

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NOS. E054 & E056 OF 2023

ELIJAH KIERE MBURU.
CLAIMANT

VERSUS

TATA CHEMICALS MAGADI LIMITED.....
.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this claim through a Memorandum of Claim dated 27th January, 2023. He seeks the following reliefs: -
 - a) A declaration that the Respondent's actions to terminate the Claimant from employment on account of redundancy was unlawful.
 - b) An order for compensation equivalent to twelve months' gross salary for wrongful termination from employment on account of redundancy.
 - c) A declaration that the Claimant is entitled to payment of his unpaid 42 leave days.
 - d) Costs of the suit
 - e) Interests of (b), (c), and (d) at the court's rate.

2. The Respondent filed a Statement of Response to the Claim dated 17th November, 2023, denying the Claimant's claim

and stating that it adhered to due process in declaring the Claimant redundant.

3. Both the Claimant's and the Respondent's cases were heard on 1st July, 2025. The Claimant testified in support of his case, adopted his witness statement, and produced the documents filed in support of his case. The Respondent presented Nicholas Mwanyalo, their Human Resources Manager, to testify on its behalf. He adopted his witness statement and produced the Respondent's documents as exhibits in the suit.
4. Parties further agreed to adopt the proceeding in this suit to apply to ***ELRC Cause No. E056 of 2023- Simon Macharia Mwaura v. Tata Chemicals Magadi LTD***, since the matters are similar, arising from the same issues, and against the same Respondent. The two causes were thus consolidated, and the instant file became the lead file.
5. Submissions were filed for the Claimant.

The Claimants' Case

6. The Claimant's case is that he worked for the Respondent as a dredge operator for approximately 13 years, earning a monthly gross salary of Kshs.139,203.41. It is his case that throughout his employment, he performed his duties diligently, competently, and without any disciplinary issues.
7. He states that on or about 12th August 2021, the Respondent abruptly declared him redundant without a

valid reason or lawful justification. He asserts further that the redundancy process did not follow the required legal procedures under the Employment Act, causing him significant hardship.

8. The Claimant contends that the termination was abrupt, unfair, unprocedural, and unlawful despite his long, loyal service.
9. The Claimant asserts further that the Respondent had absolutely no valid justification for terminating his employment on grounds of redundancy; hence, the termination was irregular, wrongful, unfair, unprocedural, and unlawful, and that it disregarded the legal requirements governing redundancy.
10. It is the Claimant's position that the Respondent failed to pay his 42 days of accrued leave and did not follow the legally required criteria for declaring redundancy. He states that his termination lacked any justifiable reason and was carried out irregularly, unfairly, unprocedurally, and unlawfully, in violation of labour laws.
11. The Claimant states that their abrupt termination without following proper labour practices or their employment terms, and failure to give them time to prepare for the sudden loss of employment, despite their long and faithful service, points to malice and bad faith on the part of the Respondent.

12. The Claimants state that they had always performed their duties diligently and that the Respondent's actions violated their labour rights.

13. It is their further case that attempts to recover their dues, specifically payment for 42 untaken leave days, have been unsuccessful, as the Respondent has been evasive and unwilling to pay. It is their case that the abrupt loss of income caused them emotional distress, financial strain, and damages for which they now claim compensation.

14. The Claimant, on cross-examination, told the court that no consultations were held on the declaration of redundancies. On further cross-examination, he confirmed that several meetings were held on the redundancy, but which were only for information and not consultative.

15. The Claimant confirmed that he was paid severance pay, ex gratia, and an ex gratia medical insurance.

16. During re-examination, the Claimant confirmed that meetings were called to discuss the redundancy process, which had already commenced. It is his evidence that what they were given was general information and not the specifics of the redundancy.

The Respondent's Case

17. The Respondent states that the Claimant's computed gross salary, inclusive of allowances, was Kshs.185,425.91. It

further states that the redundancy process was lawful and necessitated by the adverse economic impact of the COVID-19 pandemic, which caused significant losses and a negative net worth, prompting a company-wide restructuring to reduce costs.

18. The Respondent states that it communicated openly with employees, including the Claimant, about the need to reduce the workforce and that it held several consultative meetings in which the Claimant participated. It denies any unfair or malicious termination and insists that all proper procedures were followed.

19. The Respondent also contends that the Claimant received all terminal dues and demands strict proof for any claims to the contrary.

20. It is the Respondent's case that the Claimant has no valid or legitimate cause of action, and that the Claim herein amounts to an abuse of the court process.

21. On cross-examination, RW1, who is the Respondent's Human Resources Manager, told the court that loss making was not the reason for the declaration of redundancies. His further testimony is that failure by the Respondent to generate revenue was one of the issues informing the redundancies. He told the court that no documents had been produced to show that the Respondent was facing a difficult business environment.

22.It is RW1's evidence that the notice to the labour office did not indicate the positions to be declared redundant, nor that the Claimant's position would be affected.

23.It is his further evidence that the notice did not indicate the criteria to be adopted in determining employees to be declared redundant. RW1 further told the court that although he does not remember the number of dredge operators that the Respondent's company had, he knows for a fact that there were more than 30 of them, out of whom 20 percent were affected by the redundancy.

24.RW1 confirmed that the Claimant was declared redundant on 12th August 2021, and that a job advertisement which he signed was sent out 6 months later for the same position of dredge operators.

25.The Respondent prays that the Claimant's suit be dismissed and costs awarded in its favour.

Analysis and Determination

26.I have considered the pleadings, the witnesses' oral testimonies, the evidence adduced, and the rival submissions. The following issues arise for determination: -

- i. Whether the Claimant's termination on account of redundancy is lawful and fair.
- ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's termination on account of redundancy was lawful and fair

27.A termination on account of redundancy is considered fair where the employer abides by the 7 steps set out under Section 40(1) of the Employment Act, as the bare minimum standards for employee redundancy as follows: -

“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.**

28. The foregoing conditions precedent to redundancy are mandatory requirements of the law, and are not left to the choice of the employer.

29. The Claimant's position is that his termination was abrupt, unfair, unprocedural, and unlawful despite his long and loyal

service. On cross-examination, he told the court that no consultations were held on the declaration of redundancies, but on further cross-examination, he confirmed that several meetings were held on the redundancy, but which were only for information and not consultative.

30. Section 40 of the Employment Act demands that written notice be given to the employee and the labour officer stating the reasons and the extent of redundancy, the criteria for selection, consultations on the redundancy, as well as payment of severance and terminal dues.

31. The Respondent's witness (RW1) confirmed to the court on cross-examination that the notices to the labour office and to the Claimant did not specify the positions to be affected by the redundancy and the selection criteria to be applied. There is also no evidence that seniority, skill, or other objective criteria were used to select the employees/positions for redundancy. In ***Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR***, the court held that failure to demonstrate objective criteria and meaningful consultations renders redundancy unlawful.

32. Further, the Claimant's assertion that meetings held were merely informational and not consultative was not controverted. The Court in ***Jane Khalechi v Oxford University Press E.A Limited (2013) eKLR*** emphasized

that redundancy consultations must be genuine, structured, and meaningful, and not merely informational.

33. In light of the foregoing, I find and hold that the redundancy was procedurally flawed, hence the termination on account of the redundancy is unfair.

34. The second limb in determining the fairness of a redundancy is whether the employer/Respondent had valid grounds that would justify the declaration of redundancy.

35. The general principle is that redundancy is a legitimate ground for terminating a contract of employment, provided that the employer can show that actual redundancy was the reason for the dismissal. In the ***Kenya Airways case (supra)*** the Court of Appeal held that redundancy is a legitimate business decision, but an employer must show a valid operational reason, and strict compliance with Section 40 before declaring an employee redundant. In this case, the court proceeded to stress that mere economic challenges are not enough; an employer must present objective evidence of a redundancy rationale.

36. The Claimant's assertion is that the Respondent had absolutely no valid justification for terminating his employment on grounds of redundancy; hence, the termination was irregular, wrongful, unfair, unprocedural, and unlawful.

37. On its part, the Respondent claimed that the redundancy process was lawful and was necessitated by the adverse economic impact of the COVID-19 pandemic, which caused significant losses and a negative net worth, prompting a company wide restructuring to reduce costs.

38. The Respondent's witness on cross-examination admitted that no documents were produced to prove that the Respondent was making losses or in financial distress, and further stated that loss making was not the reason for the redundancy, which position contradicts his earlier assertion. RW1 further told the court that within six months after declaring the Claimant redundant, the Respondent advertised the same positions that were purportedly declared redundant.

39. In ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR***, it was held that re-advertising the same position after redundancy, casts doubt on the genuineness of the redundancy, and suggests the reason for the redundancy was not operational.

40. In the premise, I find and hold that the Respondent has failed to prove a valid, fair and justified reason for the redundancy.

41. In whole, I find the Claimant's termination on account of redundancy both procedurally and substantively unlawful and unfair.

Whether the Claimant is entitled to the reliefs sought

42. The Claimant sought a declaration that his termination on account of redundancy was unlawful, an order for compensation equivalent to twelve months' gross salary for wrongful termination on account of redundancy, a declaration that he is entitled to payment of 42 leave days, costs, and interest.

Compensation for unfair termination

43. In ***Kenfreight (E.A) Limited v Benson K. Nguti [2016] KECA 409 (KLR)***, the Supreme Court observed that the Employment Act provides for a number of remedies for unlawful or wrongful termination under Section 49, and it is up to the judge to exercise his or her discretion to determine whether to allow any or all of the remedies provided. Further in ***Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR*** the court pointed out that an award of the maximum of 12 months' pay, must be based on sound judicial principles, and that the trial judge must justify or explain why a Claimant is entitled to the maximum award.

44. Considering that the Claimant herein was in the service of the Respondent for 13 years, his assertion that he had no disciplinary issues is uncontroverted and for reason that his termination was abrupt subjecting him to psychological trauma, I deem an award of 8 months' salary sufficient compensation for the unfair termination, and which is hereby awarded.

42 days pay on account of accrued leave

45. The Claimant asserts entitlement to 42 days of unpaid leave, which he contends was not part of the payment made during his exit. The Respondent's position is that terminal dues were fully paid, but did not lead evidence such as leave records and/or pay slips as prove that either the leave was utilized or that the Claimant was paid in lieu of leave not taken.

46. Under Section 74 of the Employment Act, the employer is under obligation to keep employment records, and failure to produce these records means the Claimant's evidence is not contested. The Claimant is therefore entitled to payment for the 42 on account of accrued leave days.

47. In conclusion, the Claimant's claim succeeds in terms of the following orders: -

- a) A declaration that the Claimant's termination on account of redundancy was unlawful and unfair
- b) An order for payment of 8 months' salary as compensation for the unfair termination at Kshs.1,483,407/-
- c) An order that the Respondent pays the Claimant for 42 days of leave not taken
- d) The Respondent shall bear the costs of the suit
- e) Interest shall accrue on (b) & (c) at court rate from the date of this judgment until payment in full.
- f) This Judgment shall apply to ***ELRC Cause No. E056 of 2023- Simon Macharia Mwaura v. Tata Chemicals Magadi LTD***

48. Judgment of the Court.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 11TH DAY OF DECEMBER, 2025.**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Mwangi present for the Claimant

Mr. Munene h/b for Mr. Jack Bwire for the Respondent

Ms. Esther S - CA