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TERMINATION BY LOCKOUT: THE LEGAL OBLIGATIONS KENYAN EMPLOYERS CANNOT AFFORD TO IGNORE

Introduction

Under Kenyan law, an employer's managerial prerogative, including the right to terminate employment, is subject to statutory and procedural safeguards.

The Employment Act, 2007 and the Labour Relations Act, 2007 impose clear procedural and substantive requirements that must be satisfied before a termination can be considered lawful. These requirements apply regardless of the reason for termination, including business decline or financial hardship.

The recent judgment in *Kenya Engineering Workers Union v Eldo Dieseltune Limited [2026] KEELRC 356 (KLR)*, delivered by the Employment and Labour Relations Court at Eldoret on 6th February 2026, is a timely reminder of this reality.

The case demonstrates how an employer's failure to follow the law even in the face of genuine business difficulty can result in significant financial liability, reputational harm and findings of unlawful conduct by the court.

LEGAL FRAMEWORK GOVERNING TERMINATION OF EMPLOYMENT

The legal framework applicable to employment termination in Kenya is primarily established under two statutes:

- The Employment Act, 2007, which defines the substantive and procedural requirements for fair termination, including the right to be heard, the requirement for valid reasons and the entitlements of employees on exit; and
- The Labour Relations Act, 2007, which governs the relationship between employers, employees and trade unions, including protections against termination connected to union membership or activity.

These statutory obligations are supplemented by principles of fairness embedded in Kenya's constitutional framework, particularly Article 41 of the Constitution which guarantees fair labour practices.

Courts have consistently held that these protections apply to all employees, regardless of the size of the employer or the employer's financial circumstances.

THE FACTS

Eldo Dieseltune Limited, a motor vehicle servicing and repair company operating in Eldoret, denied three of its employees access to its premises in September 2024. They were turned away without prior notice, explanation or adherence to any formal procedure. The employer later attributed its actions to financial pressure from a bank arising from an outstanding loan.

The employer argued that business had significantly declined, that the employees were aware there was no work and that they had verbally agreed to leave employment voluntarily as far back as January 2024. No documentation supported this claim. A key witness to the alleged voluntary departure discussions had since passed away, leaving the employer's case entirely unsupported by contemporaneous records.

Kenya Engineering Workers Union filed the claim on behalf of the three employees, alleging unlawful lockout and termination in violation of the Employment Act and the Labour Relations Act.

WHEN BUSINESS DIFFICULTY ARISES: THE EMPLOYER'S OBLIGATIONS DO NOT DIMINISH

A significant misconception among some employers is that financial hardship suspends or softens the legal obligations that apply on termination. The court in Eldo Dieseltune was unequivocal in rejecting this position. A lockout by an employer whether occasioned by financial difficulty or otherwise constitutes a unilateral act that brings the employment relationship to an end and it remains unlawful unless undertaken in compliance with the law.

Where termination is driven by business decline, the applicable mechanism is redundancy under Section 40 of the Employment Act. Redundancy carries its own specific procedural requirements, including notification to the relevant union and the Cabinet Secretary, a minimum notice period and severance pay calculated at fifteen days' pay for each completed year of service.

THE COURT'S FINDINGS

1. The Lockout Amounted to Termination

The court held that the employer's own admission that employees had been instructed not to access the premises confirmed termination of employment. The mode of termination (a lockout rather than a formal letter) did not reduce its legal significance, it simply meant the employer had terminated employment without any of the procedural safeguards required by law.

2. The Termination Was Substantively Unfair

The employer failed to demonstrate a valid and fair reason for the termination as required under Section 45(2) of the Employment Act. Business decline, while acknowledged, did not exempt the employer from compliance with the statutory redundancy framework. The court also rejected the alleged voluntary departure on the basis that it was entirely undocumented.

3. The Termination Was Procedurally Unfair

There was a complete absence of procedural compliance. The employees were not given notice, not informed of the employer's financial situation through any formal or written channel and not offered the protections applicable in a redundancy situation. The employer failed to comply with the procedural safeguards under Section 40 of the Employment Act and did not accord the employees the procedural fairness required under the Act and Article 41 of the Constitution.

4. Award

The court declined to order reinstatement, finding the employment relationship had irretrievably broken down. It instead awarded each Grievant one month's salary in lieu of notice, outstanding salary for August 2024 and days worked in September 2024, payment for accrued but untaken leave, severance pay calculated at fifteen days' pay for each completed year of service and compensation equivalent to twelve months' gross salary for unfair termination.

WHY INTERNAL POLICIES MATTER

Although the judgment focused on statutory non-compliance, the circumstances illustrate how the absence of clear internal termination and redundancy protocols can expose employers to significant liability. In situations of financial strain, employers frequently act reactively. However, employment law does not accommodate informal decision making. It requires structure, documentation and process. A redundancy policy, a disciplinary and termination policy and a grievance handling policy consistently applied and well-documented provide both a procedural roadmap for such disputes.

CONSEQUENCES OF NON-COMPLIANCE

Employers who fail to meet their obligations on termination may face a range of consequences before the Employment and Labour Relations Court including:

- Financial liability for unpaid terminal dues, compensation for unlawful termination of up to 12 months' gross salary and in some cases reinstatement with full back pay.
- Reputational harm arising from public judgments and union-led disputes, particularly where long serving employees are involved.
- Regulatory exposure where the termination is found to be connected to union membership or activity, which constitutes a violation of the Labour Relations Act.

PRACTICAL STEPS TO MITIGATE RISK

Employers can significantly reduce their exposure to liability by taking timely, structured and well-documented action when workforce changes become necessary:

- Maintain Updated Policies
- Conduct Early HR and Legal Reviews
- Use the Correct Legal Framework
- Document the Business Rationale
- Comply Strictly with Notice and Consultation Requirements
- Settle Terminal Dues Promptly and Accurately

CONCLUSION

Financial pressure is one of the most testing periods in an employer's relationship with its workforce. The decisions made at this stage and the processes followed will determine whether the employer emerges from that period with its legal position intact or faces costly, time-consuming litigation.

Employers who invest in sound employment policies and follow them consistently are far better placed to manage workforce challenges lawfully, protect their organisations from significant damages awards, and maintain the trust and stability that a well-managed employment relationship requires.

The commercial team at CM Advocates LLP possesses extensive expertise in Kenya's Labour and Employment law and regulatory framework and regularly advises on statutory compliance matters, contract and policy drafting and review, and workplace dispute resolution.

If you would like to consult on this article or any other legal issue, you may contact the commercial team through corporate.commercial@cmadvocates.com

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