



**Githinji v DHL-Supply Chain East Africa (Cause E553 of 2020)
[2024] KEELRC 1816 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1816 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E553 OF 2020**

**J RIKA, J
JULY 12, 2024**

BETWEEN

CAROLINE GITHINJI CLAIMANT

AND

DHL-SUPPLY CHAIN EAST AFRICA RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim, dated 18th September 2020.
2. She states that she was employed by the Respondent, as the Human Resource Director, in charge of East Africa Region.
3. The Respondent is a registered company, carrying on the business of international transport and logistics.
4. The Claimant was employed on 15th September 2015. Her basic monthly salary was Kshs. 600,000. She was confirmed in the position in April 2016.
5. She was entitled to 25 days of annual leave exclusive of public holidays, sick –off period of 2 months with full pay, and a further 2 months, on half pay.
6. She was diligent. In March 2007, her basic monthly salary was increased to Kshs. 693,944. She was paid bonus as a result of good performance. She was lauded by Marlene Badul, Head of Human Resource Africa. She was told that she was a very valuable Employee of the Respondent.
7. She received the highest pay increase in April 2017 at 9.84% for exemplar performance.
8. In April, she initiated a system for improving Human Resource department which she styled 'Suluhisho na HR.' She was lauded by the Managing Director East Africa, for her innovation.



9. In April 2017, she received a thank you note, from the Vice-President Human Resources, for negotiating a new Collective Bargaining Agreement [CBA].
10. On 10th July 2017, the Head of Human Resource Africa, Marlene Badul, expressed her pleasure with the Claimant's team work, in articles which were published in the Respondent's magazine, known as 'Reach Magazine.' She was lauded for achieving her Q2 targets, and for displaying can-do attitude.
11. Owing to her busy schedule, she had not managed to go on annual leave, since 2016. She notified the Managing Director East Africa, Andries Retief, that she intended to take her annual leave, between 8th and 24th May 2017. The Managing Director approved the Claimant's application for annual leave.
12. She fell ill before she could go on leave, on 5th May 2017. She was admitted at Aga Khan Hospital Nairobi. She was discharged on 17th May 2017. She requested to take her annual leave as intended. She wished to travel to India for further treatment.
13. The Head of Human Resource Africa, Marlene Badul declined the Claimant's request, explaining that the Respondent, could not function, without the Claimant.
14. Her health had deteriorated, but she soldiered on. She felt unappreciated. Her body almost shut down. She was readmitted at Aga Khan in July 2017, where she fought for her life. She was diagnosed with stress-related illnesses, including seronegative arthritis and fibromyalgia, characterized by widespread musculoskeletal pain and fatigue.
15. Marlene Badul initiated a scheme, to paint the Claimant in bad light, and portray her as a burden to the Respondent.
16. She accused the Claimant of failing to sign an Employee's appointment letter. The letter originated from South Africa, and the Claimant had nothing to do with it.
17. She was readmitted to Aga Khan Hospital, in deep pain. Marlene Badul flew all the way from South Africa to Nairobi. She visited the Claimant at the Hospital, to tell her that she was going to be laid off. It was a crushing blow delivered to the Claimant by the Respondent, on her sick bed.
18. She was discharged on 5th August 2017. She continued with outpatient care. She could not walk unaided from the date of discharge in August 2017 to November 2017. By the time of filing the Claim, she could not perform simple tasks like driving herself, and shopping. She survives on a cocktail of drugs. She cannot sleep without using drugs. She can no longer hold a normal job. She states that her problems could have been avoided, if she had been allowed to take her annual leave by the Respondent, as she had planned to.
19. Marlene Badul insisted on talking to the Claimant at the Hospital, while the Claimant was actively involved in physiotherapy. She insisted on talking to the Claimant outside the ward, while the Claimant was resting. She followed the Claimant to the ward, while the Claimant was being wheeled after a painful physiotherapy session. Badul had to be asked to leave by the medical personnel.
20. The Claimant informed the Respondent that she intended to take annual leave, and travel to India for medical attention, in September 2017. She had accumulated 41 days of annual leave. Marlene Badul reiterated that the Claimant could not go on annual leave. The Claimant requested that in the meantime, she is allowed to work from home, to ease her pain. Her Doctor, F.O. Otieno, had recommended that she avoids emotional and physical stressors. He recommended that she takes sick-off, to enable her recuperate from home, as he reviewed her progress.
21. Marlene Badul compelled the Claimant to return to work while still ailing, on 20th August 2017.



22. The Claimant states that she was discriminated against. Her colleague, Security Head, East Africa, Joanness Okumu, went for eye surgery. She was allowed to go for eye surgery, and even post-surgery eye treatment.
23. Marlene Badul travelled again from South Africa to Kenya on 10th October 2017. She informed the Claimant that she could not continue working, because her role had become obsolete.
24. The Claimant was issued a notice of redundancy by Marlene Badul. The Respondent did not follow the laid down procedure, under Section 40 of the *Employment Act*.
25. The Claimant's illness deteriorated after redundancy. She travelled to Apollo New Delhi Hospital, India in August 2019. She was treated there for 1 month. Doctor M.S. Kanwar diagnosed her with sjogren's syndrome, conforming that this was aggravated by failure to seek proper treatment earlier.
26. The Claimant states that she was entitled to annual leave and sick-off days, in accordance with her contract, the law and the employment policy.
27. As a result of her protracted treatment, the Claimant developed vitiligo on her face, legs and hands. This visible physical blemish has resulted in stigmatization. She has failed to get alternative work, because people and potential Employers apprehend that she is contagious. She has become unemployable.
28. She is faced with a lifelong course of expensive medication and specialist clinics. She states that she incurred a hospital bill of Kshs. 1,725,000. She requires future medical treatment.
29. She was never paid house allowance. She was not considered to be of the right racial extraction or gender, to benefit from the Respondent's non-discriminatory policy of 'People First.' Other Employees such as Joanness Okumu had benefited from this policy. The Claimant was tragically discriminated against. Her colleagues' careers have progressed, while she was forced out, with no chance of re-employment.
30. She prays for: -
 - a. Declaration that the Respondent violated the Claimant's constitutional rights, by denying the Claimant annual leave and sick-off days.
 - b. Declaration that the Respondent's conduct towards the Claimant amounts to discrimination, in that other Employees were allowed to seek treatment and to recuperate, while she was pursued in Hospital, threatened with termination if she did not return to work and terminated for her being critically ill.
 - c. A finding that the Respondent's conduct towards the Claimant led, or contributed, to her debilitating sickness and present physical condition.
 - d. The Respondent is compelled to foot the Claimant's medical and related bills from the time of her termination to the present, as well as the cost of future medical and related expenses.
 - e. Award of Kshs. 82,418,894 comprising: accrued annual leave of 2 years at Kshs. 2,239,814; 3 months' notice at Kshs. 3,494,721; 12 months' salary in compensation at Kshs. 13,978,884; cost of medical treatment and related expenses at Kshs 1,725,000; aggravated and punitive damages at Kshs. 60,000,000; and cost of future medical and related expenses.
 - f. Costs of the suit.
 - g. Any other suitable relief.



31. The Respondent filed a Statement of Response dated 3rd November 2020. It is not denied that the Claimant was employed by the Respondent. It is denied that her contract was unfairly and unlawfully terminated, or that any of her constitutional rights have been violated by the Respondent.
32. Termination on account of redundancy was fair and lawful. Redundancy process was spearheaded by the Claimant herself. Her terminal dues were computed fairly and paid out. Her claims are misleading and without foundation.
33. From 2017, the Respondent's business in Kenya experienced various difficulties, including loss of some clients. The Respondent was compelled to reorganize its business. Several positions in its structure would be abolished. The Respondent issued a notice to the Labour Office, dated 5th June 2017.
34. The Claimant and her colleagues were all aware about the Respondent's financial position and proposed restructuring. The process was explained at various leadership and town hall meetings. As the Head of Human Resources department, the Claimant was fully aware about the redundancy process.
35. The Respondent states that it issued notice to the Labour Office Nairobi Area, that it would proceed with the redundancy process, from 9th October 2017. The positions affected by the process were listed in the notice.
36. Following consultations and notices, the Respondent issued a letter of termination to the Claimant, dated 10th October 2017.
37. She was offered pending 33.8 annual leave days; 1-month salary in lieu of notice of redundancy; 3 months' salary in lieu of notice, as per her letter of appointment; and severance at the rate of 30 days' salary for each complete year of service. She received and acknowledged payment as full and final, without any protest.
38. She left employment without bitterness, as captured in her farewell message. She was issued her Certificate of Service. Her Claim is made in afterthought.
39. The Claimant did not conduct herself in accordance with the dictates of her contract and policy: she did not train her team properly; she failed to follow the correct procedure in applying for annual leave; she performed her administrative duties fairly, but not so, her strategic duties; and she overpaid several retrenched Employees, without informing her Line Manager.
40. She took her annual leave for the years 2015 and 2016. She was paid the balance of her 33.8 leave days, on termination.
41. She applied for annual leave in May 2017, intending to go with effect from September 2017. She fell ill and was admitted before she could go on leave. She was discharged after 3 weeks. She requested for additional leave on discharge. She was advised to put in place a plan for her absence, because the business was undergoing changes, and her role was integral to those changes. She was granted leave for 3 days in September 2017.
42. Her allegation that Marlene Badul visited her, and harassed her at Aga Khan Hospital is without foundation.
43. The Claimant was notified on 27th July 2017, that Marlene Badul would be visiting Kenya, from 30th July 2017 to 2nd August 2017. Marlene was not aware that the Claimant was sick. Marlene found the Claimant absent, and was informed by her colleagues, that she was at the Hospital. She visited the Claimant at the Hospital. It is not true that she imposed herself on the Claimant at her sick bed, and had to be asked to leave by the medical personnel.



44. Marlene left the Claimant an e-mail, explaining that: the Claimant occupied an integral role in the Respondent, and in her absence, her function was suffering; her team was not sure of their individual responsibilities; the Claimant did not submit her annual leave application to Marlene, Head of Human Resources, Africa; and the Claimant never asked to go on annual leave, and received a negative response from the Respondent. The Management Terms and Conditions, which applied to the Claimant, specified that annual leave was to be taken, at the convenience of the Respondent. Marlene continued to have an amicable working relationship with the Claimant, as shown in a series of e-mails between the two.
45. The Respondent denies that it in any way, caused or contributed to, the Claimant's illness. She was not discriminated against. Her salary was all-inclusive and the prayer for house allowance is misplaced.
46. The Respondent states that the Claim is time-barred under Section 90 of the [Employment Act](#). It is proposed to have the Claim dismissed, with costs to the Respondent.
47. The Claimant filed a Reply to the Statement of Response dated 3rd February 2021. She denies that redundancy was fair and lawful, preceded by requisite notices and consultations. There is no legal justification for payment of 1-month salary in lieu of redundancy notice. The Respondent predetermined to get rid of the Claimant. Her acceptance of terminal dues did not right the wrong. Her performance and integrity were never questioned during her service. Her farewell message, was intended to maintain good relationship with colleagues, especially the younger ones, who looked up to her as their mentor.
48. The Claimant maintains that she was owed annual leave days, as shown in the dues paid to her on termination. She had applied to take leave to enable her seek treatment, which was denied by the Respondent. She maintains that Marlene was hostile, and had to be asked to leave by the medical personnel. The Claimant restates that she was discriminated against, and that the Respondent contributed to her present state of health.
49. The Claimant gave evidence, and rested her case, on 24th November 2022. Janet Mwikali Munguti, a Senior Human Resource Officer of the Respondent, gave evidence on 13th October 2023, closing the hearing. The Claim was last mentioned on 19th March 2024, when the Parties confirmed filing and exchange of their closing submissions.
50. The Claimant adopted her witness statement and exhibited documents on record, in her evidence-in-chief. She emphasized that she was an excellent performer, who was routinely garlanded by the Respondent. She was denied annual leave and sick-off days, when she fell ill. Today, she endures medical complications as a result of the conduct by the Respondent towards her. She left on redundancy. She signed acknowledgement on receiving terminal dues, because she could not be paid without signing. She had been taken off the medical insurance cover, and needed the money to fund her treatment. She eventually took herself to India, where she was treated for autoimmune condition, aggravated by her stressful work environment and lack of early treatment. She told the Court that she currently walks on crutches. Her body has broken down. She is entitled to compensation and damages as pleaded.
51. Cross-examined, the Claimant told the Court that she was employed by the Respondent, on 15th September 2015. She worked for about 2 years. She had previously worked for various multinationals.
52. She would in her position issue others with redundancy notices. She was not issued one. She expected one from her Line Manager, the Human Resource Director, Africa, Marlene, who was based in South Africa.



53. She told the Court that there is on record, a notice issued to the Labour Office. She received a copy the same day, in the morning she left employment. She wrote an e-mail expressing her gratitude to the Respondent, for the opportunity to serve. There is an e-mail indicating she was granted annual leave of 3 days in September 2017. In 2016 she had utilized 4 days. She had taken 39 sick off days. She conceded that the Respondent approved some annual leave and sick-off days.
54. She was not the only one who left on redundancy. Her Doctor reported that her illness could be work-related. She hoped that the Doctor would testify on her behalf.
55. Redirected, the Claimant told the Court that the notice to the Labour Office, was not copied to her. She was not notified of the intention to declare redundancy. She took sick-off days, which was different from annual leave. Her pending leave days were enough for her to go for early treatment. The medical opinion was not of her own creation. She was discriminated against. She compared her situation to her colleague's, Joanness Okumu, to reach the conclusion that she was discriminated against.
56. She secured alternative employment after termination, in a junior role at another company, but was dismissed because of her health condition.
57. Munguti relied on her witness statement and documents [1-7] filed by the Respondent in her evidence. The Respondent followed a fair and lawful procedure, in terminating the Claimant's contract. Employees were notified and consulted. The Labour Office was notified. The Employee were paid their redundancy dues.
58. Cross-examined, Munguti told the Court that she joined employment in December 2022. The Claimant had left employment. Munguti did not know if the Claimant's performance was exemplary. She did not see the Claimant's commendations. She was not aware that the Claimant planned to travel to India for treatment, but was denied leave by the Respondent, to enable her travel. She was not aware that others such as Okumu, were granted extended sick leave. She did not know that Marlene visited the Claimant at the Hospital, and announced to her, that her position had become redundant. Munguti has never met the Claimant. Redirected, she clarified that her evidence was based on the Claimant's personnel file.
59. The issues are: whether the Respondent's conduct towards the Claimant, caused, or contributed to, the Claimant's debilitating illness; whether the Respondent terminated the Claimant's contract fairly and lawfully; and whether she is entitled to the remedies sought.

The Court Finds: -

60. The Claimant was employed by the Respondent, through a letter of appointment dated 8th September 2015. She was employed as the Human Resources Director, East Africa. The commencement date was 15th September 2015. She reported to Head of Human Resources, Africa.
61. Claimant's illness and discrimination: The Claimant maintained while on cross-examination, that her illness was work-related. She relied mainly on the report of her Doctor, Otieno F.O. dated 15th February 2018.
62. The Doctor states that he had been treating the Claimant for the past 10 months for seronegative arthritis, lower back pains and fibromyalgia.
63. He had treated her on 28th July 2017, when she underwent therapy and physiotherapy, and was discharged on 5th August 2017.



64. The report states that she did not adequately respond therapy. The Doctor offered a view that this could have been caused by physical and emotional stress. It was suggested that the physical and emotional stress, could have been attributable to work conditions. The Doctor based his opinion concerning the work conditions, on information supplied by the Claimant.
65. The Claimant told the Court that she hoped her Doctor would be called as a witness, but she did not call him.
66. Her evidence that her illness was occasioned by her work environment, is therefore not supported by medical evidence. Physical or emotion stress, was not shown conclusively, to have been caused by the Claimant's work environment.
67. Is there evidence in any event, adduced by the Claimant to suggest that her condition was caused by her work environment?
68. The Claimant was employed in September 2015. She was the Human Resources Director, East Africa. What did this role have to do with her medical condition? She states that all had been going well at work, until she started experiencing ill-health, and was admitted at Aga Khan on 5th May 2017.
69. She spoke highly of her work environment from September 2015 to May 2017. She had been earning nothing but praise from the Respondent's top echelons. She was happy, well-paid and innovative. The Respondent encouraged her, with frequent commendations and bonus payments. Her salary, according to her own evidence, was increased at a higher rate, surpassing those of the other staff.
70. There is no conclusive medical evidence, that her illness was caused by her work environment. There was no evidence adduced by the Claimant, establishing that her work environment, until the date she was admitted at Aga Khan, was such as to trigger emotional and physical stress.
71. She complained that she had been asking to be allowed to go on annual leave, without success. She was told that her position as Human Resources Director, East Africa, did not allow her to be released to rest and enjoy her annual leave.
72. By the time she fell ill in May 2017, she had been in employment for 1 year and 8 months. Her pending annual leave days when she left, were calculated at 33.8 days.
73. She had a negative balance of annual leave of 5 days in 2015. In 2016 she had a balance of 16 days. By the time she left, her annual leave was 33.8 days. Her annual leave entitlement was 25 days. The overall balance of 33.8 days on termination, seen against the annual leave entitlement, does not support the view that the Claimant was denied her annual leave unreasonably, and for a prolonged period.
74. The Court does not think that her annual leave was such a weighty grievance, that would result in hostile work environment, leading to emotional and physical stress, culminating in the debilitating illness which the Claimant suffered.
75. Was there conduct by the Respondent, which was shown to have contributed, if not caused, the Claimant's illness?
76. The Court does not think that the Claimant offered adequate evidence, to establish that the Respondent contributed to her illness.
77. When she fell ill on 5th May 2017, she was hospitalized until 17th May 2017. The Respondent did not create barriers against her being away on sick-off.



78. Even when she says that she had informed her immediate supervisor, Managing Director, East Africa, Andries Retief, on 9th January 2017 that she intended to take annual leave, in May 2017, it was not indicated to be, on account of seeking medical attention. It is notable that she never made a formal application or notify the Managing Director, that she intended to take annual leave in May 2017 for medical reasons. She has not exhibited a leave application form, which was returned to her without approval.
79. Her evidence that she relapsed, that she was readmitted to Aga Khan Hospital, that her body completely shut down, and that she was fighting for her life, are issues which again did not benefit from medical evidence presented before the Court by her Doctor Otieno F.O. or any other Doctor.
80. The report by Doctor Otieno, states that the Claimant was admitted on 26th July 2017, and discharged 10 days later, on 5th August 2017. The Respondent again did not place barriers, on the Claimant being away for the second time, on hospital admission. She was reasonably accommodated.
81. There is nothing to show that the Respondent's conduct contributed to the Claimant being admitted a second time, leading to her fighting for her life. It is noted, that the Respondent did not place barriers against the Claimant seeking medical attention at Aga Khan, and being away on sick-off, after she relapsed. The Respondent let her seek medical attention as, and when she fell ill.
82. The visit by Marlene Badul to the Claimant at Aga Khan Hospital is captured in an e-mail written to Marlene Badul by the Claimant, sent on 7th August 2017.
83. The Claimant does not complain in her communication, about any conduct on the part of Marlene, who was her actual Line Manager, that would contribute to the Claimant's illness.
84. The meeting appears to have been routine, mainly focused on a candid discussion, about the effect of the Claimant's forced absence, on her role, at a time when the Respondent was in the middle of business reorganization. The Claimant shared the view that her illness, was affecting her docket. The two ladies discussed annual leave and sick leave, which are at the centre of the dispute. Marlene complained that the Claimant had not been sending her annual leave application forms to her, despite many requests made by Marlene, her Line Manager. The Claimant states, that she was mistaken about her sick leave, which she thought was for 45 days with full pay, and another 45 days with half pay. She states that following her discussion with Marlene, she learnt that sick leave was for a period of 30 days with full pay and a further 30 days on half pay. The e-mail suggests what transpired between the ladies at the Hospital, was a candid conversation between two Human Resource Professionals, on matters relating to the Respondent's organizational well-being, viewed against the backdrop of the Claimant's own well-being.
85. There is no evidence in the Claimant's e-mail, to suggest that Marlene was hostile or unwelcome at the Hospital, or that she inappropriately imposed herself on a bedridden patient. There is no evidence that Marlene had to be prevailed upon to leave the Hospital, by the medical personnel. She had flown from South Africa, intending to consult the Claimant on human resource issues, which the Claimant termed as a common cause. The Court does not think that Marlene travelled to Kenya from South Africa, with the ill –intention of harassing the Claimant while she was already on her sick-bed. The meeting was necessitated by the Claimant's illness and the gap her absence created, at her docket, which was integral to the whole Organization. There was nothing in this meeting, that would be viewed as having contributed to the Claimant's ill-health.
86. One would question if it was wise for the Human Resource Director Africa, Marlene Badul, to visit the Claimant at the Hospital. The Court understood that Marlene was based in South Africa, and



was probably acting within the constraints of her limited time, in a foreign jurisdiction. While in ordinary circumstances a patient admitted in hospital should be left with her Doctors, there was nothing objectionable in Marlene consulting her supervisee as she did. The Claimant's e-mail sent on 7th August 2017, does not disclose anything in this visit, that was objectionable, or would prejudice the Claimant's health.

87. The Claimant states that a colleague of hers, Joanness Okumu fell ill and was treated more favourably than herself. She grounds her claim for discrimination on this comparator.
88. There was no medical evidence placed before the Court on the nature of Okumu's illness, her terms and conditions of employment, and the accommodation extended to her by the Respondent, when she fell ill.
89. Joanness Okumu is just a name, given to the Court by the Claimant as a comparator. But the circumstances of that Employee's illness, and the different levels of accommodation allegedly extended by the Respondent, were not detailed by the Claimant. There was no evidence given by Okumu. She remains just a name, in the mists of the Claimant's evidence, thrown at the Court by the Claimant, in her pursuit of discrimination claim.
90. The Claimant pleads workplace discrimination, but provided no evidence to support the claim. She states that she was not considered to be "of the right racial extraction or gender," to benefit from the Respondent's Non-discrimination Policy, called 'People First.'
91. She toys with the idea of racial discrimination, and gender discrimination, but offered no proof. Her comparator Joanness Okumu, was of her own racial extraction and gender. It is not convincing that the Claimant was subjected to racial or gender discrimination at the workplace.
92. The Court is not able to agree with the Claimant that she was prevented by the Respondent, from traveling to India for specialized treatment. There is no application made by her to the Respondent, disclosing that she was due for treatment in India, and needed leave to travel. There is no evidence that the Respondent said no, to her traveling to India. What prevented her from making arrangement for treatment in India as she did, after she left employment? Would any reasonable Employer say no, when shown evidence of medical treatment due in India? The Claimant just kept protesting orally, that she needed to go on her annual leave, but never openly applied for annual or sick leave with the stated objective, of traveling to India for treatment. As the Human Resources Director for East Africa Region, she ought to have placed premium on the written record, rather than embrace the oral tradition in pursuing annual and sick leave. Her Line Manager, Marlene, complained that the Claimant never forwarded any leave application, to her. It would have served her Claim well, if she exhibited annual leave or sick leave applications, placed before the Respondent for approval, and returned to her by the Respondent with the stamp 'declined.' The Claimant appears to have been quite informal about leave application. On 19th September 2017 for instance, she wrote to Marlene an e-mail stating that, "I would like to go on leave starting tomorrow, for 3 days..." How does an Employee notify an Employer about annual leave to be taken with effect from the following day? Where is the space for approval? She was quite unconventional, and conceded that some days of annual leave and sick leave had been availed to her, when cross-examined.
93. The Court is not persuaded that the Respondent's treatment of the Claimant, caused or contributed to her illness; she did not apply for annual or sick leave to seek specialized treatment abroad, which was withheld by the Respondent; and she has not established a prima facie case for workplace discrimination, requiring the Respondent to show that it acted for legitimate purpose.



94. The Court formed the view that while it is not to be doubted that the Claimant suffered debilitating illness while an Employee of the Respondent, her illness was not shown to be work-related. There was no evidence of causation or contribution on the part of the Respondent, placed before the Court by the Claimant. Her claim that the Respondent caused, or contributed to, the tragic illness she endures today, appears not to be founded on cogent evidence,
95. Redundancy /reason for termination: The Claimant issued a notice of intended redundancy to the District Labour Officer, dated 5th June 2017. She issued the notice, in her capacity as the Respondent's Human Resources Director, East Africa. The notice was copied to the General Secretary, Kenya Food and Allied Workers Union.
96. The Claimant explains that need had arisen, for the Respondent to realign its workforce to its operational requirements. She states that the Respondent expected redundancies in Management and Unionized staff levels.
97. The Claimant reassured that, affected Employees would be treated fairly and lawfully. She vouched for the fairness and lawfulness of the redundancy process. She was at the lead.
98. It is absurd for the Claimant, to tell the Court that she was not issued a notice of the intended redundancy, yet she is the one who issued the notice dated 5th June 2017. If she issued notice, she had notice of the intended redundancy.
99. It would be pointless to issue the Claimant, another notice of the intended redundancy, from the Respondent's Office in South Africa. She told the Court that she expected to receive a notice from her Line Manager. The notice issued by her, issued on the instructions of the Organization, and the Claimant had no reason to expect a separate notice. She told the Court, that she handled the redundancy process. She led the process. She owned the process.
100. The Court has no reason, based on the notice issued by the Claimant to the Labour Office, to doubt the genuineness of the redundancy situation.
101. The Claimant did not question the procedure. She wrote a farewell message to the Respondent and her former colleagues, sent on 18th October 2017. The tone and tenor of her message does not betray the feelings of embitterment, frustration, lack of appreciation, hostility and ill-treatment endured during her employment.
102. She was paid 3 months' salary in lieu of notice under the termination clause in her contract; 1-month salary in lieu of notice under redundancy law; severance at the rate of 30 days' salary for each complete year of service; and 33.8 pending annual leave days. She was paid a sum Kshs. 4,411,138, after tax.
103. She acknowledged the payment as full and final. She entered into a valid and binding contract with the Respondent, as held in the Court of Appeal decision, Coastal Bottlers v. Kimathi Mithika [2018] e-KLR, that what was paid to her was full and final.
104. The Court has found no evidence, to doubt the genuineness of redundancy, and fairness of procedure, adopted by the Respondent. The Claimant led the redundancy process, and it is illogical to turn around and say that the exercise, was unfair and unlawful.
105. Remedies: Not without profound sympathy to the Claimant, the Court has reached the conclusion that this Claim fails. There is no correlation between the Claimant's employment with the Respondent, and her current health status. She has not established that she suffered work injury or illness. There is no legal basis to impose liability on the Respondent, for the Claimant's past medical treatment, as well as the cost of future treatment. The prayer for aggravated damages pleaded at a



staggering Kshs. 60 million, is without foundation. The Claimant was paid what was due to her on termination. She acknowledged payment as full and final.

106. Lastly, the Respondent pleads that the Claim is time-barred, but did not pursue this line of thinking. Nothing turns on time-bar.

It is ordered: -

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 12TH DAY OF JULY 2024.

JAMES RIKA
JUDGE

