

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO E685 OF 2024

ISSAC NDELEMA WABUGE.....
.....CLAIMANT

VERSUS

TRANSSNET PAYMENTS LIMITED.....
RESPONDENT

JUDGMENT

Background

1. The Claimant has instituted these proceedings to challenge the validity of the Respondent's decision to terminate his services on the ground of redundancy. He contends that the Respondent did not follow the law in declaring the redundancy.
2. The Claimant asserts that the Respondent hired his services as a Business Development Manager with effect from 20th November 2023. He avers that the contract was for one year but was renewable and his starting salary was Ksh. 310,000.00 per month.
3. The Claimant avers that on 1st March 2024, the Respondent reviewed his job description to Head of Partnerships. He further contends that his salary was reviewed upwards to Ksh. 319,000.00.
4. The Claimant contends that on 21st May 2024, the Respondent issued him with a notice of even date informing

him of an intended redundancy. He avers that the notice informed him that the redundancy was to take effect on 31st May 2024.

5. The Claimant contends that upon the Respondent realizing that the notice was deficient, it issued him with another notice backdated to 6th May 2024. He says that the latter notice adjusted the exit date to 6th June 2024.
6. The Claimant contends that the Respondent did not engage him on the proposed redundancy prior to issuing him with the impugned notices. He denies that he had a discussion with the Respondent's management on or about 6th May 2024 regarding the proposed redundancy. It is his case that he learned of the redundancy on 21st May 2024 when he was issued with the notices.
7. The Claimant contends that the redundancy process was irregular for want of a proper notice and for lack of consultations with him. He further contends that the fact that the Respondent issued him with two redundancy notices points to the fact that the decision to send him away on account of redundancy was motivated by malice.
8. He thus prays for a series of reliefs including: a declaration that the Respondent unlawfully terminated his services; a declaration that he was discriminated by the Respondent; compensation for unfair termination of his contract; a Certificate of Service; costs of the suit.

9. The Respondent has opposed the claim. It confirms that the Claimant was employed by it as from 20th November 2023 on a fixed term contract of one year.
10. The Respondent avers that the Claimant's position was phased out following changes in its strategy across different jurisdictions. It contends that since the Claimant was the sole employee in his department, only his position was affected.
11. The Respondent asserts that it notified the local labour office about the redundancy through its letter dated 21st May 2024 in accordance with the law. It further contends that it served the Claimant with two redundancy notices dated 6th and 21st May 2024.
12. The Respondent further avers that besides the two notices it issued to the Claimant, it had discussions with him regarding the impending redundancy on 15th April 2024 and 6th May 2024. As such, it contends that it complied with the legal requirement regarding consultations on the redundancy process.
13. The Respondent asserts that it terminated the Claimant's contract only after it had complied with the aforesaid procedures. It further asserts that it paid him his terminal dues and issued him with a Certificate of Service.

Issues for Determination

14. After evaluating the pleadings, evidence and submissions by the parties, the following issues arise for determination:-
 - a) Whether the Claimant's contract was improperly terminated through an irregular redundancy process.

b) Whether the Claimant is entitled to the reliefs which he seeks through this action.

Analysis and Determination

15. Before I address the aforesaid issues, I wish to begin by commending on a matter which the Respondent has raised through its submissions. In the submissions, the Respondent contends that this court (differently constituted) has determined another matter between the Respondent and another employee which arose from the same set of facts as this case. It therefore asks the court to render judgment that will be the same as the judgment that was rendered in the allegedly similar suit.
16. Despite making this assertion, the Respondent did not present to court the pleadings and evidence in the other matter. As such, there is little data to enable the court to determine whether indeed the two cases arose from the same set of facts.
17. That said, I have studied the judgment in the case referred to and noted the following:-
 - a) That the redundancy notice in that case was dated and issued on 22nd July 2024 whilst the redundancy notices in this suit were allegedly issued on 6th and 21st May 2024.
 - b) The date of maturity for the redundancy notice in the case referred to by the Respondent is not indicated in the decision. Therefore, it is impossible to tell when the said notice matured.

- c) On the other hand the redundancy notices in this suit were to mature on 31st May 2021 and 6th June 2024 respectively. The record shows that although one of the notices is dated 6th May 2024, both notices were served on the Claimant on 21st May 2024 which was less than one calendar month from the date of issue of the notices.
18. It is also apparent that the proceedings in the suit referred to were determined on the basis of the pleadings, documents and affidavit evidence on record without the benefit of cross examination of the witnesses. In contrast, the suit before me proceeded viva voce with the witnesses being subjected to the rigors of cross examination.
 19. Inevitably, the circumstances of and evidence in the two matters cannot be said to be the same. Therefore, the court cannot treat them as the same merely because the Respondent is the same and the reason for termination of the Claimants' contracts was an alleged redundancy.
 20. Importantly, after a court of law hears a matter, it has an obligation to assess the evidence presented against the applicable law and arrive at its own conclusion on the matter. As such, it will be an abdication of this duty if I were to simply adopt the holding by the trial Judge in the other suit as the decision in this matter especially noting that the parties and the dates of accrual of the causes of action in the two matters are not the same.
 21. The first issue to determine relates to whether the contract between the parties was legitimately terminated on account

- of redundancy. The law on redundancy in Kenya is encapsulated in sections 40 and 45 of *the Employment Act*.
22. Section 45 (2) (b) (ii) of the Act indirectly acknowledges the employer's right to terminate an employee's contract of service for operational reasons which essentially entails the redundancy process. In a sense, the provision recognizes redundancy as a substantive justification for termination of a contract of service.
 23. On the other hand, section 40 of the Act sets out the procedural requirements for a valid redundancy declaration. They include: issuance of a one month redundancy notice to the employee and or his trade union and the local labour office stating the reason(s) and extent of the proposed redundancy; undertaking the process of selection of the employee(s) to be released based on their seniority, reliability and ability if the redundancy affects employees in a pool; and paying the employee(s) salary in lieu of notice to terminate their contract, severance pay, salary arrears and accrued leave.
 24. The application of these requirements has been considered in a myriad decisions. These include key Court of Appeal decisions such as ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR, Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR)*** and ***Cargill Kenya Limited v Mwaka & 3 others [2021] KECA 115 (KLR)***. This decision will be guided by the pronouncements in these decisions.

25. In the redundancy notices which the Respondent issued to the Claimant, it alluded to change of strategy as the justification for the impugned redundancy. This is reiterated in the witness statement by the defense witness.
26. However, during trial the same defense witness who had spoken of change of strategy as the reason for the redundancy expressed himself regarding the reason for the process as follows:-
- “We terminated contract for the Claimant because we had not obtained a license to run our business. Central Bank of Kenya had not given us a license. That is why we released the Claimant.”*
27. Undoubtedly, the reason which was given for the impugned redundancy in the redundancy notices and witness statement is at cross purposes with what the defense witness proffered during trial. Whilst the notices and the written witness statement spoke of change of strategy as the reason for the redundancy, this changed to failure to obtain licensing during the trial. The two are at variance. Based on this evidence, it is apparent that the Respondent did not provide a convincing justification for its decision.
28. On the redundancy notices, it is noteworthy that they were for a duration of less than one calendar month. The first notice was issued on 21st May 2024 and was to mature on 31st May 2024, approximately ten days down the line. On the other hand, the second notice, although dated 6th May 2024, was received by the Claimant on 21st May 2024 and was to

mature on 6th June 2024, less than one month from the date it was served on the Claimant. As such, the two notices did not satisfy the time requirement under section 40 of *the Employment Act*.

29. Further, the notice to the local labour office which was issued on 21st May 2024 was expressed to mature on 6th June 2024. Thus, the said notice was for less than one month which is contrary to the requirement on time lines for a redundancy notice under section 40 of *the Employment Act*.
30. The Claimant contends that the Respondent did not consult him on the impugned redundancy. He contends that he only learned of the process on 21st May 2024 when he was issue with the redundancy notices.
31. On the other hand, the Respondent contends that it began consulting the Claimant on the process long before it issued him with the redundancy notices. It asserts that it held discussions with him on the matter on 15th April 2024 and 6th May 2024.
32. Although the Respondent asserts that there were consultations between the parties before the redundancy process commenced, there was no cogent evidence to support this assertion. No minutes of meeting held to discuss the matter were tendered in evidence. Yet, consultations on redundancy being a legal requirement, one would have expected that the parties would document their meetings as proof of compliance with the requirement.

33. Further, although the Respondent speaks of pre-redundancy meetings, it did not suggest that the parties had any meetings after the Claimant was issued with the redundancy notices to discuss the process. In the court's view, consultations on an impending redundancy should ideally happen after issuance of the redundancy notice although there is no harm in the parties speaking to the issue even before the notice issues.
34. Importantly, the evidence on record discounts the Respondent's contention that the parties had meetings on the subject before the Claimant was issued with the redundancy notices. The impugned notices fortify this position. They state in part as follows:-
- "We understand that this news may come as a shock and we want to assure you that we are committed to supporting you during this transition period."*
35. From this extract, the Respondent acknowledged that the news about the redundancy declaration was going to shock the Claimant. If it is true that the parties had been in discussion about the matter, why would the notices shock the Claimant? Why would he be shocked about a process he was already aware of?
36. The extract supports the reality that the Claimant more likely than not became aware of the process when he was issued with the impugned notices. As such, the court is inclined to believe his evidence that the Respondent did not hold consultations with him regarding the impugned process in

contravention of the law (see ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR)***).

37. On these grounds alone, it is apparent that the redundancy process did meet the threshold for a valid redundancy as required under sections 40 and 45 of *the Employment Act*. As such, the resultant decision to terminate the Claimant's contract of service was unlawful. It is so declared.
38. The next issue for determination is whether the Claimant is entitled to the reliefs which he seeks through this action. The reliefs were set out earlier in the decision.
39. The reliefs for unlawful termination of a contract of service are provided under section 49 of *the Employment Act*. Whilst assessing the quantum of compensation to award an employee, the court is required to take into account various factors. This include: the duration of service by the employee; whether the employee's conduct contributed to the decision to terminate his contract; the prospects of securing alternative employment; and the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination.
40. In this case, the court takes note of the fact that the parties had a fixed term contract for a period of one year. Although the contract had a renewal clause, it is generally acknowledged that fixed term contracts of service do not carry with them any legitimate expectation for their

automatic renewal. Their renewal is subject to agreement by the parties. As such, the Claimant cannot contend that he had any guarantee for renewal of the contract.

41. Second, the court takes note of the fact that at the time the contract was terminated, the parties had been in the employment relationship for approximately six months. This was a relatively short time.
42. Finally on this, the court notes that at the time the fixed term contract between the parties was terminated, the balance of the term under the contract was six months or thereabouts. As such, absent other factors which would have terminated the contract earlier, the actual loss that the Claimant suffered is the loss of employment for the six months.
43. Taking all these factors into account, the court is of the view that an award of compensation for breach of contract that is equivalent to the Claimant's exit salary for two (2) months will be adequate compensation. As such, he is awarded Ksh. 319,000 x 2 = Ksh. 638,000.00 as compensation for unfair termination of his employment.
44. The award is subject to the statutory deductions which were applicable at the time of termination of the contract between the parties.
45. The Claimant prayed for a declaratory order that he was discriminated. However, he offered no evidence on this. As such, the claim for discrimination fails.
46. Costs of the suit are granted to the Claimant.

47. The Respondent is ordered to provide the Claimant with a Certificate of Service in terms of section 51 of *the Employment Act*.

Summary of the Findings and attendant Orders

48. After evaluating the pleadings, evidence, submissions by the parties and the applicable law, the court makes the following findings and attendant orders:-
- a) The Claimant's contract of service was improperly terminated through an irregular redundancy process. Therefore, the contract was unlawfully terminated.
 - b) The court declines the plea for a declaration that the Claimant was discriminated by the Respondent for want of proof.
 - c) The court awards the Claimant the sum of Ksh. 638,000.00 as compensation for unfair termination of his contract of service.
 - d) The amount awarded to the Claimant is subject to the statutory deductions that were applicable at the time of termination of the contract.
 - e) The court awards the Claimant costs of the suit.
 - f) The Respondent is ordered to provide the Claimant with a Certificate of Service in terms of section 51 of *the Employment Act*.

**Dated, signed and delivered on the 19th day of February,
2026**

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th 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