



**Nyango v Agility Logistics Limited (Cause E124 of 2023)  
[2024] KEELRC 1199 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1199 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E124 OF 2023**

**M MBARÚ, J  
MAY 9, 2024**

**BETWEEN**

**JUSTIN MLALA NYANGO ..... CLAIMANT**

**AND**

**AGILITY LOGISTICS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claim is that from 10 October 2022 to August 2, 2023 the claimant was an employee of the respondent as Bond Manager for a fixed-term contract of 3 years. The monthly salary was Ksh.432,000.
2. On August 2, 2023, the claimant reported to work but the Human Resources Manager informed him that his position had been declared redundant and termination of employment would be with immediate effect. This effectively was a summary termination of employment as there was no notice of justifiable cause.
3. The claim is that the claimant was not given prior notice of the redundancy. There was no consultation over the matter. This was a disguised summary dismissal.
4. The claim is that there was a breach of the fixed-term contract which terminated prematurely. The respondent failed to adhere to the mandatory statutory criteria for redundancy. The claimant had a legitimate expectation to complete his 3-year term contract but the respondent acted in breach and contrary to the Employment Act, 2007.

The claimant is seeking the following terminal dues;

- a. Damages for unfair termination of employment;
- b. One month's pay in lieu of notice Ksh.432,000;
- c. 2 days worked in August 2023 Ksh.28,800;



- d. 24 unpaid leave days Ksh.691,200;
  - e. Unpaid house allowances for 10 months Ksh.684,000;
  - f. Severance pay for one year Ksh.216,000;
  - g. 12 months compensation for unfair termination of employment Ksh.5,184,000;
  - h. Lost wages for 26 months Ksh.11,664,000;
  - i. Costs of the suit.
5. The claimant testified in support of his case that his position as Bonds Manager required coordination of transit ships to different destinations including Somalia and DRC Congo. His duties were as per his fixed-term contract for 3 years. The respondent had no logistics manager and hence he doubled up in such a role. The head office was in Dubai where there was overall coordination,
6. The claimant testified that before the termination of his employment, in June 2023 the respondent held a meeting with all staff and stated there would be a restructuring. There was a memo issued to this effect on 16 June 2023. He saw the memo which was copied to the Labour Officer, Mombasa. However, the respondent did not engage the claimant in this matter. In June 2023 the employees knew something positive would be done and they could be placed in any department. The respondent was offering different services in Somalia and it had a contract with the UN agency.
7. The claimant testified that the respondent paid him his dues after following up on the matter on August 2, 2023, he was called and then paid in instalments. The payments were low and contrary to his expectations. In total he was paid Ksh.531, 807 being;
- 8.
- a. One month's notice;
  - b. Leave days; and
  - c. 3 days worked in August 2023.
9. Through a letter dated August 2, 2023, the claimant noted the dues paid together with the Certificate of Service.
10. In response, the respondent admitted the claimant was an employee in a bonded warehouse, which was a start-up facility. However, after 10 months, the project had not materialized due to logistical reasons beyond the control of the respondent. This necessitated a decision to let the claimant go since there was no alternative role he could be assigned.
11. On 16 June 2023, the respondent called for a staff meeting in which the claimant was present and informed all staff members of the intention to restructure due to operational changes where some roles would fall off the structure. The claimant signed attendance at the meeting.
12. After the meeting, the respondent sent out an internal memo to the Labour Office.
13. On 31<sup>st</sup> June 2023, the respondent engaged a counsellor to talk to the employees to prepare them for the impending restructuring. The claimant was present at all these meetings.
14. In July 2023 the respondent organized internal sessions to educate the employees on financial management given the planned restructuring. On August 2, 2023, the respondent arranged a meeting



- with the claimant where he was informed that his role would be removed from the structure. He was also issued with a letter of separation, and he proceeded to clear and was paid his terminal dues.
15. The redundancy was not summary in nature. There was prior notice and several meetings were held to discuss the matter. The claimant has since been paid his terminal dues,
  16. In evidence, the respondent called Joyce Mwangi the Human Resources and Administration Manager who testified that the claimant was employed in a start-up project in bonded warehouse on 10 October 2022. The project did not materialize leading to redundancy through notice dated 16 June 2023. Several meetings were held with the employees and the claimant signed in attendance. He was issued with notice and a meeting was held with him on August 2, 2023. The claimant has since been paid his terminal dues.
  17. On the claims made, there was notice pay together with days worked and leave days accrued. The claimant had a consolidated salary inclusive of house allowance and the claims made are not justified and should be dismissed with costs.
  18. At the end of the hearing, both parties agreed and filed written submissions. The pleadings, evidence, and written submissions are analyzed and the issues that emerge for determination are whether there were unfair labour practices; whether there was unfair termination of employment; and whether the remedies sought should be issued.
  19. The claimant submitted that there were unfair labour practices on the grounds that his employment was terminated without prior notice or a justified cause. He also submitted that there was no operational reason leading to the summary termination of his employment and hence this resulted in unfair termination of his employment.
  20. The claimant admitted that through a notice dated 16 June 2023, the respondent informed all employees that there would be a restructuring. In his evidence in chief and cross-examination, the claimant confirmed that the respondent invited all employees to a meeting on 16 June 2023 and after the meeting, an internal memo was issued about the restructuring.
  21. The memo dated 16 June 2023 was to the effect that the respondent has decided to declare redundant some staff from Agility Logistics Limited (DGS) Mombasa with effect from July 17, 2023. This has been necessitated by a review and assessment of our current structure based on the current operational requirements, and a new business strategy aimed at reducing space control and minimizing duplication of positions. ...
  22. An employer is allowed to lay off its employees where there is a redundancy. Section 40(1) of the *Employment Act*, 2007 (the Act) allows an employer who is faced with an operational requirement and cannot sustain its employees to terminate the employment subject to adherence to the procedures under *the Act*.
  23. In the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR. The Court of Appeal held that where the employer was faced with an operational matter under Section 43(2) of *the Act*, notice had to be issued to the employees before termination of employment. Section 40(1) of *the Act* required notice of the intended redundancy to be given to the employees likely to be affected and the labour officer for the area where the employer's business was situated. Notice to the affected employee had to be issued in person where the employee(s) is/are not unionized.
  24. In the case of *Africa Nazarene University v David Mutevu & 103 others* [2017] eKLR the court held that redundancy is a legitimate ground for terminating a contract of employment provided there is a



valid and fair reason based on operational requirements of the employer and the termination is by a fair procedure. As section 43(2) of *the Act* provides, the test of what is a fair reason is subjective. The phrase “based on operational requirements of the employer” must be construed in the context of the statutory definition of redundancy.

25. In this case, the claimant was issued with the general notice and personal notice dated 16 June 2023 and August 2, 2023. He was not unionized and hence he was directly involved in the various meetings held with the employees following the management’s decision to restructure the business.
26. In the case of *Cargill Kenya Limited v Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR) (22 October 2021) (Judgment) the Court of Appeal where the employer is found to demonstrate adherence to the provisions of Section 40(1) of *the Act*, the reasons for, and extent of the redundancy apparent, such is not unfair termination of employment.
27. In this case, too, the claimant was issued with prior notice and preparations commenced for counselling and financial planning all addressing the intended restructuring and layoff of employees. He was then issued with personal notice and his final dues were paid. These included notice pay, pay for days worked, and leave days accrued.
28. The claim is that the payments made were too low. Hence the claimant has claimed payment of severance pay, house allowances, and compensation for unfair termination of employment and damages for unfair labour practices.
29. On the findings that there was due process, there were the requisite notices issued in terms of Section 40(1) of *the Act* and copied to the Labour Officer, the claimant cannot justify his claim that his employment was terminated unfairly and that there were unfair labour practices. On the evidence and written submissions, the respondent is found to have demonstrated sufficient grounds leading to lawful termination of employment on account of an operational requirement. The claimant has since cleared and a Certificate of Service issued.
30. On the claim for notice pay, there is evidence of the two notices which issued. One is a general notice to all employees dated 16 June 2023 and a personal notice to the claimant dated August 2, 2023.
31. The claim was for 2 days worked in August 2023, the claimant was paid for 3 days worked in August 2023.  
The accrued leave days were tabulated and paid in full.
32. On the claim for house allowances for 10 months, the claimant submitted that he was entitled to 15% of the gross salary in house allowance. He relied on the case of *Dennis Kipkoech Langat v Tex Trading Limited* [2021] eKLR and *Grain Pro Kenya Inc. Ltd v Andrew Waitthaka Kiragu* [2019] eKLR. However, these cited cases are based on different facts. The claimant was not earning a minimum wage regulated under the *Wage Orders*. His salary was regulated under a fixed-term contract which was terminated following the declaration of a redundancy. House allowance is not due to the position held by the claimant.
33. On the claim for severance pay, under Section 40(1), payment of severance pay is based on every full year worked. The rationale is to cushion the employee whose employment is terminated for no fault of his own but due to operational reasons. However, where the employee has served for less than a year, severance pay is not prorated. The employee is released to secure new employment as his skills and expertise remain constant.
34. On the claim for lost salaries for 26 months, the redundancy being lawful and the due process properly applied under Section 40 of *the Act*, employment was terminated for a fair and valid reason. The due



notices were issued and additionally, the claimant has acknowledged payment in lieu of notice under Section 40(1) (f) of *the Act*.

35. On the claim for costs, the claim is without merit, the termination of employment arose out of an operational matter, there is no disciplinary issue and hence, each party bears its costs.

36. Accordingly, the claim is without merit and is hereby dismissed, with each party to bear its costs.

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 9<sup>TH</sup> DAY OF MAY 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

