

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E853 OF 2022

LINET NYONGESA.....

CLAIMANT

VERSUS

MILESTONE GAMING

LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This judgment relates to the Claimant's Statement of Claim dated 21st November 2022 and filed in court on 22nd November 2022. Under the claim, the Claimant seeks the following reliefs as against the Respondent: -

- a) A Declaratory order that the Claimant's termination was unlawful and unfair
- b) Twelve (12) months' salary as Contact Center Manager (12 x KES.481,500) amounting to KES.5,778,000/- being compensation for wrongful and unfair termination of employment:
- c) KES.2,407,500/- being severance pay at the rate of 15 days for every year worked as at 31st October 2022.
- d) One (1) month payment in lieu of notice (KES. 481,500/-)
- e) Costs of this suit
- f) A correct certificate of service

- g) Interest on (b), (c), and (d) above.
2. The Respondent entered an appearance and subsequently filed a Response to the Statement of Claim dated 14th December, 2022, denying the Claimant's averments.
 3. The Claimant's case was first heard on 14th March, 2024, but was stood down and heard again on 24th February, 2025, together with her witness, Moses Owino. Both witnesses adopted their respective witness statements, and the Claimant produced the documents filed in her case as her exhibits. The Respondent's case was also heard to conclusion on this hearing date, at which the court took evidence from one Robert Macharia, who similarly adopted his statements and produced the Respondent's documents as exhibits.
 4. Submissions were filed for both parties and have been duly considered.

The Claimant's case

5. It is the Claimant's case that she began working for the Respondent on 14th December 2013 on a starting salary of Kshs.15,000 and rose through the ranks due to her competence and dedication. She avers that by November 2020, she had risen to the role of Contact Center Manager, earning a gross monthly salary of Kshs.481,500.
6. The Claimant states that the Contact Center Manager position falls under the Customer Care and Service

Department and is on the same organizational level as the Customer Experience Manager, Quality Assurance Manager, and Workforce Manager. She avers that hers was the only role with subordinate staff reporting to it.

7. It is her case that in this role, she was responsible for overseeing and managing the Respondent's call centers and staff, which is an essential function for the organization's operations. The Claimant states that her role as Contact Center Manager was a critical part of the Respondent's operations and was essential to the company's ability to function.
8. She avers that she served diligently in this position until 30th September 2022, when she was informed by the Head of Human Resources that the company was undergoing restructuring aimed at improving profitability, and which would render her position redundant.
9. It is her case that a letter dated 30th September 2022 followed, which letter referred to the abolishment of the Customer Experience Manager position, which was an entirely different role from hers. The Claimant contends that this purported redundancy was neither genuine nor reasonable, but was instead a targeted attempt to remove her rendering the process unlawful.
10. The Claimant asserts that the role of Contact Center Manager was never actually abolished, as the Respondent continued to require and perform the same functions after

her termination. She states that she was discriminated against, noting that hers was the only role eliminated during the restructuring, while the Respondent was hiring up to 10 additional customer service agent positions that would ordinarily fall under her supervision, despite claiming the redundancy was meant to improve profitability.

11. The Claimant further maintains that the redundancy process was neither genuine nor reasonable and that the Respondent failed to follow the required procedures, and as a result, the redundancy declaration was unlawful.
12. The Claimant argues that the redundancy process was unlawful because the Respondent failed to comply with essential legal requirements. She avers that the redundancy notice issued on 30th September 2022 presented the termination as a final decision rather than initiating the required consultation. It is her case that the Respondent also failed to notify the labour office of the intended redundancy.
13. The Claimant states that she was not consulted, heard, or allowed to challenge the process, the selection criteria, or alternatives to redundancy. She states that no genuine effort was made to explore other options before her employment was terminated.
14. It is the Claimant's case that the selection criteria used were discriminatory, targeting her personally rather than her role and ignoring the Last-In First-Out principle, especially given new hires under her department.

15. The Claimant maintains that the redundancy declaration and all related actions were unlawful, unreasonable, and void, and that her termination lacked a valid reason and violated her right to be heard under Section 45 of the Employment Act.
16. The Claimant states that the Respondent failed to provide a valid reason for her termination, did not give her an opportunity to be heard, and that it later issued her a manipulated certificate of service.
17. On cross-examination, the Claimant told the court that in the year 2017, she was sent to Tanzania to head the department of customer care. It is her assertion that in 2013, her employer was Pevans E. A. Limited, which gave her her first contract. She avers that her initial contract does not mention the Respondent, though they were one and the same.
18. It is the Claimant's position that she resigned her role in Kenya on 20th September 2017, and took up the role in Tanzania from January 2018, where she worked for Sportspesa Tanzania and had a contract with Sportspesa.
19. It is her evidence that her contract with the Respondent is dated 6th January, 2021, and that she signed the contract and the role was Contact Centre Manager. The Claimant further told the court that she did not know when the

Respondent company was incorporated, but maintained that her contract with the Respondent was entered into in 2021.

20. It is her testimony that she sued Milestone Gaming and not any other company. It is her position that she was not given notice of redundancy, but was only issued with a termination letter indicating the termination was on account of redundancy.

21. She avers further that she was called and told that the Respondent's company no longer needed her services and that her last day at work was 31st October, 2022.

22. It is the Claimant's evidence that she could not confirm whether notice was given to the Labour Office, though the letter indicates that it was received by the Labour Office. She avers that the letter of 11th October, 2022, listed her terminal dues, but that she had worked for the company longer than was stated in the certificate of service.

23. It is her further case that she was paid severance pay for 2 years and salary for the last month of service, together with leave days. It is the Claimant's position that she was in the service of the Respondent for more than 9 years, arguing that Milestone Gaming is the same company as Sportspesa, and therefore seeks 7 years of severance pay from Sportspesa Kenya.

24. On re-examination, the Claimant told the court that Pevans E. A Ltd was changed to Milestone Gaming Ltd, but it

is the same company, with the same CEO, branding, physical address, and trade name (Sportpesa). She states that the offer to go to Tanzania was made to her by the global CEO, and that she accepted it, knowing she had resigned from the role but not from the company.

25. The Claimant prays that her claim be allowed.

The Respondent's case

26. The Respondent's case is that it offered the Claimant employment as a Contact Center Manager, which she accepted through a letter dated 30th October 2020, but due to regulatory restrictions affecting the Respondent's operations, her actual employment commenced on 1st December 2022 under a formal employment contract.

27. The Respondent states that the Claimant accepted the position by signing both the offer letter and the employment contract. The Respondent further states that it could not have employed the Claimant on 14th December 2013, as alleged, because it did not exist at that time, as evidenced by its certificate of incorporation.

28. It is the Respondent's position that between 14th December 2013 and 1st November 2020, the Claimant was employed by other organizations, as shown in her curriculum vitae, and was therefore not available for employment with the Respondent during that period.

29. The Respondent states that the Contact Center Manager role, which was formerly part of the Customer Care department, was abolished following departmental restructuring. It states further that all Customer Care staff, regardless of rank, report directly to the Head of Department, and no staff reported to the Contact Center Manager, and that the Respondent's organogram is provided in support of this assertion.

30. It is the Respondent's position that the Contact Center Manager position was not essential to its operations, and that the operations continued uninterrupted after the role was abolished.

31. The Respondent states that when verbally informed of the role's abolishment, the Claimant abruptly and rudely stormed out of a meeting with the Head of Human Resources, as evidenced by her email dated 30th September 2022.

32. The Respondent states that it issued letters dated 30th September 2022 to both the Claimant and the Labour Officer. It states that the letters mistakenly referred to the position of Customer Experience Manager instead of Contact Center Manager due to a clerical error, which upon discovery, it issued a corrected letter to the Labour Officer on 5th October 2022 and subsequently sent another corrected letter on 11th October 2022 to both the Claimant and the Labour Officer stating the correct position.

33.It is the Respondent's case that the position of Contact Center Manager was abolished, and the Claimant's employment was terminated through a letter dated 31st October 2022, and that the Labour Officer was notified of this termination via a letter dated 1st November 2022.

34.The Respondent asserts that the Claimant received all her final dues in accordance with the law, as shown by her, and was issued a certificate of service as required under the Employment Act, 2007.

35.The Respondent maintains that it is entitled to restructure its departments based on business needs, that the decision to abolish the Contact Center Manager position was lawful, and that the resulting redundancy arose solely from the restructuring of the customer care department. It further states that the abolition of the role was neither intended to, nor did it in fact, discriminate against the Claimant.

36.The Respondent denies the Claimant's allegations of unfairness, procedural impropriety, or irregularity in the declaration of redundancy, and asserts that the Labour Officer was properly notified of the intended redundancy.

37.The Respondent further states that the Claimant's termination on account of redundancy was lawful and compliant with the Employment Act, 2007. It denies that the termination lacked reason or that the Claimant was denied an opportunity to be heard.

38. The Respondent maintains that the Claimant's termination resulted from redundancy caused by the restructuring of the customer care department, which led to the abolition of the Contact Center Manager position. It states that the Claimant was given an opportunity to be heard and was issued a valid certificate of service.

39. On cross-examination, RW1 told the court that the Claimant's seniority was considered and that there was no one else in her position. It is RW1's evidence that as the Head of Human Resources at the Respondent's company, he called the Claimant to a meeting, but that the notice or the purpose of the meeting was not communicated prior.

40. It is RW1's testimony that he had not communicated to the Claimant earlier that she was going to be terminated. He further confirmed that the notice of redundancy issued referred to Customer Experience Manager and not Contact Centre Manager. He further confirmed that the Claimant's position was Contact Centre Manager.

41. It is RW1's evidence that he did not take minutes of the meeting held with the Claimant. He confirmed that there is no company in Kenya called Sportpesa, but that Sportpesa is a trade name. It is his further evidence that Pevans E. A. Ltd was using the trade name Sportpesa, and that the Respondent is a franchise holder of Sportpesa and trades under the name Sportpesa.

42. RW1 further testified on cross-examination that the Claimant resigned from Pevans E. A Ltd, and that resigning from a position is similar to resigning from the company.

43. RW2, a process server, told this court on cross-examination that he had no evidence indicating that the person he served at the Labour Office (Eli Jothemo) was a labour officer.

44. The Respondent prays that the Claimant's claim be dismissed with costs.

Analysis & Determination

45. The following issues arise for determination: -

- i. Whether the Claimant was an employee of the Respondent before 2021;
- ii. Whether the Claimant's termination on account of redundancy was fair; and
- iii. Whether she is entitled to the reliefs sought.

Whether the Claimant was an employee of the Respondent before 2021

46. The Claimant contends that she began working for the Respondent on 14th December 2013 and rose through the ranks, attaining the position of Contact Center Manager by November 2020.

47. On its part, the Respondent maintains that it offered the Claimant employment as a Contact Center Manager, which

she accepted through a letter dated 30th October 2020, but due to regulatory restrictions affecting the Respondent's operations, her actual employment commenced on 1st December 2020 under a formal employment contract. The Respondent maintains that it could not have employed the Claimant on 14th December 2013, as alleged, since it did not exist at that time, as evidenced by its certificate of incorporation.

48. The Certificate of Incorporation before the court indicates that the Respondent company was indeed incorporated on 24th September, 2017. This therefore confirms that the Respondent could not have employed the Claimant before the date of its incorporation.

49. The Claimant's evidence further confirms that she was in 2013 employed by Pevans E.A. Ltd trading as Sport Pesa, and that she resigned from this entity in September 2017 to take up a new contract in Tanzania with Sportpesa Tanzania in 2018.

50. The record further shows that her first actual written contract with the Respondent Milestone Gaming Ltd is one dated 6th January 2021, which took effect from 1st December 2020.

51. Although it is evident that Pevans E. A Ltd, Sportpesa Tanzania, and the Respondent share a common trade name, Sports pesa, the companies are all incorporated as separate legal entities, which explains why the Claimant had to resign

from one to move to another, rather than simply being redeployed.

52. In ***Kenya Airways v Aviation & Allied Workers Union (2014) eKLR***, the Court of Appeal held that employment relationships and liabilities cannot be implied between distinct corporate entities without documentary or contractual proof.

53. The Claimant did not provide any contract, pay slips, or other evidence connecting her 2013–2020 employment to Milestone Gaming Ltd, the Respondent herein.

54. In the end, I reach the conclusion that the Claimant only became an employee of the Respondent on 1st December 2020, and therefore her claim of 9 years of service with the Respondent has not been proven.

55. I thus hold that the Claimant worked for the Respondent for only 2 years.

Whether the Claimant’s termination on account of redundancy was fair

56. The Claimant was terminated on account of redundancy. Section 2 of the Employment Act, 2007 defines redundancy thus: -

“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.”

57. The general principle is that redundancy is a legitimate ground for terminating a contract of employment, provided that the employer can prove that actual redundancy was the reason for the dismissal.

58. Section 40(1) of the Employment Act sets out seven conditions that an employer must adhere to for a redundancy process to pass muster: -

“An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions:-

(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.**

59. The provisions herein are couched in mandatory terms; hence, an employer considering redundancy cannot cherry

pick and selectively apply any of the conditions. (See ***Kenya Union of Journalists and Allied Workers v. Nation Media Group, (2013) eKLR***).

60. In ***Thomas De La Rue v David Opondo (2013) eKLR***, it was held that a redundancy is invalid if any of the statutory steps under Section 40 are not complied with.
61. In the instant case, the notice dated 30th September, 2022, referred to the position of Customer Experience Manager as the position being abolished and not that of Contact Center Manager held then by the Claimant, but which I note was rectified by subsequent letters.
62. RW1 admitted that no prior communication was sent out to the Claimant about the redundancy meeting, and no minutes of the alleged consultation meeting were taken. Further, the letter presented termination as a concluded decision and not a notice of intended redundancy as is envisaged under Section 40. In ***Loice Otieno v Kenya Commercial Bank (2013) eKLR***, the court opined that notice must be of the intended redundancy, not a final decision.
63. Additionally, the notice to the Labour Office is also questionable, as the process server could not confirm that the person served was indeed a labour officer.

64. In light of the foregoing, the Respondent substantially failed to follow mandatory redundancy procedures, as consultation and prior notice are mandatory requirements under Section 40 of the Employment Act, 2007, and which omissions render the termination by redundancy procedurally unfair, and so I hold.
65. On whether the Respondent had fair and justified reason (s) to declare the Claimant redundant, the Respondent's position is that the Claimant's role of Contact Center Manager was abolished as part of the company's restructuring.
66. On her part, the Claimant argues that her duties continued after termination, that the redundancy was targeted, and that the Respondent hired more staff, which then undermines the justification for the redundancy. In ***Kenya Airways v Aviation & Allied Workers Union (2014) eKLR***, it was held that an employer may restructure provided that decisions are based on legitimate business needs.
67. The Respondent did not lead evidence on the restructuring, as no documents were produced relating to the restructuring or informing the need to restructure. Further, no minutes were produced in evidence of the discussions regarding the reorganization, and the Respondent did not also demonstrate financial challenges or an organogram showing the elimination of the Contact Centre Manager role before termination.

68. The Claimant's assertion that the Respondent hired 10 new customer service agents, whose roles ordinarily fall under her, was also not controverted. Further, the Respondent did not provide evidence of absorption or redistribution of the Claimant's duties.

69. The totality of the mishaps herein raises doubt on the legitimacy of the alleged restructuring. In ***Jane Khalechi v Oxford University Press (2013) eKLR***, it was held that redundancy must be based on proven operational reasons and the employer must demonstrate that the job no longer exists.

70. In the final analysis, I find and hold that the Respondent did not prove that the Claimant's position genuinely ceased to exist, and the redundancy fails the test of substantive justification under Section 45(2)(a).

71. I thus find and hold that the termination by redundancy is both procedurally and substantively unfair.

Whether the Claimant deserves the remedies sought

72. The Claimant sought a declaratory order that she was unfairly and unlawfully terminated, twelve (12) months' salary being compensation for wrongful and unfair termination of employment, Kshs.2,407,500/- being severance pay at the rate of 15 days for every year worked as at 31st October 2022, one (1) month payment in lieu of

notice (KES.481,500/-, Costs of this suit, a corrected certificate of service and interest.

73. The Court has held the Claimant's termination unfair and unlawful, which entitles her to compensation pursuant to Sections 49 and 50 of the Employment Act. The Claimant was terminated for no fault of her own, but solely at the Respondent's instance.

74. Having told the court in her oral testimony that she has since secured alternative comparable employment, I deem an award of 7 months' salary sufficient compensation for the unfair termination.

75. The record indicates that the Claimant was paid severance pay for the two-year period she served the Respondent. The 7 years severance pay claim fails the court having found that the entities she served between 2013-2020, were separate from the Respondent. This claim, therefore, fails.

76. On the claim for one month salary in lieu of notice, the terminal dues listed and paid pursuant to the letter dated 31st October, 2022, do not include salary in lieu of notice. The claim is thus merited and is awarded as claimed.

77. In conclusion, I grant the following reliefs: -

- a) A declaration that the Claimant was unfairly and unlawfully terminated on account of redundancy

- b) That the Respondent shall pay the Claimant an equivalent of 7 months' salary as compensation for the unfair termination at Kshs.3,370,500/-
- c) One month's salary in lieu of notice is awarded at Kshs.481,500/-
- d) The Respondent shall bear the costs of the suit
- e) A certificate of service be issued to the Claimant within 14 days of this judgment.
- f) Interest shall accrue on (b) & (c) from the date of this judgment until payment in full.

78. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER, 2025.

C. N. BAARI
JUDGE

Appearance:

Ms. Nekoye h/b for Mr. Ochieng for the Claimant

Mr. Ebosso h/b for Mr. Gakaria for the Respondent

Ms. Esther S- C/A