 testified that there were difficulties in continuation of the Claimants' employment which was discussed with the union and the jobs to be given were from the outsourcing company. However, the minutes of this meeting was not produced in court.
32. RW1 testified that there is no evidence that consultation was done before issuance of the notice on 29th May 2015 as required under clause 26 of the CBA and the minutes are not in court.
33. RW1 testified that the Respondent followed a criteria to select affected employees; who were non-core employees. In its endeavour to avoid non-employment, the Respondent provided alternative employment through Jokali, an independent employer.
34. RW1 testified that the offer by Jokali was similar to what the Respondent was offering and it had an agreement with Jokali, however, it was not produced in court.
35. RW1 testified the employees were paid and there is evidence the document was forwarded to the bank. It was uploaded to bank, and there is evidence that the bank received the money. There is no forwarding letter or stamp on the document as it is an online document.
36. RW1 testified that that the Respondent did not give notice to the Claimants in the alleged payments made to them.
37. RW1 testified that there were no individual notices sent to the union members.

38. RW1 testified that the Respondent did not release the Claimants after the court's judgment as most of them kept working for the outsourcing company to date. From 2015 to December 2016, the Respondent did not pay any salaries, Jokali was paying them but there is no evidence to this effect.

Claimants' Submissions

39. The Claimants submitted on five issues: whether the Claimants were unfairly, un-procedurally and unlawfully declared redundant; valid and applicable CBA; payment of severance pay as per the 2012-2014 CBA; payment of notice pay as per the 2012-2014 CBA; payment of 12 months' salary compensation as general damages; issuance of Certificate of Service; and costs and interest.
40. On the first issue, the Claimants submitted that the Court of Appeal in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR stated that the law of redundancy in Kenya is governed by mainly the Employment Act, the Labour Relations Act, terms of the contract of service and CBA where applicable; the court further applied Section 40 of the Employment Act which is procedural in its tenor and Sections 43, 45 and 47(5) of the Employment Act. It upheld that to establish a valid defence to a claim for unfair termination based on redundancy, there must be: procedural propriety in implementing a redundancy decision; and justification of redundancy.
41. On procedural fairness, the Claimants submitted that the Respondent locked them out of employment on 29th June 2015 after issuance of an alleged intention to declare redundancy notice on 29th May 2015 on condition that the Claimants could only return to work upon signing new employment contracts with Jokali Handling Services Limited. Aggrieved by this decision, they filed a suit in Nairobi ELRC Cause No. 1197 of 2015 and were issued with temporary orders on 10th July 2015 returning them to work. However, on final determination of the suit, the Respondent informed the Claimants that they were declared redundant and terminated their employment on 20th December 2016.
42. The Claimants submitted that the Respondent allegedly issued a redundancy notice dated 29th May 2015 to the union and the labour office and no further termination notice was issued to the affected Claimants. This was acknowledged by the Respondent's witness who testified that the notice was final.
43. It is the Claimants' submission that there were as no consultations between the Respondent and the union concerning the selection criteria and other considerations such as seniority in time, skill, ability and reliability of the employees. Clause 26(b) of the 2012-2014 CBA provides for consultation and a selection criterion in determining the employees that would be affected in a redundancy.

44. The Claimants submitted that contrary to Section 40 of the Employment Act, the Respondent did not undertake any selection process or issue further notices of termination to the individual affected Claimants. The Respondents did not conduct any further consultations or pay the Claimants dues.
45. The Claimants submitted that the bank statement produced by the Respondent alleging the payment of Kshs 706,590 and Kshs 17,253,060 on 30th June 2015 and 1st July 2015 does not state the beneficiaries or their accounts.
46. The Claimants submitted that the Respondent's witness acknowledged that the Claimants were not paid notice pay in lieu of termination on redundancy as per the alleged schedule of payment produced by the Respondent.
47. On justification, the Claimants submitted that the Respondent failed to prove any justification for the declaration of redundancy thus the redundancy was unfair and un-procedural.
48. On the second issue, the Claimants submitted that at the time of filing this suit, the Respondent and the Kenya Engineering Workers Union were in the process of negotiating the 2014-2016 CBA. Additionally, the Respondent in *Linus M. Mobengi & 22 Others v Devki Steel Mills Limited* (2020) eKLR acknowledged the existence and applicability of the registered 2012-2014 CBA.
49. The Claimants submitted that it is unfounded for the Respondent to claim that the applicable CBA was the 2008-2010 CBA while there is a further registered CBA 2010-2012 produced by the Claimants, prior to the now applicable 2012-2014 CBA. Therefore, the applicable CBA in determination of the redundancy and in calculation of dues was the registered CBA for the period 2012-2014.
50. On the third issue, the Claimants submitted that they are entitled to severance pay in line with clause 26(e)(ii) of the 2012-2014 CBA which provides for payment of severance pay in an event of declaration of redundancy to the Claimants as follows: at the rate of 20 day pay per year worked for Claimants who worked between 1-5 years; 22 day pay per year worked for Claimants who worked between 6-10 years; and 27 day pay per year worked for Claimants who worked for over 10 years.
51. On the fourth issue, the Claimants submitted that they are entitled to payment in lieu of notice of termination in line with Clause 26(e)(ii) and 19 of the 2012-2014 CBA which provides for payment of notice pay in lieu of termination notice as: one month pay in lieu of notice for employees who have worked for 1-5 years; two months pay in lieu of notice for employees who have worked for 6-10 years; and three months pay in lieu of notice for employees who have worked for over 10 years.

52. On compensation, the Claimants submitted that they were un-procedurally and without justification declared redundant by the Respondent. Therefore, they urge the court to award 12 months pay to each Claimants as damages for unfair termination.
53. The Claimants submitted that Clause 25 of the 2012-2014 CBA provides for issuance of a certificate of service to the Claimants whose employment continued for a period of more than 4 weeks. The Respondent did not issue the Claimants with the service contrary to section 51 of the Employment Act and clause 25 of the CBA.
54. On costs, the Claimants submitted that they have incurred cost in filing and prosecution of the suit and urges the court to award then costs and interest as awarded in *Linus M. Mobengi & 22 Other v Devki Steel Mills Limited* (2020) eKLR.

Respondent's Submissions

55. The Respondent submitted on three issues: whether the Claimants' claim is time barred; whether there was termination on 20th December 2016 and for that reason; whether the reliefs sought can be granted; and which party ought to bear the costs for the present claim.
56. On the first issue, the Respondent submitted that Section 90 of the Employment Act provides that no civil action or proceedings arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within 3 years next after the act, neglect or default complained or in case of continuing injury or damage within 12 months next after the cessation thereof.
57. The Respondent submitted that the events complained of emanated from the redundancy/outsourcing notice dated 29th May 2015 on the basis of which a labour outsourcing and other form of re-organization were effected. Subsequently, the Claimants were accorded legal accommodation pending hearing and determination of the main suit filed by KEWU, which was dismissed by the court on 18th December 2016 for lack of merit.
58. The Respondent submitted that the separation with the Claimants was effective 1st July 2015 which implies that the present suit ought to have filed on or before 1st July 2018 within the three years' time limitation provided by the law. Therefore, this suit is time barred by statute and this court has no powers under the law to entertain the claim.
59. On the second issue, the Respondent submitted that the court having dismissed the union's suit in *Nairobi Employment & Labour Relations Court Cause No. 1197 of 2015- Kenya Engineering Workers Union v Devki Steel Mills Limited* on 18th December 2015, the orders issued on 10th July 2015 dissipated with the lifetime of the main claim. Therefore, no further action was needed on employment status of the claim by the Respondent to terminate them.

60. The Respondent submitted that it intended to terminate the Claimants on 18th December 2015, noting that nothing prevented it from doing so as it had already issued the redundancy/outsourcing notice dated 29th May 2015 which took effect on 1st July 2015 leading to the filing of the primary claim.
61. The Respondent submitted that no termination of employment against the Claimants on 18th December 2015 as the termination had already been commenced through the redundancy/outsourcing notice dated 29th May 2015 and regularized through payments made on 30th June 2015 and 1st July 2015 before the outsourcing company took over.
62. It is the Respondent's submission that the legal accommodation offered by the court on 10th July 2015 in form of interim orders came to an end with the judgment dismissing the main suit on 18th December 2016. There was no fresh termination of employment by the Respondent and for that reason, the matter should be dismissed with an award for costs in favour of the Respondent.
63. On costs, the Respondent submitted that it is trite law that the award of costs is discretionary, however, the courts have been guided by the principle that costs follow the event. The effect being that the party who calls forth the event by filing a suit or application will bear the costs of the suit or application fails; but if this party shows legitimate occasion, by successful application then the other party will bear the costs.
64. I have examined all the evidence and submissions of the parties herein. The issues for the courts determination are as follows:1. Whether the claim before court is time barred.2. Whether the claimants termination was fairly and procedurally done.3. Whether the claimants are entitled to the remedies sought.

Issue No 1

65. On the issue of this claim being time barred, the decision to lock out the claimants members out of office was taken by the respondents on 29th June 2015. The claimants however filed an urgent application in ELRC Cause No 1197/2015 and Hon Justice Nderi granted orders on 10/7/2015 ordering the respondents to allow all employees locked out of their employment against Labour laws section 76 and CBA 26 to resume their duties unconditionally until parties met and reasons stated to applicants union as stipulated in CBA between the parties and section 40 of the Employment Act 2007 pending the hearing and determination the intended application by the applicant demands of all employees to resume their duties. These orders were thereafter extended and all employees remained at work pending hearing and determination of the main claim.
66. Judgment in 1197/2015 was subsequently delivered by Hon. Nderi J. on 20/12/2016 whereby the claimants' suit was dismissed. This means that the employees who had hitherto been returned to work now ceased to work in 20/12/2016. This then became the effective date of termination and the day the cause of action arose.

67. This claim was filed on 18/12/2018 which is within the statutory period of 3 years envisaged under section 90 of the Employment Act. The claim that this claim is time barred does not therefore have any force of law.

Issue No 2

68. Owing to the termination of the claimant's members, the claimants have averred that they were unlawfully declared redundant and that the respondents did not follow the CBA in place. On record, the claimants produced various CBAs between claimants and respondent the last being one registered on 15/8/2012 and was to remain in force for 2 years until amended by parties.
69. The CBA also provided at para 26 how employees who were declared redundant were to be paid their terminal dues as follows: 1. 5 years of service – 18 days for each year worked plus 1 month pay in lieu of notice, 6-10 years – 20 days' pay for each year of service plus one month notice. Over 10 years of service, 25 days salary for each year worked plus 1 month notice. At the time of the claimant members termination in 2015, the CBA in force was the one registered on 15/8/2012 by Hon Justice Ndolo.
70. The claim in court is for payment of severance pay as per the schedule submitted in court. The issue of the unlawfulness or otherwise of the process does not therefore arise. The claim for payment or compensation for wrongful redundancy does not therefore arise.

Issue No 3

71. The issue then is whether the grievants are entitled to the amounts due to them as redundancy pay. The respondent aver that they paid the grievants all their dues as per their attached schedule. There is no evidence adduced before court by respondents that they paid the redundancy dues or severance pay and notices.
72. It is therefore my finding that the claimant's members are entitled to payment of their redundancy/severance pay as per the 2012 CBA which I direct the respondents to pay. Due to the large number of parties involved, I direct the amounts be calculated by the parties as per this court's judgment to be included in the final judgment of the court as an addendum. The respondents will pay costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF JULY 2025.
HELLEN WASILWAJUDGE

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