



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

CAUSE NO. E 1054 OF 2023

WLFRED NYANUSI

HARUN.....CLAIMANT

VERSUS

WATU CREDIT LIMITED.....

....RESPONDENT

JUDGMENT

Background

1. The parties to this action had an employment relationship which was terminated on 5th March 2024 on account of alleged redundancy. The Claimant has instituted these proceedings to challenge the legality of the decision to terminate the aforesaid employment relationship.
2. It is perhaps important to explain why despite the fact that the suit was filed in December 2023, the dispute between the parties relates to a decision that was made on 5th March 2024. The record shows that the Respondent begun the redundancy process by issuing the Claimant with a redundancy notice dated 30th November 2023. When the Claimant received the notice, he filed suit on 20th December 2023 seeking to challenge it.

3. When the Respondent was served with the pleadings in the cause, it withdrew the aforesaid redundancy notice and issued the Claimant with a fresh notice dated 25th January 2024. It is this latter notice that resulted in the impugned decision to terminate the Claimant's employment on 5th March 2024.
4. To accommodate these developments, the Claimant had to amend his pleadings. Hence the decision to file the Amended Statement of Claim dated 13th March 2024.

Claimant's Case

5. The Claimant contends that the Respondent hired his services as the Head of Human Resources from 1st September 2022. However, the letter of appointment which he tendered in evidence shows that the commencement date for the appointment was 1st April 2022.
6. The Claimant avers that through a letter dated 1st July 2023, the Respondent changed his role to that of East Africa Recruitment, Compensation and Benefits Lead. He avers that this new position was unilaterally imposed on him after he raised concerns about discrimination against him. He contends that although he initially resisted the position, he subsequently accepted it after the parties agreed that it (the new position) was to be tenable for a minimum period of one year from 1st July 2023 and that the Respondent was to address the discrepancies in his salary which he believed had been occasioned by racial prejudice against him.

7. The Claimant avers that the parties executed a letter of variation of the terms of his initial contract of service to incorporate the aforesaid changes. He contends that by the Respondent agreeing to address the discrepancies in his salary in the variation instrument, it implicitly acknowledged that he had suffered discrimination in respect of the quantum of his salary on account of his race. He further avers that after the Respondent executed the variation instrument, it became bound to ensure that he held the new position for a minimum period of one year from 1st July 2023.
8. The Claimant avers that before he began executing his new mandate, he requested the Respondent for a sabbatical leave of six (6) months. He asserts that the Respondent granted this request and that the sabbatical leave was to run from 1st September 2023 with full pay.
9. The Claimant avers that whilst he was on the sabbatical leave, the Respondent summoned him to a meeting on 30th November 2023 to discuss his redundancy. He contends that he did not want to appear to insubordinate the Respondent's management. As such, he heeded the call the meeting.
10. The Claimant avers that during the meeting, the Respondent informed him that he was to be declared redundant. He contends that on the same date, the Respondent issued him with a redundancy notice of even date. He contends that the notice informed him that the proposed redundancy was to crystalize on 29th December 2023.

11. The Claimant avers that he asked the Respondent's management for and was given a copy of the redundancy notice which had been issued to the local labour office. He contends that he noticed that there was a discrepancy in the two notices regarding the effective date of the redundancy. Whilst the notice that was issued to him mentioned 29th December 2023 as the effective date, the notice to the labour office mentioned 31st December 2023 as the effective date. Further, he contends that he noticed that the notice that was issued to him was for a period of less than thirty (30) days.
12. The Claimant contends that whilst the notice that was issued to him suggested future consultations to obviate the impending redundancy, the notice to the labour office did not have similar representations. He further avers that immediately after the Respondent served him with the redundancy notice, it blocked his access to his work tools. In his view, the foregoing affirms his belief that the Respondent had made up its mind to terminate his contract of service and that the proposed consultations were merely cosmetic.
13. The Claimant contends that due to the doubts he had regarding the legitimacy of the redundancy process, he moved to court to challenge it. He contends that after he served the Respondent with the pleadings in the cause, it withdrew the redundancy notice dated 30th November 2023.

14. The Claimant asserts that after the Respondent withdrew the aforesaid notice, it issued him with a fresh redundancy notice dated 25th January 2024. He contends that the new notice informed him that his job was likely to be lost on account of redundancy and that the effective date for the proposed redundancy was going to be 27th February 2024. He further avers that a similar notice was issued to the local labour office.
15. The Claimant contends that although the new notices indicated that the redundancy was to take effect on 27th February 2024, this did not happen. On the contrary, he asserts that he continued in employment after the aforesaid date.
16. To support this contention, the Claimant asserts that on 29th February 2024, one Natalia Fedorova sent him an email asking him to resume duty the next day. According to him, this request, coming after 27th February 2024, signified the fact that the Respondent had abandoned its quest to declare him redundant and that his position was in fact subsisting.
17. The Claimant contends that the Respondent neither extended the redundancy notice which lapsed on 27th February 2024 nor issued him with a fresh one. Consequently, it is his case that the redundancy process which was commenced through the notice dated 25th January 2024 lapsed on 27th February 2024 spurring legitimate expectation in him that he was to continue in the Respondent's employment after this date.

18. The Claimant avers that on 5th March 2024, he was shocked to receive a letter of even date from the Respondent terminating his services on account of redundancy. He contends that the letter was issued to him notwithstanding that at the time, there was no subsisting redundancy notice which had been issued to him. Further, he contends that by issuing him with the impugned letter, the Respondent disregarded the agreement between the parties that the new position he had been given was to last for at least one year.
19. The Claimant also contends that at the time that the Respondent issued him with the letter to terminate his services, the holder of the position he had previously occupied (Head of Human Resources) had resigned and the position was vacant. As such, he asserts that if the Respondent was acting with *bona fides*, it should have deployed him to that position to obviate the alleged redundancy.
20. Consequently, the Claimant contends that the decision to terminate his employment was illegal. As such, he prays for the various reliefs which he has set out in his Amended Statement of Claim.

Respondent's Case

21. The Respondent is opposed to the claim. To anchor its response to the action, it filed a Memorandum of Response

dated 31st May 2024, a statement by its witness and a bundle of documents dated 31st May 2024.

22. The Respondent acknowledges that it first engaged the Claimant as a Senior Human Resource Manager. It further acknowledges that he was subsequently assigned to the position of East Africa Recruitment, Compensation and Benefit Lead.
23. The Respondent however denies that the shift in the Claimant's position was prompted by his complaint that he had been discriminated against. It avers that the changes were informed by its (the Respondent's) desire to expand its business into the East Africa region.
24. The Respondent denies that the Claimant was coerced into taking the new position. It contends that he took up the role based on a mutual agreement between the parties. It further contends that he was to tentatively hold the position for one (1) year as it (the Respondent) rolled out and implemented its strategic plan.
25. The Respondent denies that the Claimant was discriminated against. It disputes his contention that the promise to reconfigure his salary was intended to redress the alleged discrimination against him.
26. The Respondent admits that it issued the Claimant and the local labour office with a redundancy notice dated 30th November 2023. However, it contends that this notice was subsequently withdrawn and spent.

27. The Respondent acknowledges that it deactivated the Claimant's work email at some point during the currency of his contract. However, it contends that this was prompted by the apprehension that he was breaching confidentiality and trust obligations under his contract of service.
28. The Respondent contends that its core business is to provide asset financing for purchasing three wheeled motorized transport. It asserts that upon reviewing its business strategy in November 2023, it became apparent that there was limited need for the role of East Africa, Recruitment, Compensation and Benefits Lead. The Respondent avers that this reality was primarily because of its (the Respondent's) inability to expand and support the position as had initially been intended. Consequently, it avers that it made a decision to reorganize itself in a bid to optimize on costs and expenses.
29. The Respondent avers that the fact that the decision to restructure was going to impact on some positions within its rank and file was inescapable. It contends that whilst some positions were likely to be eliminated altogether, others were likely to be rebranded.
30. The Respondent avers that the Claimant was away on sabbatical leave when it was noted that the role of East Africa Recruitment, Compensation and Benefit Lead was no longer sustainable within its rank and file. Nevertheless, it

avers that it issued him with a redundancy notice dated 30th November 2023.

31. The Respondent contends that the aforesaid redundancy notice was however withdrawn through a letter dated 18th January 2024. As such, it avers that the notice has no relevance to the present dispute.
32. The Respondent contends that it issued the Claimant and the local labour office with new redundancy notices dated 25th January 2024. It avers that the aforesaid notices were expressed to crystalize on 27th February 2024.
33. The Respondent avers that it invited the Claimant for consultative meetings during the currency of the second redundancy notice. However, it contends that he declined to honour the invites.
34. The Respondent avers that despite the Claimant's reluctance to attend the proposed meetings, it (the Respondent) kept pushing him on the issue. As a result, it avers that he eventually yielded to the request for a meeting on 27th February 2024.
35. The Respondent avers that following the lapse of the redundancy notice on 27th February 2024 and after holding a consultative session with the Claimant on the same day, it issued him with a letter dated 5th March 2024 terminating his services on account of redundancy. In the premises, it contends that it terminated his employment in accordance with the law on redundancy.

Issues for Determination

36. After evaluating the pleadings, evidence and submissions by the parties, the following issues emerge for resolution:-
- a) Whether the Claimant was discriminated against.
 - b) Whether the Claimant's contract of service was improperly terminated.
 - c) Whether the Claimant is entitled to the reliefs which he seeks through this action.

Analysis

37. The Claimant accuses the Respondent of discriminating against him. The basis of the accusation is that the Respondent was paying him a lower salary in comparison to the salary that it was paying other employees who were holding positions that were equivalent to his position at the time.
38. The Claimant avers that when he raised concern over the matter, the Respondent retaliated by attempting to impose a new position on him. He however avers that after discussions, the Respondent agreed to redress his grievances by adjusting his salary through a variation instrument.
39. On its part, the Respondent denies the claim of discrimination. It avers that the decision to assign the Claimant the new position had nothing to do with the alleged discrimination. It further denies that the decision to adjust

his salary was informed by the need to redress the alleged discrimination.

40. I have looked at the employment contract variation instrument which the parties signed on 1st July 2023. It is true that the Respondent awarded the Claimant a salary correction adjustment of Ksh. 150,000.00. However, it is unclear from the instrument what informed the correction. Whilst the Claimant contends that the adjustment was to redress discrepancies in his salary which had allegedly been occasioned by discrimination against him, the Respondent contests this fact.
41. During cross examination of the Claimant, he conceded that he had not tabled evidence to support his claims of discrimination. It was his case that he relied on the fact that he was granted a salary adjustment to prove that he was a victim of discrimination.
42. Discrimination on the basis of, inter alia, race is prohibited by both *the Constitution* and *the Employment Act* (see article 27 of *the Constitution* and section 5 of *the Employment Act*). As such, it is an actionable wrong.
43. The burden of disproving allegations of discrimination at the workplace in Kenya lies with the employer (see section 5(7) of *the Employment Act*). However, an employee alleging discrimination by an employer bears the preliminary evidential burden of establishing a *prima facie* case of discrimination before the employer can be called upon to

demonstrate that the acts that are complained of do not constitute discriminatory treatment (see ***SWM v Hardware Trading Store Limited & another*** [2021] KEELRC 1423 (KLR), ***Inbukwa v Tentacle Communications Limited*** [2023] KEELRC 2535 (KLR), ***Gichuru v Package Insurance Brokers Ltd*** [2021] KESC 12 (KLR), ***Gitonga v Karanja Njenga Advocates*** [2025] KEELRC 2042 (KLR) & ***Musyimi & 2 others (Suing as Legal Representatives of the Late Joshua Muthama Musyimi) v Attorney General & 2 others (Employment and Labour Relations Cause 141 of 2014)*** [2025] KEELRC 408 (KLR) (30 January 2025) (Judgment)).

44. In the instant case, the Claimant asserted that the Respondent discriminated against him by paying him differentially as compared to his Caucasian colleagues. However, he did not present cogent preliminary material to suggest that there were Caucasian colleagues who were holding positions that were equivalent to his but who were earning higher salaries.
45. The fact that the Claimant was granted a salary adjustment is not of itself evidence of discrimination. Besides demonstrating that the Claimant was awarded an amount to correct his salary, the statement does not suggest that the correction was prompted by underpayments of his salary in comparison to his Caucasian colleagues.

46. Consequently, the court finds that the Claimant has not presented sufficient preliminary material to suggest that the Respondent subjected him to differential treatment at the workplace. In the premises, the claim for discrimination fails.
47. The Claimant contends that the Respondent's decision to terminate his contract on account of redundancy was unlawful. He contends that the Respondent neither demonstrated that it had valid reasons to justify the redundancy nor showed that it safeguarded due process whilst making the decision.
48. Section 45 of *the Employment Act* acknowledges that an employer can terminate an employee's contract of service on account of his (the employer's) operational requirements. It is therefore not in dispute that the law recognizes redundancy as a legitimate ground for release of an employee from employment.
49. Section 40 of the Act prescribes the criteria which the employer must satisfy before his decision to terminate a contract of service on account of redundancy can pass muster. First, he must demonstrate that there is a valid justification to support the decision. And hence the requirement that he provides reasons for his decision. Second, he must process the release of the employee from employment in accordance with fair procedure. Hence the need to: issue the redundancy notice; adhere to an objective selection criteria for the employee(s) to be discharged due to redundancy; and pay the affected employee(s) his terminal

dues which include pay in lieu of notice and severance pay (see also the Court of Appeal decision in ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya, Minister For Transport, Minister For Labour & Human Resource Development & Attorney General [2014] KECA 403 (KLR)***).

50. In the instant case, the Respondent issued the Claimant with two redundancy notices. The first one is dated 30th November 2023 whilst the second one is dated 25th January 2024.
51. The Respondent avers that it withdrew the earlier notice dated 30th November 2023. The Claimant does not deny this fact. As a matter of fact, he confirms that the first notice was withdrawn (see par 26 of his amended witness statement).
52. Once the Respondent withdrew the redundancy notice dated 30th November 2023, it (the notice) ceased to exist. As such, it was extinguished and has no legal effect in the current proceedings.
53. From the redundancy notice that is dated 25th January 2024, it is apparent that the Respondent cited “organizational restructuring” as the reason for the proposed redundancy. The Respondent informed the Claimant that the anticipated redundancy could potentially result in the elimination and or alteration of “various positions and roles within the company”.

54. According to the minutes of the meeting that was held between the parties on 30th November 2023, the Respondent's management informed the Claimant that the Respondent's business structure could no longer support the position of East Africa Recruitment, Compensation and Benefits Lead. The reason which was given for this development was that the Respondent was not able to expand in order to support the position as had been expected earlier.
55. Besides these bare representations by management, there is no evidence that it (the management) shared with the Claimant data to support the position it expressed at the meeting. Further, there is no evidence that management tabled evidence of a resolution by the Respondent's Board of Management confirming that indeed the Respondent had resolved to restructure the company with the consequence that the Claimant's position would become superfluous.
56. It is also noteworthy that although the Respondent alleged that it undertook restructuring which resulted in the abolition of the Claimant's position, it did not present evidence of its new organogram. As such, the contention that it had undergone restructuring remains a mere allegation.
57. Absent evidence of the new organogram and absent evidence that the Respondent's Board of Directors passed a resolution to restructure and do away with the Claimant's position, assertions that the position was done away with remain unproven. The court will be engaging in conjecture if

it were to rely on them to come to the conclusion that the Respondent had indeed undergone a restructuring process.

58. The fact that the Claimant's position may not have been abolished is fortified by the fact that one of the Respondent's officers by the name Nataliia Fedorova wrote to him notifying him that his sabbatical leave was coming to an end and that he was expected to resume duty in his new position of East Africa Recruitment, Compensation and Benefits Lead. Although the email in question appears to be undated, the Claimant contends that it was sent to him on 29th February 2024, two days after the lapse of the redundancy notice which purportedly notified him that his position had been abolished. Further, the defense witness appeared to concede that the aforesaid email was sent to the Claimant when he stated as follows during cross examination:-

"Claimant was on sabbatical during redundancy process. He was asked to resume work on 29.2.2024".

59. Based on this evidence, the court finds that although the Respondent asserted in the redundancy notice that the reasons for the proposed redundancy was the review of "its operational structure", it did not present cogent material to prove on a balance of probabilities that it underwent the purported restructuring. As such, the court finds that the Respondent did not prove the reason for the alleged redundancy.
60. Besides establishing the reason for the redundancy, the employer ought to adhere to the following guidelines whilst

processing the discharge of an employee from employment on account of redundancy:-

- a) Issue notice to the employee(s) and or their trade union stating the extent of the proposed redundancy. The notice should be for a minimum period of one month. A similar notice should issue to the local labour office.
- b) Undertake selection of the employee(s) to be discharged from employment based on their seniority, skill, ability and capability. The rule of the thumb in this respect is for the employer to undertake the selection based on the “first in last out” principle. However, he has the latitude to undertake the selection process based on the skills and abilities of the affected employees if the requirements of his business dictate so as long as the process is objective, fair and verifiable.
- c) Pay the discharged employees their terminal dues including: notice pay; severance pay; pay of accrued salary; and payment of leave commutation.

61. In the instant case, the Claimant avers that the redundancy notice that was issued to him was defective because it did not specify the extent of the proposed redundancy. On the other hand, the Respondent contends that the notice specified the extent of the redundancy.

62. A reading of the redundancy notice that was sent to the Claimant shows that all that the Respondent stated in it was

that the review process was likely to “result in the elimination and or alteration of various positions and roles within the company”. Unlike the notice which was sent to the labour office, the notice to the Claimant did not specify that the proposed redundancy was to impact employees within “the Human Resource role”.

63. I agree with the position expressed by Maraga JA in the Court of Appeal case of ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya, Minister For Transport, Minister For Labour & Human Resource Development & Attorney General [2014] KECA 403 (KLR)*** that at the point of issuing a notice of intended redundancy, the employer is unlikely to know the names of the employees who may be impacted by the process. However, I do not understand the decision to be saying that the employer is entitled to be ambivalent on the extent of the proposed redundancy. Even if he does not know the names of the employees who are likely to be impacted by the process, he should have an idea regarding which departments may be impacted. As such, he should disclose this information in the notice.
64. The Respondent’s notice to the Claimant did not address the requirement relating to disclosure of the extent of the proposed redundancy with a measure of certainty. As such, I agree with the Claimant that it (the notice) was defective in this respect.

65. Apart from the aforesaid concerns, the court is satisfied that the Respondent substantially satisfied the other procedural requirements that undergird a redundancy process. As such, the redundancy declaration is declared irregular only to the extent that the Respondent did not prove the reason for the redundancy and also failed to state the extent of the redundancy with a measure of exactitude.
66. The next issue for determination relates to the reliefs which the Claimant is entitled to. According to the letter of termination of the Claimant's contract, the Respondent offered to pay him the following terminal dues:-
- a) Salary payable up to the effective date of termination.
 - b) Severance pay computed at the rate of 15 days salary for every completed year of service.
 - c) Accrued leave days.
 - d) Payment in lieu of notice in accordance with his contract of employment.
 - e) Any other applicable entitlement.
67. During cross examination of the Claimant, he confirmed that the Respondent offered to pay him the aforesaid terminal benefits. He further confirmed that the Respondent indeed paid him all the aforesaid benefits.
68. The court notes that although the Respondent terminated the Claimant's services irregularly, it nevertheless paid him all the benefits that are payable to an employee whose contract has been terminated on account of redundancy. Taking this into account, the court awards the Claimant

compensation for the unfair termination of his contract of service which is equivalent to his salary for two (2) months.

69. According to the Employment Contract Variation instrument dated 1st July 2023, the Claimant's gross salary per month was agreed at Ksh. 800,000.00. As such, he is awarded Ksh. 1,600,000.00 as compensation.
70. The award is subject to the applicable statutory deductions.
71. The court awards the Claimant interest on the aforesaid amount at court rates from the date of this decision.
72. The court awards the Claimant costs of the suit.

Summary of the Findings and Award

73. After evaluating the evidence on record, submissions by the parties and the applicable law, the court makes the following findings and attendant orders:-
 - a) The court finds that the Respondent improperly terminated the Claimant's contract of service on account of redundancy.
 - b) The court awards the Claimant compensation for unfair termination of his contract of service in the sum of Ksh. 1,600,000.00.
 - c) The court awards the Claimant interest on the amount awarded at court rates from the date of this decision.
 - d) The amount awarded to the Claimant is subject to the applicable statutory deductions.
 - e) The court awards the Claimant costs of the case.

Dated, signed and delivered on the 25th September, 2025

B. O. M. MANANI
JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI