



Bagonza v Regional Centre on Small Arms & Light Weapons (Cause E889 of 2024) [2026] KEELRC 174 (KLR) (28 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 174 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E889 OF 2024
CN BAARI, J
JANUARY 28, 2026**

BETWEEN

GODFREY BAGONZA CLAIMANT

AND

REGIONAL CENTRE ON SMALL ARMS & LIGHT WEAPONS RESPONDENT

JUDGMENT

Introduction

1. This suit was lodged by way of a Memorandum of Claim dated 15th October, 2024, wherein the Claimant seeks the following reliefs as against the Respondent: -
 - i. A declaration that the Respondent discriminated against the Claimant contrary to his constitutional rights as per Article 27 of *the Constitution* and Section 5(3) of the *Employment Act* of the Republic of Kenya in the conduct of affairs culminating in the Claimant's termination from employment.
 - ii. Damages for infringement of Claimant's constitutional rights.
 - iii. A declaration that Claimant's termination was unfairly and unprocedurally conducted.
 - iv. Twelve (12) months' salary compensation for unfair and unprocedural termination of employment at the sum of USD 120,000.00.
 - v. Three months' salary in lieu of notice at USD.30,000.00
 - vi. Severance pay of not less than 15 days' pay for each of the 11 years he has worked at RECSA, being USD 55,000/-
 - vii. Service pay of not less than 15 days' pay for each of the 11 years he has worked at RECSA, being USD 55,000/-



- viii. An order that the Respondent issue the Claimant with a certificate of service for the period he has been in its employment
 - ix. An order to pay costs and/or relocate the Claimant and his belongings to his home country, Uganda.
 - x. Costs of the suit plus interest
 - xi. Any other relief this Honorable court may deem fit
2. The Respondent filed a Response to the Memorandum of Claim dated 19th November, 2024, denying the Claimant's claim. The Claimant filed a reply to the Response to the claim dated 13th January, 2025.
 3. The Claimant's case was heard on 28th May, 2025, when the Claimant testified in support of his case, adopted his witness statement, and produced a bundle of documents filed as exhibits in support of his case, all dated 15th October, 2024.
 4. The Respondent's case was heard on 2nd October, 2025. Ms. Eunice Ndobi (RW1) testified in support of the Respondent's case. The witness adopted her witness statement and produced the list and bundle of documents filed as exhibits in support of the Respondent's case.
 5. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

6. The Claimant's case is that he commenced employment with the Respondent on 1st July 2007 as an International Professional Staff member, serving as an Administrative & Procurement Officer under a letter of offer dated 7th June 2007. He avers that his employment in that role was terminated on 30th September 2013, at which time a new position of Grant Manager WRA-RECSA was created and offered to him.
7. It is his case that acceptance of the new role repealed his previous contract, and he assumed the Grant Manager position on 1st October 2013 after receiving terminal dues for the earlier contract.
8. The Claimant avers that his contract as Grant Manager WRA-RECSA was renewed several times, with the final renewal dated 9th December 2022 for a two-year term from 1st January 2023 to 31st December 2024. He states that the contract provided for a monthly salary of USD 10,000, tax-free, in accordance with the host agreement between the Republic of Kenya and the Respondent.
9. It is his case that while serving as Grant Manager, WRA-RECSA, he reported directly to the Respondent's Executive Secretary. He avers that after the current Executive Secretary assumed office on 22nd April 2024, the Claimant experienced what he described as a pattern of discriminatory conduct, including exclusion from a newly circulated organizational structure in July 2024, exclusion from meetings involving Principal Officers, denial of a new laptop despite using outdated equipment, lack of work assignments in the months preceding termination, failure to receive feedback on his 2023/2024 performance appraisal despite follow-up, and delayed payment of his September 2024 salary, which was only remitted after he raised a written complaint.
10. The Claimant states that by a letter dated the 26th of August 2024, he was notified by email, while on his annual leave, that his employment contract would be terminated with effect from the 30th of September 2024, four months before his contract as Grant Manager WRA-RECSA was due to expire on the 31st of December 2024.



11. The Claimant avers that in the letter, the Respondent attributed the premature termination of the contract to the ending of United States Government funding to the Respondent.
12. It is his case that, by a letter dated 4th September 2024, he acknowledged receipt of the decision to prematurely terminate his contract, accepted the termination, and submitted a draft handover report. He avers that in the same letter, he sought clarification on the terminal dues payable following the termination, while proceeding on terminal leave and making arrangements to wind up his duties in Nairobi and relocate to Uganda.
13. The Claimant further states that by a letter dated 19th September 2024, the Respondent purported to reinstate him as an officer within the organization, but the letter failed to specify the job title, effective date, or terms of the purported reinstatement, and did not address his earlier request for clarification regarding payment of his terminal dues arising from the premature termination of his contract as Grant Manager WRA-RECSEA.
14. The Claimant states that on 21st September 2024, he formally declined the Respondent's offer of a new contract as an officer and reiterated his request for clarification and payment of his terminal dues following termination of his role as Grant Manager WRA-RECSEA.
15. He further avers that, although the Respondent convened a meeting to address the issue - initially scheduled for 26th September and later held on 30th September 2024 - the discussions were inconclusive, as the Respondent's representatives were unable to clarify the terminal dues payable.
16. Subsequently, by a letter dated 30th September 2024, the Respondent offered to relocate the Claimant and his belongings to Uganda, pay three months' salary in lieu of notice, and provide severance pay of USD 10,000, but did not address service pay. He states that in response, the Claimant reiterated his demand for full payment of terminal dues in a letter dated 1st October 2024.
17. The Claimant further avers that while the Respondent paid his September 2024 salary on 3rd October 2024, it has failed to remit the outstanding terminal dues despite formal demand by his advocates.
18. On cross-examination, the Claimant told the court that he was redeployed to grants, and since he had an open-ended contract, he could have gone back to his previous position. He confirmed that the contract could be terminated by either party by giving notice or pay in lieu.
19. The Claimant further confirmed that he received notice of termination, and the reason for the termination was a new structure that excluded him. It is his position that he was discriminated against because the structure was not a fair practice.
20. The Claimant further confirmed that he was offered the position of Principal Officer, but he did not accept the offer. He told the court that he had an old laptop, but did not know whether anyone else had a new laptop.
21. It is the Claimant's case that though the rest of the Respondent's staff were paid on 19th September, 2024, his salary was delayed, and the reason given was that he needed to have cleared, which he says he cleared on 30th September, 2024.
22. The Claimant told this court that he incurred costs to return to his country, but has not filed the documents in court.
23. The Claimant prays that the court allow his claim.



The Respondent's Case

24. The Respondent states that the Claimant was initially recruited on 1st July 2007 as an International Professional Staff member in the position of Administrative and Procurement Officer, and that by a letter dated 30th September 2013, he was redeployed to a newly created position of Grant Manager, WRA-RECSA. It avers that this redeployment resulted in a new employment contract, which repealed the 2007 contract.
25. It is the Respondent's case that upon the Claimant's redeployment it settled all entitlements due to him under the 2007 contract, namely: salary arrears for October 2012 to May 2013 amounting to USD 43,618, pension contributions from July 2011 to September 2013 totaling USD 22,680, gratuity for July 2011 to September 2013 in the sum of USD 28,350, education allowance for three children for 2013 amounting to USD 6,000, 13th cheque for 2013 of USD 4,377, and unsettled claims/refunds totaling USD 636.
26. The Respondent further avers that the position of Grant Manager was governed by new, separate, and independent contracts of employment, each staggered for periods ranging from twenty-one (21) to twenty-five (25) months and subject to periodic renewal. It states that all such contracts were subject to a generic clause making them contingent upon the availability of funds under the WRA-RECSA Grant. The Respondent avers that the remuneration under these contracts varied from one contract to another, ranging between USD 7,000 and USD 10,000.
27. The Respondent avers that the allegations of discrimination are vague, ambiguous, and equivocal, and do not relate to any constitutionally or legally recognized and prohibited grounds of discrimination, including race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status, or HIV status.
28. The Respondent further avers that the alleged discriminatory acts complained of by the Claimant do not relate to recruitment, training, promotion, terms and conditions of employment, termination of employment, or any other matter arising out of the employment relationship.
29. On the Claimant's claim of exclusion from the purported new organizational structure of 12th July 2024, the Respondent states that his job description was already contained in, and governed by, his employment contract and was self-executing, hence the redeployment was neither discriminatory, prejudicial, nor malicious, and in any event, administrative discretion favoured non-interference with the Claimant's extensive contractual duties.
30. In relation to the procurement of laptops, the Respondent states that this was an internal procurement decision intended to meet specific institutional needs and was not meant for all staff. It avers that an internal memo dated 3rd March 2023 on ICT Infrastructure Status assessed equipment for each staff member, including the Claimant, identified challenges with the Claimant's desktop computer, and addressed them through repair and replacement. The Respondent avers that the Claimant never made a specific request for a new laptop nor demonstrated that the desktop computer hindered his performance.
31. On the delayed remittance of the Claimant's September 2024 salary, the Respondent avers that it is customary for staff to submit a clearance form before payment upon exit. It avers that the claimant was aware of this requirement, and once he cleared with the Respondent on 2nd October 2024, his September 2024 salary was immediately paid.
32. The Respondent avers that Clause 9(c) of the employment contract with the Claimant permits termination by either party upon one month's notice or payment of one month's salary in lieu



- of notice. It avers further that by a letter dated 26th August 2024, the Respondent informed the Claimant that his employment was terminated due to the decision of the United States Government, communicated by letter dated 18th March 2024, to end funding for the HALO/RECSA award, which directly affected the Claimant's salary.
33. The Respondent further states that the Claimant was aware of the impending funding termination as early as 14th February 2024, prior to the Respondent's own notification.
 34. The Respondent further relies on Clause 7 of the contract, which provides that the employment term of 24 months is expressly subject to the availability of funds. The Respondent contends that availability of funding is fundamental to the existence of the contract, and that the cessation of funding for the HALO/RECSA award necessarily brought the position of Grant Manager to an end.
 35. The Respondent states that under Section 11.2.1 of the Revised RECSA Staff Manual, 2016, it was obligated to avoid redundancy where possible and accordingly offered the Claimant an alternative position of Principal Officer. The Respondent avers that the Claimant declined this offer without providing any legally justifiable reason.
 36. On the issue of terminal dues, the Respondent contends that the Claimant's claims are founded on an erroneous interpretation of both the law and the facts. The Respondent maintains that the Claimant was engaged as an international staff member whose remuneration was tax-free and not subject to statutory deductions, and therefore he is not entitled to claim service pay.
 37. The Respondent avers that the meeting held on 26th September 2024 formed part of the consultation process aimed at mitigating redundancy. The Respondent further contends that the consultations were rendered unproductive due to the Claimant's insistence on legally untenable demands for terminal dues, severance pay, and service pay.
 38. On cross-examination RW1 told the court that the Claimant was informed that his contract would come to an end on 30th September, 2024 due to funding ended by USAID. She confirmed that termination was for no fault of the Claimant.
 39. RW1 further confirmed that someone else held the position that the Claimant was to be deployed to, but that a position could have been found had the Claimant accepted the offer.
 40. It is her evidence that the Claimant was on a diplomatic mission and that no taxes were deducted from his dues. She further confirmed that the Claimant was not a member of a provident fund at termination.
 41. RW1 further told the court that the Respondent was to issue the Claimant with one way economy tickets, but did not due to the instant suit.
 42. The Respondent prays that the Claimant's claim be dismissed with costs.

Analysis and Determination

43. I have considered the pleadings, the witnesses' testimonies, the evidence adduced, and the rival submissions. The Court isolates the following issues for determination:-
 - i. Whether the termination of the Claimant's employment was unfair.
 - ii. Whether the Claimant was subjected to discrimination contrary to Article 27 of *the Constitution* and Section 5 of the *Employment Act*.
 - iii. Whether the Claimant is entitled to the reliefs sought



- iv. Who bears the costs of the suit

Whether the Claimant's termination was unfair

44. The termination of the Claimant's contract was attributed to the ending of United States Government funding to the Respondent, which the Claimant confirmed being aware of prior to the issuance of the notice to terminate his services.
45. The Respondent's witness confirmed to the court that the Claimant was terminated for no fault of his own, which confirms that his case was a case of redundancy.
46. Redundancy is generally a legitimate ground to terminate employment, and all an employer needs to show is that actual redundancy was the reason for the termination, and strict compliance with the redundancy procedure as spelt out under Section 40 of the *Employment Act*. (See Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR (Supreme Court)).
47. The Court of Appeal in Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR, had this to say on redundancy: -
- “The employer has the managerial prerogative to restructure its business, but such prerogative must be exercised lawfully and fairly.”
48. Section 40 requires, in mandatory terms, that one month's written notice to the employee is issued simultaneously with one month's written notice to the local labour officer. It further demands consultation with the affected employee, the application of an objective criterion, and the payment of severance pay and all other accrued dues.
49. It is not disputed that the Claimant was issued with a termination notice dated 26th August 2024. It is also evident that he was paid salary for the notice period (September, 2024), and he further confirmed that consultative meetings were held on 26th and 30th September 2024, during which the Respondent attempted to mitigate redundancy by offering an alternative position, which the Claimant declined.
50. In Thomas De La Rue (K) Ltd (supra), the Court of Appeal held that an employee who declines reasonable alternative employment cannot fault the employer for redundancy.
51. In my considered view, the Respondent substantially complied with the procedural requirements for termination on account of redundancy, and so I hold.
52. The second limb in determining the fairness of a termination is the requirement to comply with Section 45(2)(a) of the *Employment Act*, which demands that an employer must prove a valid and fair reason for termination.
53. The Respondent terminated the Claimant's employment due to the cessation of funding for the HALO/RECSA award. Clause 7 of the Claimant's contract expressly provided that the contract was subject to the availability of funds. In Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR, the Court of Appeal recognized redundancy arising from operational requirements, including financial constraints, as a valid ground for termination.
54. Further, in Omar Mwamnuadzi v Kenya Ports Authority [2018] eKLR, the Court held that where a contract is expressly tied to funding, withdrawal of such funding constitutes a valid reason for termination.



55. The evidence before the court shows that funding was withdrawn by the U.S. Government, and that the Claimant was aware of the impending cessation long before the termination of his contract.
56. It is also not disputed that the Claimant's termination was not related to misconduct or poor performance on his part.
57. The entirety of the foregoing is a clear indication that the Respondent had a valid and fair reason for the termination.
58. In the premise, I am satisfied that the Respondent has established a valid, fair, justified, and genuine operational reason for declaring the Claimant's position redundant. It therefore follows that the Claimant's termination on account of redundancy is both substantively and procedurally fair, and so I hold.

Whether the Claimant was subjected to discrimination

59. Article 27 of *the Constitution* and Section 5(3) of the *Employment Act* prohibit discrimination on specified grounds. The burden of proof rests on the employee to establish a prima facie case of discrimination, after which the employer must justify the differential treatment. In *Gichuru v Package Insurance Brokers Ltd* [2016] eKLR, the Court of Appeal held that: -

“Discrimination involves unequal treatment based on prohibited grounds, and the claimant must demonstrate the link between the alleged acts and such grounds.”

60. Similarly, in *Barclays Bank of Kenya Ltd v Gladys Muthoni & 20 Others* [2018] eKLR, the Court stated that unfair treatment alone does not amount to discrimination unless tied to a prohibited ground.
61. In the present case, the Claimant complained of exclusion from an organizational structure, meetings, delayed salary, lack of equipment, and alleged marginalization. The Claimant, however, did not plead or prove that these actions were based on any of the prohibited grounds under Article 27 or Section 5(3) of the *Employment Act*.
62. The Respondent, on its part, provided reasonable explanations grounded in administrative discretion, contractual terms, and operational needs for the actions that the Claimant purports were discriminatory. Further, the Claimant admitted under cross-examination that he declined the appointment as Principal Officer and was unaware whether other staff had similar ICT equipment that he claims he was denied.
63. The Court therefore finds that the Claimant failed to establish a nexus between the alleged conduct and any constitutionally prohibited ground.
64. I thus find and hold that the allegation of discrimination has not been proven, and it therefore fails.

Whether the Claimant is entitled to the reliefs sought

Compensation for Unfair Termination

65. Having found that the Claimant's termination was substantively and procedurally fair, compensation under Section 49(1)(c) of the *Employment Act* is not available.
66. The claim is dismissed.



Notice Pay

67. The Claimant's employment contract provided for one month's notice or pay in lieu thereof. The Respondent issued the Claimant a termination notice and paid him his salary for the notice period, which the Claimant confirmed receipt of.
68. The Respondent, however, offered to pay the Claimant three months' salary as part of his exit package in its letter of 30th September, 2024, which amount has not been shown to have been remitted.
69. I therefore order that the Respondent pay the Claimant 3 months' salary on account of notice.

Severance Pay

70. Severance pay under Section 40 of the *Employment Act* applies in redundancy situations. The cessation of funding amounted to redundancy, and it is evident that the Respondent offered severance pay of USD 10,000 and attempted redeployment, which the Claimant rejected. In *Kenya Airways Ltd v Aviation & Allied Workers Union* (supra), the Court held that severance must be reasonable and context-specific.
71. The Claimant, in my view, did not demonstrate entitlement to the exaggerated sum claimed. Similarly, the Respondent did not show that it paid the Claimant the amount offered as severance pay.
72. In the premise, I hold that the Claimant is entitled to payment of severance pay having been declared redundant in the amount offered by the Respondent.

Service Pay

73. Section 35(6) of the *Employment Act* excludes service pay where an employee is a member of a pension or provident fund, or is exempted by law. The Claimant was an international staff member with tax-free remuneration and not subject to statutory deductions.
74. In *Nzioki v Smart Coatings Ltd* [2017] eKLR, the Court held that service pay is not automatic and must be grounded in statute or contract.
75. This claim is found to lack merit and is hereby dismissed.

Certificate of Service

76. Under Section 51 of the *Employment Act*, issuance of a certificate of service is mandatory.
77. This claim is merited and is allowed as prayed.

Relocation Costs

78. The Claimant alleged relocation expenses, and though he did not provide documentary proof, RW1 admitted that relocation was part of what the Respondent offered the Claimant in the form of one way economy tickets and courier services for luggage movement to his country of origin.
79. The Respondent, in the circumstances, shall refund the amount the Claimant incurred on tickets and courier services at cost, subject to production of payment receipts.



Costs

80. The Claimant's claim has only partly succeeded, premised on the Respondent's failure to prove that it has paid the amounts it offered to pay the Claimant as an exit package vide its letter of 30th September, 2024.
81. In the premise, parties are ordered to bear their own costs of the suit.
82. In the final analysis, the Claimant's claim partly succeeds and orders granted as hereunder: -
- a. That the termination of the Claimant's employment was lawful, fair, and justified.
 - b. That the claim for discrimination is dismissed.
 - c. That the Respondent shall pay the Claimant severance pay at USD 10,000
 - d. That the Respondent pay the Claimant three months' salary in the sum of USD 30,000
 - e. That the Respondent shall refund the Claimant's relocation costs, subject to production of payment receipts.
 - f. The Respondent is directed to issue the Claimant with a Certificate of Service forthwith.
 - g. Parties shall bear their own costs of the suit.
83. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2026.

C. N. BAARI

JUDGE

Appearance:

Mr. Orlando h/b for Mr. Odongo for the Claimant

Mr. Masai present for the Respondent

Ms. Esther S- C/A

