



**Wazir v Redstar International Limited (Cause E477 of 2023)  
[2024] KEELRC 1971 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1971 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E477 OF 2023**

**SC RUTTO, J**

**JULY 26, 2024**

**BETWEEN**

**SHAKILA MBWANA WAZIR ..... CLAIMANT**

**AND**

**REDSTAR INTERNATIONAL LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Through a Statement of Claim dated 14<sup>th</sup> June 2023, the Claimant avers that she was offered employment by the Respondent on 16<sup>th</sup> May 2022 as a Showroom Manager on a permanent basis. That she was later promoted albeit verbally to the position of Operations Manager to be in charge of showrooms and retail supermarkets. According to the Claimant, she performed her duties diligently until 23<sup>rd</sup> March 2023 when she was served with a letter of termination. She contends that she was not given a mandatory notice of termination on account of redundancy before her employment was terminated.
2. In the Claimant's view, her employment was unfairly and unlawfully terminated and as such, claims the sum of Kshs 2,522,211.51 being notice pay, three (3) holidays worked but not paid, prorated leave pay and compensatory damages.
3. Opposing the Memorandum of Claim, the Respondent avers that the Claimant was given sufficient notice of her termination. The Respondent further states that the Claimant's dues were settled and she freely and willingly signed a discharge voucher absolving the Respondent from any further claims or settlement.
4. The matter proceeded for hearing on 15<sup>th</sup> April 2024, during which both parties called oral evidence.



## **Claimant's Case**

5. The Claimant testified in support of her case and for starters, she adopted her witness statement as well as her list and bundle of documents to constitute her evidence in chief.
6. It was the Claimant's evidence that during the period she worked for the Respondent, she was never issued with a pay slip.
7. That in December 2022, she was promoted to the position of Operations Manager but was not given any promotional letter nor offered any salary increment.
8. According to the Claimant, she was persuaded by the Respondent's Chief Operating Officer, Kamaksha and Jaynish, who was the Managing Director to leave her job at Carrefour where she was working as a department head. That at the time, she was being promoted to Category Manager. They promised that they would offer her better terms hence she was forced to resign from her former employer solely on the promise of the Respondent's Chief Operating Officer and the Managing Director.
9. She further averred that on 21<sup>st</sup> March 2023, they had a weekly meeting at the Respondent's Boardroom whereafter, the General Manager Mr. Jiten told her that the business was too low and that they no longer needed her services.
10. It was the Claimant's contention that this was done verbally and she was never informed early enough. She was told to go back on 24<sup>th</sup> March 2023 with the company laptop whereupon, she was issued with a letter dated 23<sup>rd</sup> March 2023 claiming that the company was rationalizing all its expenses and could not sustain her. She was told to sign the letter and go.
11. The Claimant further averred that she was not paid her full notice and that during the period she worked for the Respondent, she did not proceed on leave despite requesting for the same on several occasions.
12. That further, she was never invited to a meeting for discussion on declaring her redundant and was not given a 30 days Redundancy Notice. It was her further assertion that no notice was given to the Ministry of Labour.
13. According to the Claimant, there was no justification for the redundancy since the Respondent increased the number of employees in all the shops and opened new branches at Galleria Mall in Nairobi.
14. In the Claimant's view, her termination was unfair and not based on law and hence was malicious.

## **Respondent's Case**

15. The Respondent called oral evidence through its General Manager, Mr. Jiten Wadhia who testified as RW1. Similarly, he adopted his witness statement as well as the list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
16. RW1 stated that the terms of the Contract stated that either party may terminate the Contract by issuing a thirty (30) day notice or payment in lieu of notice.
17. RW1 averred that throughout the period of employment, the Claimant served as a Showroom Manager and was never promoted.



18. RW1 further stated that the Respondent issued the Claimant with a notice of termination of employment which was effective from 24<sup>th</sup> March 2023 to 24<sup>th</sup> April 2023. That the Claimant was to utilize her pending leave days from 24<sup>th</sup> March 2023 to 13<sup>th</sup> April 2023.
19. That as a gesture of good faith, the Respondent paid the Claimant in full for the entire notice period.
20. According to RW1, the Claimant's termination was procedurally fair according to Clause 1 of the employment contract which allowed either party to terminate the contract either verbally or in writing by giving thirty-day notice or payment in lieu of notice.
21. That further, the Claimant expressed her agreement with the terms of the notice of termination and payment of dues by willingly and consciously appending her name, Identification Number and Signature on the Discharge Voucher dated 23<sup>rd</sup> March 2023.
22. To the best of his knowledge and information, the Respondent has since paid the Claimant all her final dues including her salary for the days worked in March, and payment for the notice period as required by law.
23. According to him, the Claimant is not entitled to the prayers sought in the Memorandum of Claim.

### **Submissions**

24. The Claimant submitted that the Respondent did not follow the laid down procedure in terminating her on account of redundancy as expressed in law. She maintained that she was not subjected to the laid down procedure before the Respondent made a wrong conclusion to declare her redundant. In her view, the Respondent's actions were unprocedural.
25. On the part of the Respondent, it was submitted that no evidence has been tendered by the Claimant to prove that the Respondent through its representatives approached her with better terms to persuade her to resign from Majid Al Futtaim and join the Respondent. The Respondent maintained that no headhunting took place and the Claimant applied for the role, was interviewed and was appointed to the position of Showroom Manager.
26. With respect to the Claimant's assertions that she was verbally terminated by RW1 after a weekly staff meeting at the Respondent's Boardroom, the Respondent termed the same as fictitious. It was submitted that this was another failed attempt to paint the Respondent as one who unfairly terminated the Claimant and distort the truth on how the employment relationship procedurally ended.
27. The Respondent further submitted that the letter of termination was willfully signed by the Claimant where she agreed that the same represented a full and final settlement of her computed dues and there are no further claims against the Respondent.
28. In further submission, the Respondent stated that it has adequately demonstrated that the termination was lawful and all procedures under the law and the employment contract were strictly followed.

### **Analysis and Determination**

29. Flowing from the pleadings on record, the evidentiary material placed before me, as well as the rival submissions, it is evident that the issues falling for the Court's determination are:-
  - a. Whether termination of the Claimant's employment was unfair and unlawful;
  - b. Is the Claimant entitled to the reliefs sought?



## Unfair and Unlawful Termination?

30. The record bears that the Claimant was notified of her termination through a letter dated 23<sup>rd</sup> March 2023. As can be discerned from the said letter, the reason ascribed for the Claimant's termination from employment, was the Respondent's inability to secure any new orders hence the company was rationalizing all its expenses which it could not sustain.
31. Fundamentally, the Claimant was declared redundant. As was held by the Court of Appeal in *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR, termination of employment through redundancy ought to be both substantially justified and procedurally fair.
32. In this regard, substantive justification refers to the reasons for which the redundancy was effected while procedural fairness has to do with the procedure applied in effecting the redundancy. I will consider the two elements under separate heads.

### i. Substantive Justification

33. Section 2 of the *Employment Act*, defines the term redundancy to mean: -
  - “ 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”.
34. The import of the aforementioned provision is that the circumstances or reasons leading to an employee being declared redundant must fall within the statutory definition of the term redundancy.
35. Revisiting the reasons advanced for the termination of the Claimant's employment, the Respondent indicated that it was rationalizing its expenses as it was not securing any new orders.
36. In this regard, the Respondent was required to prove that the reason for the Claimant's termination was valid, fair and based on its operational requirements. In default, the termination would be rendered unfair in light of the provisions of Section 45(2) (b) (ii) of the *Employment Act*.
37. Notably, the Respondent did not adduce evidence in whatever form or manner, to prove its assertions.
38. No doubt, the Respondent was at liberty to reorganize its enterprise as it desired. Nonetheless, the Respondent was duty-bound to prove to the requisite standard that the Claimant's redundancy was genuine and justified. In this case, it failed to do so.
39. Accordingly, I cannot help but conclude that the Respondent has failed to prove to the requisite standard that it had a valid and fair reason to terminate the Claimant's employment on account of redundancy.

### ii. Procedural Fairness

40. Under Section 40(1) of the *Employment Act*, the following conditions must precede a redundancy: -
  - 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 the 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 to 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.
41. From the record, the Respondent notified the Claimant of her redundancy through a letter dated 23<sup>rd</sup> March 2023. Through the same letter, the Claimant was advised that she would take her leave from 24<sup>th</sup> March 2023 to 13<sup>th</sup> April 2023. It is also notable that the said letter indicates that the end date of the Claimant's contract of employment was 24<sup>th</sup> March 2023.
42. What can be deduced from the foregoing is that the notice period given to the Claimant was short of the 30 days notice prescribed under Section 40(1) (b) of the *Employment Act*. This position was confirmed by RW1 who testified under cross-examination that the Claimant was not given notice prior to her termination.
43. If I may say, the notice contemplated under section 40 (1)(b) is an "intention to declare a redundancy". It is issued before the redundancy itself. What was issued to the Claimant in this case was a letter of termination. In essence, the Claimant had already been declared redundant.
44. I further find it worth pointing out that payment of one month's salary does not supplant the requirement of notice. As it is, payment of one month's salary is a separate requirement altogether under Section 40(1) (f) of the *Employment Act*.
45. Therefore, in as much as the Respondent paid the Claimant one month's salary in lieu of notice, that did not sanitize its failure to notify the Claimant of her redundancy one month prior to, as required under Section 40(1) (b) of the *Employment Act*.
46. Further to the foregoing, the Respondent did not comply with the second part of Section 40(1) (b) when it failed to prove that it issued a notice to the labour office with respect to the Claimant's redundancy.
47. The other requirement is in respect of the selection criteria stipulated under Section 40 (1) (c) of the *Employment Act*. In this regard, the employer is required to prove that in the selection of the employees to be declared redundant, it has paid due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy.
48. From the record, there is no indication or suggestion that there were other employees serving as Showroom Managers together with the Claimant. This being the case, the requirement for a selection criteria was not applicable herein.



49. As to the payments under Section 40(1)(e)(f) and (g) of the *Employment Act*, the Claimant was advised through the letter dated 23<sup>rd</sup> March 2023 that she would be paid notice pay and that she would be entitled to take her pending leave days. The Claimant has not refuted receiving her notice pay hence I have no doubt that the Respondent complied with clause (f) of Section 40(1) of the *Employment Act*.
50. With regards to the Claimant's pending leave days, the record bears that she was advised to take her leave up to 14<sup>th</sup> April 2023. Be that as it may, there is no indication that the Claimant was paid salary during this period hence such leave if taken, was unpaid. This being the case, the Claimant was entitled to leave pay and as this was not paid, the Respondent is at fault for want of compliance with Section 40(1)(e) of the *Employment Act*.
51. As the Claimant had not served in the Respondent's employment for one complete year, the issue of severance pay does not arise.
52. In addition to the procedural requirements under Section 40(1) of the *Employment Act*, the Respondent was required to hold consultations with the Claimant prior to her redundancy. In this case, there was no indication let alone suggestion that such consultations were held in accordance with Article 13, Convention No. 158 - Recommendation No. 166 of the *International Labour Organisation (ILO) Convention*. As such, the Respondent is at fault for not holding pre-redundancy consultations with the Claimant.
53. In sum, it is this Court's finding that the Respondent has not proved that the Claimant's termination was substantively fair within the meaning of Section 45(2)(b)(ii) of the *Employment Act*. Further, it is this Court's finding that in terminating the Claimant's employment on account of redundancy, the Respondent did not substantially comply with the provisions of Section 40(1) of the *Employment Act*.

#### **Reliefs?**

54. As the Court has found that the Respondent did not prove to the requisite standard that it had a valid and fair reason to terminate the Claimant's employment on account of redundancy and substantially failed to follow the procedure under Section 40(1)(b) of the *Employment Act*, the Court awards her one (1) month's salary in lieu of notice and compensatory damages equivalent to three (3) months of her gross salary. This award takes into account the length of the employment relationship as well as the circumstances surrounding the termination.
55. The claim for nine (9) leave days succeeds for reasons set out elsewhere in this Judgment. Specifically, that there is no evidence that the Claimant was paid salary for days she was asked to take her leave after termination.
56. The claim for pay for three (3) holidays worked is declined as there is no evidence to support this assertion. Besides, the said holidays have not been specified.

#### **Orders**

57. In the final analysis, I allow the Claim and enter Judgment in favour of the Claimant against the Respondent as follows: -
  - a. A declaration that the Claimant was unfairly terminated from employment.
  - b. The Claimant is awarded one (1) month's salary in lieu of notice being the sum of Kshs 170,000.00.



- c. The Claimant is awarded compensatory damages in the sum of Kshs 510,000.00 being equivalent to three (3) months of her gross salary.
- d. The Claimant is awarded the sum of Kshs 51,000.00 being unpaid leave.
- e. The total award is Kshs 731,000.00.
- f. Interest on the amount in (e) at court rates from the date of Judgment until payment in full.
- g. The Claimant shall have the costs of the Claim.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY 2024.**

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Mokaya

For the Respondent Mr. Kisigwa

Court Assistant Millicent Kibet

**Order**

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

