



**Nyakweba v Directline Assurance Company Limited (Cause 297 of 2019)
[2025] KEELRC 2981 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2981 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 297 OF 2019
DKN MARETE, J
OCTOBER 22, 2025**

BETWEEN

SANDRA NYAKWEBA CLAIMANT

AND

DIRECTLINE ASSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. This matter was brought to court by way of a Statement of Claim dated 7th May, 2019. The issue in disputes is therein cited as;
 1. Unfair and Unlawful dismissal.
 2. Other benefits arrears.
2. The Respondent in a Memorandum of Response dated 22nd July, 2019 denies the claim and prays that it be dismissed with costs.
3. The claimant in a Reply to Response to Claim dated 17th April, 2023 rubbishes the response and restates their claim.
4. The claimant's case is that all material time to this cause, she was an employ of the Respondent.
5. It is their further case that on 8th October, 2007, she was employed by the Respondent as a Claims Officer on permanent and pensionable terms. On 8th August, 2008, she was promoted to position of Deputy Claims Officer. Thereafter, the claimant was appointed to the position of Claims Manager at a salary of Ksh.130,000.00 per month on the same terms and conditions
6. The claimant's other case is that on 1st March, 2012, she was offered the position of Claims Director and put on three months' probation and later confirmed to the office at a remuneration of Kshs.500,000.00 per month less statutory deductions. All other terms and conditions remained



constant. Again, on 1st June, 2012, the claimant was so issued with a letter confirming her new status and employment. This was also followed with a contract to this extend.

7. The contract of employment was to expire on 3rd June, 2016 but before this happened, the claimant was issued with a letter dated 23rd December, 2015 expressing the Respondent desire to renew the contract. This was done on 1st February, 2016 with the issue of a new contract to the claimant. On 9th May, 2016, as claimant continued his services to the Respondent, the Human Resource Manager one Jane Mkundi in the presence of Managing Direction, Terry Winjenje without notice or valid reason summon the claimant and informed her that her contract of employment was been terminated on grounds of redundancy.
8. The claimant further avers that after her dismissal, the Respondent employed various persons including Ms Elizabeth Waichigo to take over her position as Head of Legal and Claims which is an indicator of the Respondent's ill intension and malice in terminating the claimant's employment. It is her contention that her contract was permanent and pensionable with a working span of sixty (60) years. Her stint of service was spoilt for commendable service and thus the reasons for her arise in office and remuneration from Kshs.50,000.00 to Kshs. 500,000.00.
9. The Claimant in the penultimate avers that she was never issued with a show cause letter or even walked through disciplinary proceedings this being a total disregard of procedures set out in the Employment Act, 2007. This was also an abrogation of the provisions of her employment besides good labour practices, natural justice and the Constitution Kenya, 2010 in that The Claimant was never served with a warming letter as is required by law.
 - i. The Claimant was never served with a Notice to Show Cause Letter as is required by law.
 - ii. The Claimant way never issued with a termination letter as is required by law but rather Employment Contract was terminated orally.
 - iii. The Respondent never explained to the Claimant reasons for the termination of her Employment contract as is required by law.
 - iv. The Respondent never constituted a Disciplinary Committee to hear and determine any allegations levied against the Claimant.
 - v. The Respondent went ahead to dismiss the Claimant without according her a chance to Appeal against the decision as provided for by law.
 - vi. The Claimant was denied an opportunity to be heard and to be represented as the law requires.
 - vii. The Respondent acted in a rushed manner and extremely inconsiderate manner.
 - viii. All the requirements of the law were thrown out in the haste to dismiss the Claimant.
10. The claimant again in a Reply to the Response to Claim avers that;

In reply paragraph 9 of the Statement of Response, the Claimant avers that the Respondent's action terminating her contract flouted the Constitution, the provisions of the Employment Act as stipulated under section 40, the provisions of her employment contract as provided under Clause 22, The Human Resource Management Professionals Act, the tenets of good Labour practice and the principles of natural justice in that:

 - i. No Notice was issued to the Claimant notifying her that the Respondent was to undergo a redundancy process as contemplated under section 40(1)(b) of Employment Act.



- ii. Failure to invite the Claimant to discuss consult on possible redundancy situations and explore alternatives.
- iii. The Respondent never gave notice to the labour office at least a month before the process commenced.
- iv. The alleged redundancy was not justified as the Respondent created the positions of Head of Claims and Legal and also the position of Manager to handle the same duties which were being handled by the Clams Director.
- v. The Claimant was never made aware and copied in the alleged letter sent to the labour office.
- vi. The Claimant states that the Respondent failed to establish a reasonable, fair, objective selection criterion.
- vii. No severance pay was offered or paid to the Claimant.
- viii. The Respondent acted in a rushed manner and extremely inconsiderate manner.
- ix. All the requirements of in the law were thrown out in the haste to dismiss the Claimant.

She prays thus;

- a. Loss of earnings as damages for unfair termination (12 months* 500,000* 25 years)
.....Kshs.150,000,000/=
- b. Pension for the remaining period (12*10/100 500,000*25years)
.....Kshs.15,000,000/=
- c. Issuance of an executed Certificate of Service.
- d. Interest on (a) and (b) above at Court rates from the day each payment fell due and payable until payment in full.
- e. Cost of this suit.

- 11. The Respondent's case is a denial of the claim.
- 12. The Respondent in denial of the claim comes out as follows; That the Claimant did not execute their alleged contract of employment and challenges the claimant to strict proof thereof. The Respondent again denies employing various persons to replace the Claimant's redundant Claimant's Director position and again puts the Claimant to strict proof thereof. That Respondent denies that the Claimant employment contract was permanent and pensionable and reaffirms that the three (3) year contract offered to the Claimant was never executed by herself. That the Claimant was lawfully, procedurally and fairly terminated from employment on account of redundancy. The Respondent denies their averments at paragraph 17 of the claim including all the particulars set out thereat. That the decision to terminate the Claimant services was done in accordance with the company polices and the requirements of the Employment Act, 2007. That the Claimant is not entitled to damages to the tune of Ksh.150,000,000.00 or any part thereof as she was fully paid her legal dues and accepted thereby discharging the Respondent from any liability whatsoever. The Claimant is not owed any pensions dues and if at all, these would not fall within the jurisdictions of this court. In any event, the Respondent avers that they are aware that the Claimant was duly paid due pension by M/s Alexander Forbes Co. Ltd.
- 13. The issues for determination therefore are;



1. Whether the termination of employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
2. Whether the Claimant is entitled to the relief sought.
3. Who bears the costs of this cause.
14. The matter came to court variously until the 20th February, 2025 when the parties agreed on a determination by way of written submissions.
15. The 1st issue for determination is whether the termination of employment of the Claimant by the Respondent was wrongful, unfair and unlawful. On this, the parties hold diametrically oppose position. The parties in their various written submissions come out in reiteration of their respective cases.
16. It is the claimant's submissions that redundancy is a termination like any other and therefore the requirement of section 43, 45, 47 and 49 of the Employment Act, 2007 apply in the circumstances. Section 40 is particularly ideal and provides that redundancy must be based on valid and lawful reasons, after which the rudiments of section 40 must be fully applied and accomplished.
17. The claimant further submits that the notice of separation dated 9th May, 2016 alluded to operational requirement and anticipated changes in the organization which were never demonstrated, explained or cited by the Respondent as reasons for a declaration of redundancy for the claimant. This is besides the fact that in a letter dated 29th June, 2010, the Respondent had confirmed to the NSSF that the claimant was employed on a permanent and pensionable basis. Here, the claimant seeks to rely on the celebrated authority of *Walter Ogal Anuro vs Teachers Service Commission (2013) eKLR* where the court superbly restated the ingredients of a fair termination of employment as comprising of substantive and procedural fairness.
18. The claimant further submits that it is absurd and unheard-of that in an environment of a numerous staff portfolio like in this case, the Respondent only declared one position vacant. This is an indicator that the redundancy process was not substantially justified as the Respondent neither filed the committee's reports or minutes to justify the re-organization. It was merely a blank statement of redundancy in breach of section 5(3) of the Employment Act, 2007 and Article 27 of the Constitution. The claimant in buttressing their case chooses to rely on authorities of *Kenya Airways Limited vs Aviation & Allied Workers union Kenya & 3 others* and *VMK VS CUEA (2013) eKLR* to this extent.
19. The Respondent in their written submission dated 7th April, 2025 comes in to submit a case of lawful termination of employment. The Respondent in this write-up turns around and denies the claimant's case by setting out a case of compliance with the parameters of redundancy a set out in section 40 of the Employment Act, 2007. However, this is not supported by any evidence.
20. A look at the respective cases of the parties brings out this matter in favour of the claimant. On a balance of probabilities and preponderance of evidence, the claimant's case comes out top most. The Respondent has in toto failed to demonstrate adherence to section 40 of the Employment Act, 2007 which forms the bedrock of the essentials for a fair and procedural case of redundancy. In this event, a case of lawful redundancy falls by the way side. I therefore find a case of wrongful, unfair and unlawful termination of the Claimant's employment by the Respondent and hold as such.
21. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.
22. I am therefore declined to allow the claim and order relief as follows;



- i. Twelve (12) months salary as compensation for unlawful termination of employment.
Kshs.500,000.00x12 monthsKshs.6,000,000.00
- ii. Interest at court rates from the date of this judgment of court till payment in full.
- iii. The costs of this cause shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF OCTOBER 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Buluma instructed by M/s Lestins & Smith Advocates for the Claimant.

Miss Okondo instructed by J.A. Guserwa & Company Advocate for the Respondent

