

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

ELRC CAUSE NO E548 OF 2024

DR EFFIE MWALO.

.....**CLAIMANT**

VERSUS

RUAI FAMILY HOSPITAL.....

RESPONDENT

JUDGMENT

Background

1. The parties to this dispute had an employment relationship which was anchored on the Respondent’s letter to the Claimant dated 5th July 2023. Through the letter, the Respondent engaged the Claimant’s services as a Medical Officer at its Ruaka branch with effect from 1st July 2023. According to the letter, the Claimant’s monthly salary was agreed at Ksh. 163,691.93.
2. The Claimant contends that she took up the assignment and worked for eleven (11) months before the Respondent issued her with a letter dated 30th May 2024 terminating her services on account of redundancy. According to the letter, the Respondent indicated that it had suffered a drastic drop in revenue, a matter which made it difficult for it to sustain some of its employees (including the Claimant) on the pay roll. As such, it communicated to the Claimant its decision to

terminate her services with effect from 31st May 2024 on account of redundancy.

3. The Claimant contests the validity of the reason the Respondent offered to justify its decision. She contends that there was no valid redundancy at the workplace. As such, she avers that the decision to terminate her services was unlawful.
4. On the other hand, the Respondent contends that it released the Claimant from service because of the fiscal challenges it was experiencing. It avers that payments from the National Health Insurance Fund and other medical insurance providers had become erratic making it difficult for it to sustain its operations. It further avers that the employees were aware of this challenge as payment of their salaries was periodically delayed.
5. The Respondent contends that it satisfied the conditions for termination of the Claimant's employment on the ground of redundancy. It states that it issued her and the local labour office the requisite redundancy notices. It further avers that prior to issuing the notices, it held a meeting with the affected employees to discuss the matter. Finally, it contends that it paid the Claimant her redundancy dues. As such, it prays for the suit to be dismissed with costs.

Issues for Determination

6. After evaluating the pleadings, evidence and submissions on record against the applicable law, the following issues arise for determination:-

a) Whether the Claimant's contract of service was improperly terminated.

b) Whether the Claimant is entitled to the reliefs which she seeks through these proceedings.

Analysis and Determination

7. The law on redundancy is set out in sections 40 and 45 of *the Employment Act*. Although an employer is entitled to terminate the services of an employee on account of a redundancy at the workplace, there must be a valid justification for the decision. Further, the redundancy must be processed in accordance with the laid down procedure.
8. The Respondent contends that it terminated the Claimant's services because it had become difficult to keep her on the payroll owing to the fiscal challenges it was experiencing. It asserts that a number of medical insurance service providers were not settling medical claims on regular basis thus affecting its cash flow.
9. The Respondent avers that the aforesaid challenge was known to the employees as they had suffered delay in payment of their salaries because of this. When the Claimant was cross examined on the matter, she conceded that the Respondent had indeed occasionally delayed to pay employee salaries pointing to the reality that it (the Respondent) may have been having genuine fiscal challenges.
10. Having regard to this, the court is inclined to believe the Respondent's contention that it was forced to lay off some

employees due to fiscal challenges. As such, on the basis of the material before me, I arrive at the conclusion that the Respondent had a legitimate reason to declare the impugned redundancy.

11. However, a redundancy does not pass muster merely because the employer has demonstrated that he had a genuine reason to declare it (the redundancy). In addition, the employer must process the redundancy in accordance with the law.
12. One of the critical procedural requirements in the process relates to issuance of redundancy notices. The employer is required to issue the affected employees with a notice of intention to declare a redundancy at least one month before termination of their contracts (see section 40 of *the Employment Act* and ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR)***). The notice should specify the reason for and the extent of the proposed redundancy.
13. In the instant case, the Respondent did not satisfy this requirement. The notice it issued to the Claimant was dated 30th May 2024 and was to mature on 31st May 2024, one day down the line. On the other hand, the notice it allegedly issued to the local labour office was sent out on 29th May 2024, two days before the maturity date of the redundancy. Therefore, the two notices did not meet the one month threshold set by the law.

14. Further, although the redundancy notice that was issued to the Claimant spoke to the reason for the redundancy, it did not address its (the redundancy's) extent. As such, the notice was defective in this respect as well (see ***Nation Media Group Limited v Munene (Civil Appeal E603 of 2021) [2025] KECA 114 (KLR) (24 January 2025) (Judgment)***).
15. The other critical matter which an employer must address when undertaking a redundancy process relates to the selection of employees who are to be released from service. The selection process should be guided by factors such as the seniority, skill, reliability and ability of the employees who are likely to be impacted by the proposed redundancy.
16. In this case, although the Respondent asserts that it followed the law in undertaking the selection of employees to be discharged from employment, there is no evidence presented to court to demonstrate how it (the Respondent) selected the Claimant for release from service. No data relating to the pool of the employees who were affected showing their seniority, skills among others which was relied on to guide the selection process was presented to court. Absent this evidence, it is not possible for the court to arrive at the conclusion that the Respondent undertook the selection of the employees to be released from service in accordance with the law (***Nation Media Group Limited v Munene (Civil Appeal E603 of 2021) [2025] KECA 114 (KLR) (24 January 2025) (Judgment)***).

17. The totality of the evidence on record demonstrates that the impugned redundancy declaration was procedurally flawed. As such, the court declares that the Claimant's contract of service was improperly terminated.
18. The next issue for determination is whether the Claimant is entitled to the reliefs which she seeks through this action. The reliefs she seeks are enumerated in the Memorandum of Claim and witness statement.
19. The first prayer is for a declaration that the Respondent unlawfully terminated her services. The court has already granted this prayer.
20. The Claimant also prayed for accrued leave days. However, during the trial, she conceded that she was paid in lieu of the accrued leave days. As such, the claim for accrued leave days fails.
21. The Claimant also prayed for salary arrears. However, she did not specify the period in respect of which her salary was not paid. During trial, she stated that she received Ksh. 290,000.00 from the Respondent part of which settled her salary arrears for one month. However, she did not go further to indicate what remained unpaid, if at all. Having regard to the paucity of evidence on the claim, it is declined.
22. The Claimant also prayed for house allowance for the eleven (11) months that she served the Respondent. In response, the Respondent made a general denial of the claim. However, it did not demonstrate that the allowance was paid despite the fact that as the employer, it maintains employee

records including the ones for payment of allowances. As such and by virtue of section 112 of *the Evidence Act*, it (the Respondent) is deemed to have special knowledge of the status of these records and thus bears the burden of proving or disproving any disputed fact in respect of them.

23. The letter of appointment which the Claimant was issued with indicates that her salary was consolidated. However, it did not specify what comprised the consolidated salary. Specifically, the letter did not state that the consolidated salary included house allowance.
24. The pay slip which was tendered in evidence describes the sum of Ksh. 163,962.00 paid to the Claimant as basic salary. The pay slip does not show that the Claimant was paid house allowance thus rebutting the presumption that the amount reflected in it (the pay slip) included house allowance.
25. The court is alive to the fact that in addition to basic salary, an employee may be paid various other allowances such as medical allowance, airtime allowance, travel allowance, responsibility allowance and house allowance. Once any of these allowances is added to the basic salary, it (the salary) qualifies to be described as consolidated despite the fact that it may not include the other allowances. And hence the importance of specifying what exactly has been taken into account in the consolidated salary.
26. Importantly, section 31 of *the Employment Act* provides that if the employer elects to consolidate an employee's house allowance with the salary, he should specifically state in the

contract of service that the house allowance is included in the consolidated salary. As such, it is not sufficient for him (the employer) to merely state that the salary paid is consolidated without specifically speaking to the fact that house allowance is included in the consolidated pay (***Grain Pro Kenya Inc. Ltd v Andrew Waithaka Kiragu [2019] KECA 563 (KLR)***).

27. Having regard to the fact that the Respondent did not specify in the Claimant's letter of appointment that her consolidated salary included house allowance as required by section 31 of *the Employment Act*, the court finds that no evidence was tendered to confirm that the Claimant received house allowance for the eleven (11) months that she worked for the Respondent. As such, she is entitled to recover the allowance.
28. The Claimant's salary was Ksh. 163,691.93. Therefore, her monthly house allowance on the amount was to have been $\text{Ksh. } 163,691.93 \times 15/100 = \text{Ksh. } 24,554.00$. Thus, the allowance for eleven (11) months amounts to Ksh. 270,094.00. Accordingly, judgment is entered for the Claimant for Ksh. 270,094.00 to cover the unpaid house allowance.
29. The Claimant has prayed for compensation for the unfair termination of her contract of service. Her contract having been irregularly terminated through an unlawful redundancy, she is entitled to compensation for wrongful termination of the contract.

30. Whilst assessing the quantum of compensation to grant, the court is obligated by section 49 of *the Employment Act* to take into account various factors including the duration of the employee's service. In this respect, the court notes that at the time the employment relationship between the parties was terminated, they had been in the relationship for less than one year. Having regard to this, the court awards the Claimant compensation for wrongful termination of her contract which is equivalent to her salary for three months, that is to say, Ksh. 163,691.93 x 3 = Ksh. 491,075.79.
31. The Claimant has also prayed for pay in lieu of notice to terminate her services. However, during trial, she conceded that the Respondent had paid her in lieu of notice. Having regard to this, the prayer for pay in lieu of notice is declined.
32. The Claimant has prayed for severance pay under section 40 of *the Employment Act*. However and in the court's view, this benefit is only payable where a contract of service is validly terminated through redundancy. Where the contract is discharged in disregard of the law on redundancy, the termination is deemed as unlawful and the aggrieved employee can only claim for compensation for unfair termination of the contract under section 49 of the Act. He cannot pursue both compensation for unlawful termination of his contract and severance pay. That will be tantamount to seeking double compensation which the law does not countenance. As such, the prayer for severance pay is declined.

33. The Claimant is awarded costs of the suit.
34. The amount awarded to the Claimant is subject to the applicable statutory deductions at the time the contract between the parties was terminated.

Summary of the Findings and Orders

35. After evaluating the pleadings, evidence and submissions on record against the applicable law, the court makes the following findings and attendant orders:-
 - a) The court finds and declares that the Respondent unlawfully terminated the Claimant's contract of service through an irregular redundancy declaration.
 - b) The court declines to grant the prayers for salary arrears and accrued leave days.
 - c) The court awards the Claimant Ksh. 270,094.00 on account of accrued house allowance.
 - d) The court awards the Claimant compensation for wrongful termination of her contract which is equivalent to her salary for three months, that is to say, Ksh. 163,691.93 x 3 = Ksh. 491,075.79.
 - e) The court declines to grant the prayer for pay in lieu of notice.
 - f) The court declines to grant the prayer for severance pay.
 - g) The Claimant is awarded costs of the suit.
 - h) The amount awarded to the Claimant is subject to the applicable statutory deductions at the time the contract between the parties was terminated.

**Dated, signed and delivered on the 23rd 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