

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E1034 OF 2021

NADIMA MAHBUB KASSAM
CLAIMANT

VERSUS

COFFTEA AGENCIES LIMITED.....
.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim is dated 10th November 2021 and filed on 14th December 2021. She seeks the following reliefs: -
 - a) Three months' salary in lieu of notice
 - b) compensation for unlawful termination
 - c) unpaid severance pay
 - d) underpayment of salary
 - e) general damages for discrimination
 - f) certificate of service
 - g) costs and interests.

2. The Respondent entered an appearance on 11th January, 2022, and subsequently filed a Statement of Response to the claim dated 26th April, 2022, admitting that the Claimant was her employee, but denying that she was unfairly terminated, and instead, avers that she was procedurally declared redundant.

3. The Claimant's case was heard on 13th March, 2025, when the Claimant testified in support of her case, adopted her witness statement, and produced her list and bundle of documents as exhibits in the matter. The Respondent's case was heard on 23rd October, 2025. It presented Mr. Salim Kalu, who testified in support of its case. He adopted his witness statement and produced the Respondent's list and bundle of documents as exhibits in support of their case.
4. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

5. The Claimant's case is that she was employed by the Respondent as a General Trade Sales Executive under a contract dated 9th December 2019, which took effect retrospectively from 6th January 2019. She avers that she earned a consolidated monthly salary of Kshs.220,000, exclusive of sales incentives.
6. It is her case that she performed her duties diligently and faithfully until 27th March 2021, when her employment was unfairly and wrongfully terminated. She contends that the termination violated Section 5(3)(a) of the Employment Act, 2007, as read together with Article 27(4) of the Constitution of Kenya, 2010.
7. The Claimant states that her unfair and wrongful termination was communicated through a letter dated 27th

February 2021 and sent via email on 28th February 2021, which date was a Sunday and a non-working day. She contends that although the letter cited redundancy as the reason for termination, the true reason was her pregnancy, amounting to unlawful discrimination.

8. The Claimant further states that prior to the termination, on 5th February 2021, she had informed the Respondent of her pregnancy and requested maternity leave effective 15th May 2021, based on medical advice, but the Respondent did not respond to this request but instead proceeded to terminate her employment on alleged redundancy grounds, which she describes as a baseless and unlawful pretext.
9. The Claimant further states that despite her follow-up communication seeking clarification, no reasonable explanation was provided as to why she alone was declared redundant. She maintains that her pregnancy was delicate and that the termination caused her stress, ultimately resulting in a miscarriage.
10. It is her case that the Respondent discriminated against her on the basis of gender and pregnancy, in violation of Articles 27(5), 42(2), and 2(b) of the Constitution of Kenya, 2010.
11. The Claimant submits that the Respondent breached Article 41 of the Constitution of Kenya, 2010 by violating her right to fair labour relations and fair remuneration, guaranteed to every worker under the Constitution.

12. The Claimant states that her termination was unlawful and in breach of both statutory and contractual obligations, for the reason that the Respondent failed to accord her a fair hearing before terminating her employment, breached Sections 41, 43, and 45 of the Employment Act, 2007, by failing to meet the procedural and substantive requirements governing termination of employment, that it failed to properly compute and pay her terminal benefits and other lawful dues, and that it unlawfully dismissed her without adhering to the lawful procedures applicable to redundancy.
13. The Claimant asserts that despite numerous requests, the Respondent has inordinately delayed payment of her dues, causing her undue hardship and necessitating the filing of this suit. She states that a formal demand letter was served upon the Respondent, but the Respondent has failed, refused, and/or neglected to settle the claim.
14. On cross-examination, the Claimant told the court that she had worked with the Respondent for two years, and that her basic monthly pay was Kshs. 220,000/-, and hence her 15 days' pay would amount to Kshs.110,000/-.
15. She confirmed that she was issued one month's notice of redundancy, which notice stated the reason for the termination as being redundancy. It is her testimony that her Kshs.220,000 monthly salary was a consolidated salary. She avers that she was entitled to a Kshs.15,000 car allowance.

- 16.The Claimant further told the court on cross-examination that she was underpaid. She stated that her net pay was about Kshs.160,000. She avers that she was paid salary through a bank account but does not have bank statement before court which if produced would have shown how much she was being paid.
- 17.The Claimant confirmed that she was paid Kshs.220,000 as severance pay, having worked with the Respondent for two years. She further confirmed that she saw the notice to the labour office and that it had names of seven (7) other employees, and none of the other employees were expectant. It is her testimony that she was issued a letter of redundancy.
- 18.The Claimant told the court that she did not dispute the reason for the redundancy. She confirmed that she was not on maternity leave at the time of redundancy, and that the redundancy notice was issued in February, 2021, and her maternity leave was to begin in May, 2021.
- 19.In re-examination, the Claimant confirmed that the redundancy notice had a termination date. She further confirmed that there was no prior meeting or discussion regarding redundancy and that it came as a surprise.
- 20.It is the Claimant's prayer that the Court award her the reliefs listed in her claim.

The Respondent's Case

21.The Respondent denies that the Claimant's employment was unfairly or wrongfully terminated or dismissed. It maintains that the Claimant was lawfully declared redundant and that all procedures under the Employment Act were duly followed.

22.It avers that the Claimant was not dismissed, but was instead declared redundant in accordance with the provisions of the Employment Act. The Respondent states that at a management meeting held on 28th January 2021, a resolution was passed to declare certain employees redundant following a significant downturn in the Respondent's financial position.

23.The Respondent states that on 15th February 2021, it notified the Ministry of Labour of its financial challenges and its decision to declare some staff members redundant, and that on the same date, it submitted to the Ministry a list of employees intended to be laid off, which included the Claimant.

24.The Respondent further states that by a letter dated 27th March 2021, it informed the Claimant that she had been declared redundant with effect from 27th February 2021, and that her dues would be settled upon completion of the one month redundancy notice period, and the Claimant acknowledged receipt of the one month notice of redundancy.

25. It states further that the letter sent to the Ministry of Labour included a list of several employees identified for redundancy and that the Claimant was not singled out. The Respondent reiterates that the redundancy decision was made in accordance with the law.

26. The Respondent states that it is unaware of any communication regarding the Claimant's pregnancy, and maintains that the decision to declare her redundant was lawful, justified, and undertaken in compliance with the prescribed legal procedures.

27. The Respondent contends that the Claimant's prayers are unsupported by the facts and evidence presented in the Memorandum of Claim. It avers that the claim for three months' salary in lieu of notice it relies on Section 40(1)(f) of the Employment Act, 2007, which governs payments due in cases of redundancy, and maintains that the Claimant was treated in accordance with the law.

28. Further on the claim for compensation for unlawful termination, the Respondent denies unlawfully terminating the Claimant's employment and reiterates that she was lawfully declared redundant in full compliance with the Employment Act, 2007. On severance pay, the Respondent asserts that the Claimant was paid all her dues, including service pay.

29. The Respondent states in respect of the claim for general damages for discrimination that the redundancy decision affected the Claimant and seven other employees and was based solely on financial constraints and the impact of their remuneration on the company. It maintains that the Claimant cannot prove she was treated differently due to pregnancy or that the redundancy decision was unjustified under Article 27 of the Constitution of Kenya, 2010.

30. The Respondent acknowledges its obligation under Section 51 of the Employment Act, 2007, and states that it has always been willing to issue the Claimant with a Certificate of Service.

31. In his oral testimony, RW1 told the court that the redundancy decision was made on 28th January, 2021, and the notice of redundancy was shared with the staff on 27th February, 2021. It is his further evidence that the Claimant sent an email on 1st February, 2021, for leave that she intended to take in May, 2021, even when the leave requirement was for applications to be made only 14 days prior to the date of commencement of the leave.

32. RW1 further told the court that he was unaware that the Claimant was underpaid, arguing that she was paid Kshs.220,000 monthly for the entire period she was in the service of the Respondent.

33. On cross-examination, RW1 told the court that two letters were sent to the Ministry of Labour, one being the notice of redundancy and the second one a list of the employees intended for redundancy.

34. It is RW1's testimony that the notice issued to the Claimant on the redundancy is dated 27th February, 2021, and was to take effect on 27th March, 2021.

35. RW1 further avers that the Claimant was not consulted on whether or not to be declared redundant, and that the criteria used was informed by numbers in a department. He confirmed that the Respondent still has employees and remains in operation.

36. Finally, the Respondent avers that the Memorandum of Claim discloses no reasonable cause of action, and prays that the Claimant's case be dismissed with costs.

Analysis and Determination

37. I have carefully considered the pleadings, the witnesses' oral testimonies, and the rival submissions. The issues for determination are:-

- i. Whether the Claimant's termination amounted to a lawful redundancy under Section 40 of the Employment Act, 2007.
- ii. Whether the Claimant was discriminated against on account of pregnancy.
- iii. Whether the Claimant is entitled to the remedies sought.

Whether the redundancy was lawful

38.Redundancy is defined under Section 2 of the Employment Act, 2007, as loss of employment through no fault of the employee, arising purely from the operational requirements of the employer. Section 40 goes on to set out mandatory procedural requirements, including notice to the employee and the Labour Officer, application of fair selection criteria, and payment of severance pay.

39. In ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2020] KECA 680 (KLR)***, the Court of Appeal held that redundancy must meet both substantive justification and procedural fairness, and that the requirements under Section 40 are mandatory. Further, in ***Thomas De La Rue (K) Ltd v David Opondo Omutelema, [2013] KECA 492 (KLR)***, the same Court emphasized that failure to strictly comply with Section 40 renders a redundancy unlawful and unfair.

40.The Claimant contends that her termination by redundancy is unfair and unlawful, arguing that the Respondent violated Section 5(3)(a) of the Employment Act, 2007, as read together with Article 27(4) of the Constitution of Kenya, 2010, in effecting the redundancy.

41.On its part, the Respondent demonstrated that a management resolution to declare redundancies was made on 28th January 2021 owing to a financial downturn. The Respondent contends that a notice of redundancy was

issued to the Labour Office on 15th February 2021, and subsequently, a list of the affected employees, specifically eight (8) in number, was submitted.

42. It is the Respondent's contention that the Claimant was issued with a one month redundancy notice dated 27th February 2021, which was to take effect on 27th March 2021.

43. The Claimant admitted that she received one month's notice of the redundancy and that she understood the reason for the declaration of redundancy and did not dispute the same. The Claimant further confirmed to this court that she saw the list submitted to the Labour Office, which she confirmed included seven other employees of the Respondent.

44. The court notes that RW1 admitted that there was no consultation with the Claimant prior to the declaration of redundancy. While Section 40 does not expressly require consultation in the same manner as Section 41, jurisprudence has interpreted fair procedure to include meaningful engagement.

45. In ***Francis Maina Kamau v Lee Construction (2014) KEELRC 788 (KLR)***, the Court held that consultation is an important element of procedural fairness in redundancy situations. This said, however, in this matter, there was evidence of notice to the Labour Officer and payment of severance, and no evidence was tendered to challenge the genuineness of the Respondent's financial downturn.

46. In the circumstances, the court finds on a balance of probabilities that the Respondent substantially complied with Section 40 of the Employment Act, hence the redundancy was procedurally and substantively justified, and so I hold.

Whether there was discrimination on account of pregnancy

47. In the case of ***GMV v Bank of Africa Kenya Limited, [2013] KEELRC 162 (KLR)***, it was held that termination on account of pregnancy amounts to unfair discrimination and is unconstitutional.

48. The burden of proof in discrimination claims shifts to the Respondent once a prima facie case is established. Section 5(3)(a) of the Employment Act prohibits discrimination on grounds of pregnancy, and Article 27(4) and (5) of the Constitution prohibit discrimination based on sex, which includes pregnancy.

49. The Claimant's position is that she informed the Respondent of her pregnancy on 5th February 2021, and that the redundancy followed shortly thereafter. It is her assertion that none of the other employees declared redundant were expectant.

50. On cross-examination, the Claimant admitted that she was not yet on maternity leave when the redundancy was

declared, and her maternity leave was scheduled to begin in May, 2021.

51. It is apparent from the record that the redundancy decision was made on 28th January 2021, long before the Claimant's pregnancy communication, which RW1 states was made on 1st February 2021. The Claimant did not also produce documentary evidence proving that she formally notified the Respondent of her pregnancy prior to the redundancy decision.

52. Conversely, the Respondent produced evidence showing that the redundancy resolution predated the alleged pregnancy communication. In ***Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 20 others [2018] KECA 718 (KLR)***, the Court of Appeal held that mere temporal proximity is insufficient to prove discrimination without cogent evidence of differential treatment.

53. In the end, I reach the conclusion that the Claimant did not demonstrate that she was singled out or treated differently from the seven other employees declared redundant, and I find that discrimination was not proved.

**Whether the Claimant is entitled to the remedies sought
Three months' salary in lieu of notice**

54. Section 40(1)(f) of the Employment Act, 2007, requires that at least one month's notice be given to an employee declared redundant or payment in lieu thereof.

55. The Claimant admitted receiving one month's notice, and the record further confirms this position. The claim for three months lacks a contractual basis, and it fails.

Compensation for unlawful termination

56. Pursuant to Sections 49 and 50 of the Employment Act, compensation is payable only where termination is found unfair. Having found the redundancy lawful, this claim fails.

Unpaid severance pay

57. The Claimant admitted receiving Kshs.220,000, equivalent to 15 days per year for her two years of service. This admission satisfies Section 40(1)(g), and the claim fails and is dismissed.

Underpayment of salary

58. The Claimant produced no documentary evidence to prove underpayment. The burden of proof lies on her, and which burden she has not discharged. This claim equally fails.

General damages for discrimination

59. Discrimination was not proved. This claim similarly fails.

Certificate of service

60. Under Section 51 of the Employment Act, an employer must issue a certificate of service.

61. The court notes that the Respondent expressed willingness to issue one, and orders the Respondent to issue the Claimant with a Certificate of Service within 14 days of this judgment.

62. In whole, I find the Claimant's termination by way of redundancy lawful and fair, and save for the order for issuance of a certificate of service, the rest of the Claimant's claim lacks merit and is hereby dismissed.

63. I make no orders on costs.

64. Judgment accordingly.

DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5TH DAY OF MARCH, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Malanga present for the Claimant

Mr. Langat present for the Respondent

Ms. Esther S - CA