

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO E 719 OF 2022**

**JESSICA  
KAGISYE.....  
.....CLAIMANT**

**VERSUS**

**ANGAZA KENYA  
LIMITED.....RESPONDENT**

**JUDGMENT**

**Background**

1. The Claimant has filed this action to challenge the Respondent's decision to terminate her contract of service. It is her case that the decision was unlawful.
2. The Claimant contends that the Respondent hired her services as an Account Executive on 11<sup>th</sup> January 2022 on permanent terms. She avers that prior to this, the Respondent had engaged her remotely on probationary terms from 12<sup>th</sup> October 2021.
3. The Claimant avers that under the contract of service, she was entitled to salary of USD 1,612.50 per month. She further avers that she was to receive monthly commission and Ksh. 20,000.00 per year to cover the cost of her professional development.

4. The Claimant avers that she rendered her services to the Respondent with diligence and without blemish. She contends that this fact is confirmed by the results of her performance review for the year 2022 which was rated as good.
5. The Claimant contends that on 17<sup>th</sup> August 2022, the Respondent issued her with a letter terminating her contract on account of redundancy. Yet, she avers that there was no indication that its (the Respondent's) business had slowed down to warrant the decision.
6. The Claimant avers that the decision to terminate her services was harsh and uncalled for. It is her case that the Respondent failed to observe the law, the contract between them and the principles of equity whilst making the decision.
7. The Claimant avers that the Respondent did not give her and the local labour office the reasons for and extent of the intended redundancy before it terminated her services. Similarly, she contends that the Respondent did not issue her and the labour office with the requisite one month redundancy notice in contravention of the law. She further avers that the Respondent did not consider the guidelines relating to skill, ability and reliability of the affected employee(s) whilst making its decision.
8. The Claimant contends that a few days before her contract was terminated, she had disclosed to her line manager that she was expectant. She believes that it is this disclosure that

influenced the Respondent's decision to terminate her services. As such, she avers that the decision to terminate her contract on account of redundancy was a smokescreen.

9. The Claimant avers that the Respondent's action was discriminatory. She avers that the decision violated section 5 of *the Employment Act* and article 27 of *the Constitution*.
10. The Claimant further avers that after the Respondent hired her on permanent basis, it asked her to relocate to Kenya. She avers that this development aroused reasonable expectation in her that she would work for the Respondent for a long period. As such, it is her case that the decision to terminate her services shocked her and did not take into account the financial burden she had incurred following her relocation.
11. The Claimant thus prays that the impugned decision be declared unlawful and in breach of the various provisions of *the Constitution* that she has set out. In addition, she prays for: salary in lieu of notice to terminate her contract; compensation for unfair termination of her contract; commission; damages for violation of her constitutional rights; Ksh. 20,000.00 towards her professional development; costs of the case; and interest.
12. In response, the Respondent admits that the parties had an employment relationship as asserted by the Claimant. However, it denies that the relation was unlawfully terminated.

13. The Respondent avers that it first hired the Claimant on a fixed term contract for one year from 13<sup>th</sup> January 2022. It contends that the contract entitled the Claimant to conditional commission based on her performance.
14. The Respondent further avers that the contract allowed the Claimant the flexibility of working either from Burundi or Nairobi. However, it contends that her duty station was Nairobi.
15. Whilst admitting that the Claimant was entitled to receive support for her professional development, the Respondent contends that this benefit was entirely at its discretion. Further, it avers that the sum of Ksh. 20,000.00 which it was to pay under the arrangement was payable directly to the service provider and not the Claimant.
16. The Respondent contends that sometime in the year 2022, it conducted a rigorous review of its business unit, model structure and performance which showed that some employees' skills were not required and hence were superfluous. As such, it contends that it was not able to sustain the affected employees' salaries.
17. The Respondent contends that following the foresaid development, it opted to terminate the services of the affected employees. It avers that the Claimant was one of the employees who were affected by the decision.
18. The Respondent avers that it issued the Claimant with a redundancy notice dated 17<sup>th</sup> August 2022. It contends that

after this, the Claimant was interviewed and involved in the process that led to her release from service.

19. The Respondent avers that the Claimant was consulted about and accepted the terminal dues that were paid to her. As such, it contends that it complied with the requirements of redundancy declaration under section 40 of *the Employment Act*.
20. Despite the Respondent contending that it complied with the requirements of section 40 of *the Employment Act*, it makes a contra averment to the effect that the parties mutually agreed to dispense with these requirements except as relates to payment of severance pay (see par 18 of the supplementary witness statement by Lucy Wangeci Mugo dated 9<sup>th</sup> September 2024 and par 20 of the Amended Response to Memorandum of Claim). It avers that the Claimant was paid her severance pay and issued with a Certificate of Service.
21. The Respondent denies that it terminated the Claimant's contract because of her pregnancy. It contends that the Claimant was not the only employee who was affected by the redundancy. It avers that the process affected several other employees of either gender. As such, it avers that the assertion by the Claimant that she was targeted due to her pregnancy is baseless.
22. The Respondent denies that it directed the Claimant to relocate to Kenya on permanent basis. It contends that the

Claimant's decision to relocate to Kenya was self-driven due to personal and family reasons.

23. The Respondent avers that although the Claimant relocated to Kenya on her own volition in order to join her husband, it footed her relocation expenses and assisted her to procure her work permit and Alien Card. As such, it contends that her assertion that it subjected her to unfair treatment is without foundation.

### **Issues for Determination**

24. After evaluating the pleadings, evidence and submissions by the parties, the court is of the view that the following are the issues that arise for determination:-
- a) Whether the parties had a fixed or indefinite term contract of service.
  - b) Whether the decision to terminate the Claimant's contract of service was unlawful.
  - c) Whether the Claimant is entitled to the reliefs which she seeks through these proceedings.

### **Analysis**

25. The contract which evidences the employment relationship between the parties is dated 11<sup>th</sup> January 2022. Although clause two (2) thereof is titled "Appointment and Duration" it only sets out the start date for the employment relation (13<sup>th</sup> January 2022). There is no provision in the contract which speaks to the end date for the relation.

26. Although the Respondent contends that the relationship between them was for a fixed term, this is not supported by the contract which was tendered in evidence and which, for all purposes and intents, demonstrates that the parties had an indefinite term contract of service. It is so declared.
27. The Claimant asserts that the Respondent terminated her services because of her pregnancy. However, apart from making this bare assertion, she did not tender cogent evidence to anchor it. Absent this evidence, the court is unable to come to the conclusion that her services were terminated on account of her pregnancy.
28. It is apparent from the evidence on record that the reason why the Respondent terminated the Claimant's contract was the purported redundancy within its establishment. The Respondent contends that after conducting a review of its operations, it became apparent that the skills of some of its employees, including the Claimant, were no longer required. As such, it declared the impugned redundancy.
29. The law that regulates declarations of redundancy at the workplace in Kenya is encapsulated in sections 40 and 45 of *the Employment Act*. Section 45 recognizes that an employee may be laid off owing to operational requirements of the employer. In effect, the provision recognizes redundancy as a valid ground to terminate a contract of service.

30. Although an employee's contract of service may be legitimately closed on account of redundancy, this must be done in accordance with the law. Section 40 of *the Employment Act* requires the employer to ensure and or do the following:-
- a) Issue the affected employee or his trade union, where applicable, with a redundancy notice.
  - b) Issue the local labour officer with a redundancy notice.
  - c) The redundancy notice must be issued to the employee/trade union and labour office at least one month before the date of the actual redundancy.
  - d) The redundancy notice must specify the reasons for and extend of the proposed redundancy.
  - e) The employees to be declared redundant ought to be selected having regard to the principles of seniority, skill, ability and reliability.
  - f) Once identified, the employees must be paid their redundancy dues in accordance with the law and collective bargaining agreement, if there is one in place.
31. From the record, the Respondent issued the Claimant with a redundancy notice dated 17<sup>th</sup> August 2022. However, the notice was not copied to the local labour office. There is no evidence that the said office was issued with a standalone notice. As such and to this extend, the court finds that the notice dated 17<sup>th</sup> August 2022 did not meet the prerequisites of section 40 of *the Employment Act*.

32. The redundancy notice shows that it was to take effect on 17<sup>th</sup> August 2022, the very same day it was issued. This was contrary to section 40 of *the Employment Act* which requires such notice to be issued at least one month before the date of the actual redundancy.
33. The redundancy notice dated 17<sup>th</sup> August 2022 does not indicate the reason why the Claimant was declared redundant. Further, it does not speak to the extent of the redundancy in contravention of section 40 of *the Employment Act*.
34. Similarly, the notice does not speak to the selection procedure that was used to settle on the Claimant as the employee who had to be relieved of her duties. Again, this renders it deficient in law.
35. Although the Respondent asserts that the Claimant was engaged in consultations over the proposed redundancy, it did not tender cogent evidence to back these claims. In any event, it is evident that the Claimant's employment was terminated on 17<sup>th</sup> August 2022, the very day she was issued with the redundancy notice. This begs the question when were the alleged consultations held?
36. From the foregoing, it is evident that the Respondent did not comply with the requirements of section 40 of *the Employment Act* whilst relieving the Claimant of her employment on account of redundancy. As such, the court

finds that the Claimant's contract was unfairly and unlawfully terminated. It is so declared.

37. As I wind up on this aspect of the case, it is necessary to address one matter which the Respondent has raised. The Respondent contends that the parties agreed to dispense with some of the redundancy procedures prescribed under section 40 of *the Employment Act* owing the nature of the remote working of the Claimant. It for instance argues that the requirement of notice to the local labour office was dispensed with by agreement.
38. Section 26 of *the Employment Act* stipulates that the provisions of Parts V and VI of the Act which include section 40 thereof constitute the basic minimum terms and conditions of a contract of service. They form the foundation of the terms of a contract of service upon which the parties to the contract can only improve but not derogate from. As such, parties to a contract of service cannot agree to contract out of the terms.
39. What I understand the Respondent to be suggesting is that the parties agreed to contract out of some of the stipulations on redundancy under section 40 of *the Employment Act*. This suggestion flies in the face of section 26 of *the Employment Act* and is therefore impermissible.
40. The Claimant has claimed for commission pay. However, the Respondent contends that this benefit was only payable based on the performance of an employee.

41. I have looked at the contract between the parties and it is apparent that commission payment was pegged on performance. The Claimant did not table evidence on her performance to provide a basis for her claim for commission. Absent this evidence, the claim fails for want of proof.
42. The Claimant has prayed for payment of training fees of Ksh. 20,000.00. However, the Respondent avers that this sum was not payable to the Claimant but to the third party who was to provide training.
43. Clause six (6) of the contract between the parties is clear that the training fees was payable directly to the service provider and not the Claimant. As such and on this account, her claim for this amount is declined.
44. The Claimant has sought general damages for breach of her constitutional rights under articles 27, 41 and 47 of *the Constitution*. However, the court declines this plea for two reasons. First, the Claimant did not demonstrate that she was a victim of discrimination in order to claim violation of article 27 of *the Constitution*. Second, as regards articles 41 and 47 of *the Constitution*, the Claimant's claim will be redressed by application of *the Employment Act*. As such, to make an award under these provisions of *the Constitution* will result in double compensation.
45. The Claimant has further claimed for notice pay under section 40 (1) (f) of *the Employment Act*. However, the Respondent contends that it paid this amount. It avers that

the amount was included in the payment of USD 2,731.47 and USD 1,289.15 which was remitted to the Claimant on 19<sup>th</sup> August 2022 and 3<sup>rd</sup> November 2022 respectively.

46. Despite the Respondent providing proof of the aforesaid payments, the Claimant did not lead cogent evidence to controvert the Respondent's position on the matter. Absent this evidence, the court is convinced that the Respondent paid the Claimant the notice pay that is required under section 40(1) (f) of *the Employment Act*. As such, the claim for notice pay is declined.
47. The court has found that the Respondent flouted section 40 of *the Employment Act* whilst processing termination of the Claimant's contract. As such, the Claimant is entitled to compensation for unfair termination of her contract.
48. Section 49 of *the Employment Act* requires the court to take into account various factors whilst assessing the quantum of compensation for unfair termination of a contract of service. These include: whether the conduct of the employee contributed to the decision to terminate her contract; the circumstances in which the employment relationship was terminated; the reasonable expectations of the employee regarding the duration the contract would have lasted; and the duration of the employee's service.
49. In the instant case, it is apparent that the Claimant's conduct did not contribute to the decision to terminate her contract. Although the parties had not been in the

employment relationship for long, the court notes that the Claimant relocated from her home country to Kenya to work for the Respondent only for her contract to be terminated shortly thereafter. She contends that she relocated to Kenya because she reasonably expected that her services to the Respondent were to last for a long while.

50. In the court's view, it does not matter that the Claimant's decision to relocate to Kenya was partially informed by her desire to be with family. The fact that she was to work for the Respondent which is domiciled in Kenya certainly contributed to her decision to relocate to Kenya. As such, the court accepts her evidence that the Respondent's decision to abruptly terminate her services a few months after she had moved to Kenya was insensitive as it did not consider the inconvenience she had to bear in order to relocate to Kenya. Taking these factors into account, the court awards the Claimant compensation for the unfair termination of her contract of service which is equivalent to her gross salary for five (5) months, that is to say,  $\text{USD } 1,612.50 \times 5 = \text{USD } 8,062.50$ .
51. The amount awarded to the Claimant attracts interest at court rates from the date of this judgment.
52. The amount is subject to the applicable statutory deductions.
53. The Claimant is awarded costs of the case.

### **Summary of the Findings and Determination**

54. After evaluating the pleadings, evidence and submissions by the parties, the court makes the following findings and attendant orders:-
- a) The contract of service between the parties was for an indefinite term.
  - b) The Respondent unlawfully terminated the Claimant's contract of service.
  - c) The Claimant's claim for commission pay is declined for want of proof.
  - d) The Claimant's prayer for payment of training fees of Ksh. 20,000.00 is declined.
  - e) The Claimant's claim for general damages for violation of her constitutional rights is declined.
  - f) The Claimant's claim for redundancy notice pay under section 40(1) (f) of *the Employment Act* is declined.
  - g) The court awards the Claimant compensation for the unfair termination of her contract of service which is equivalent to her gross salary for five (5) months, that is to say,  $USD 1,612.50 \times 5 = USD 8,062.50$ .
  - h) The court awards the Claimant interest on the amount awarded at court rates from the date of this judgment.
  - i) The amount awarded to the Claimant is subject to the applicable statutory deductions.
  - j) The Claimant is awarded costs of the case.

**Dated, signed and delivered on the 30<sup>th</sup> day of October,  
2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> 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**