



**Kirema v Brand Design Developers Limited (Cause E915 of 2023)  
[2025] KEELRC 2533 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2533 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E915 OF 2023  
L NDOLO, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**SYLVIA MUKAMI KIREMA ..... CLAIMANT**

**AND**

**BRAND DESIGN DEVELOPERS LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant's claim against the Respondent, brought by a Statement of Claim dated 8<sup>th</sup> November 2023, is that her employment was unlawfully terminated. The Respondent filed a Defence dated 7<sup>th</sup> December 2023.
2. At the trial, the Claimant testified on her own behalf and Danson Kariuki Nduati testified on behalf of the Respondent. Thereafter, the parties filed written submissions.

**The Claimant's Case**

3. By a contract dated 17<sup>th</sup> February 2023, the Claimant was employed by the Respondent in the position of Senior Account Manager. Her appointment was subject to a four months' probation period and upon confirmation, her monthly salary was to be raised from Kshs. 160,000 to Kshs. 182,000.
4. According to the Claimant, she met all the conditions set for confirmation, under clause 4 of her employment contract. She was therefore shocked to receive a letter dated 14<sup>th</sup> July 2023, under the reference 'Notice for Non-Confirmation on Probation'. By this letter, the Claimant was given two (2) weeks' notice and was notified that her last day of work would be 31<sup>st</sup> July 2023.



5. The Claimant accuses the Respondent of withholding her salary for July 2023, contrary to Section 17 of the *Employment Act*. The Claimant further faults the Respondent for breaching the law on declaration of redundancy, as laid out in Section 40 of the Act.
6. The Claimant contends that the process leading to the termination of her employment was in blatant disregard of *the Constitution*, the *Employment Act* and international law, in that:
  - a. There was no notice of intention to declare redundancy, to the Claimant or to the Labour Office;
  - b. There was no consultation with the Claimant before the declaration of redundancy;
  - c. The Respondent did not provide a valid reason for terminating the Claimant's employment, despite her exemplary service;
  - d. The Claimant was denied the benefit of the law.
7. The Claimant maintains that the termination of her employment was in bad faith, malicious, discriminatory, unlawful and unfair. She complains that she was not issued with a certificate of service.
8. The Claimant seeks the following remedies:
  - a. A declaration that the termination of her employment was unlawful and unfair;
  - b. An order revoking the termination and reinstating the Claimant to the position of Senior Account Manager, without loss of salary and benefits;
  - c. Kshs. 2,184,000 being 12 months' salary in compensation;
  - d. Kshs. 115,015 being withheld salary;
  - e. An order directing the Respondent to issue the Claimant with an authenticated P9 Form;
  - f. Punitive and aggravated damages;
  - g. Certificate of service;
  - h. A fine of Kshs. 100,000 against the Respondent for failure to comply with Section 51(3) of the *Employment Act*;
  - i. Costs plus interest.

### **The Respondent's Case**

9. In its Defence dated 7<sup>th</sup> December 2023, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim.
10. The Respondent states that it entered into a probationary contract with the Claimant, for a period of 4 months. According to the Respondent, Section 42(4) of the *Employment Act* allows a party to a probationary contract to terminate such contract by giving not less than 7 days' notice or payment in lieu. The Respondent states that it issued the Claimant with 2 weeks' notice.
11. The Respondent concedes that upon confirmation, the Claimant's salary was to be increased from Kshs. 160,000 to Kshs. 182,000 but points out that the Claimant was not confirmed. The Respondent asserts that it was within its right not to confirm the Claimant and was entitled to terminate the probationary contract with notice.



12. The Respondent avers that there was a significant loss of its corporate retainer clients that was sudden and drastic. The Respondent adds that the loss of its retainer clients and the negative impact on the Company and employees could not be foreseen or anticipated.
13. The Respondent claims to have held several consultative meetings with its employees, in addition to effecting several cost cutting measures such as salary cuts and loan restructuring, to try and save the business.
14. The Respondent claims to have issued the Claimant with a certificate of service, through her Advocates. The Respondent states that it is willing to issue the Claimant with her P9 Form.

### **Findings and Determination**

15. There are two (2) issues for determination in this case:
  - a. Whether the termination of the Claimant's employment was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

### **The Termination**

16. On 14<sup>th</sup> July 2023, the Respondent wrote to the Claimant as follows:

“Dear Sylvia,

Re: Notice for Non-confirmation on Probation

After careful evaluation, it is with regret that we must inform you that your probationary period with Brand Design Limited will not be confirmed, primarily due to the unfortunate impact of a significant loss of business.

The loss of business has compelled us to make difficult decisions to ensure the sustainability of the company. Regrettably, this includes a reduction in our workforce. We understand that this news may come as disappointment, and we empathise with any concerns or uncertainties you may have regarding your professional journey.

During your probationary period, we closely monitored your performance and contributions to the company. We appreciate your hard work and dedication during this time, and it is essential to emphasise that this decision is not a reflection of your skills or commitment. We want to express our gratitude for your efforts and recognize the positive aspects you have brought to your role. However, given the current circumstances, we are unable to offer you a permanent position within the organisation at this time. It is a result of the challenging circumstances we face as a business.

We will comply with all applicable employment laws and regulations, ensuring that you receive all outstanding entitlement owed up to your last day of employment and guidelines for the exit process.

According to our company policy, the notice period for probationary employees is two weeks. Therefore, your last working day will be 31<sup>st</sup> July 2023. During this period, we encourage you to complete any outstanding tasks and ensure a smooth transition of your responsibilities. We will provide support and guidance to assist you during this process.

Please do not hesitate to reach out if there is anything further we can do to assist you. We wish you all the best in your future endeavours.



Yours Faithfully,  
(signed)  
Danson Kariuki Nduati  
Managing Director”

17. Although the reference of this letter suggests that the termination of the Claimant’s employment arose from non-confirmation at the end of the probation period, the body of the letter discloses otherwise. In this regard, the Respondent gives the reason for its decision to release the Claimant as ‘significant loss of business’.
18. By nature and design, probation serves as a trial period during which the employee’s capability and fit into the employer’s establishment is gauged. Termination of employment at the end of the probation period must therefore be preceded by an objective appraisal of the performance of the employee.
19. In her final submissions dated 7<sup>th</sup> March 2025, the Claimant refers to the decision in *Luke Kinyua Kamunti v Amigos Nuts and Commodities Limited* [2019] eKLR where it was held that:

“...the probationary period serves the purpose of giving the employer the opportunity to evaluate an employee and if satisfied confirm the employee into employment or extend the probation if not satisfied or even terminate the contract if the employee’s performance is below expectation.

The termination of employment was stated to be due to political temperatures making it difficult for the company to access raw materials. This took the termination out of the ordinary purview of termination of a probationary contract as the employer ascribed a reason for the termination that was a ground for declaration of redundancy. Since the termination was on account of redundancy, the question that arises is whether the right procedure was followed.”
20. The present case is on all fours with the foregoing decision. The termination of the Claimant’s employment had nothing to do with her performance during probation. Rather, the reason as stated by the Respondent, was decline in business, leading to inability to sustain the Claimant in employment. This has all the hallmarks of a redundancy.
21. Section 2 of the *Employment Act* and the corresponding provision in the *Labour Relations Act*, define redundancy as:

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”
22. For a redundancy to be lawful, the following conditions set under Section 40 of the *Employment Act*, must be observed:
  - (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;



- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
  - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
  - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
  - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
  - (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
  - (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
23. None of the foregoing conditions were met; instead, the Respondent chose to hide behind the cloth of probation but without success. The only conclusion to make in the circumstances of this case is that the termination of the Claimant's employment was unlawful and unfair.

### **Remedies**

24. The Claimant had initially sought reinstatement but abandoned this plea in final submissions. I therefore award her three (3) months' salary in compensation. This award takes into account the Claimant's short stint in service but also the Respondent's unlawful conduct in terminating the employment relationship prematurely.
25. I have also considered the undisputed fact that the Claimant did not, in any way, contribute to the termination, and the slim chances of her securing alternative employment of equal stature.
26. There is evidence that the Claimant has been paid her withheld salary. Her P9 Form and certificate of service have also been issued. The claims thereon are therefore moot.
27. No evidence was led to support the claim for punitive and aggravated damages which consequently fails and is dismissed.
28. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 480,000 being three months' salary in compensation for unlawful and unfair termination of employment.
29. This amount is subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.
30. The Claimant will have the costs of the case.
31. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:



Mr. Manyara for the Claimant

Ms. Gakaria for the Respondent

