



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
(ON Makau J on 30th April, 2026)

CAUSE NO. E362 OF 2020 (387 OF 2020)

JAMES IRUNGU.....CLAIMANT **KAMAU**

-VERSUS-

PHILIP TONDE.....1ST
RESPONDENT

CROP HEALTH TECHNOLOGIES..... 2ND
RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 12th July, 2020, the Claimant sued the Respondent alleging constructive dismissal and prayed for the following reliefs:-

- a) A declaration that the Claimant's employment was unfairly terminated by the Respondents.**
- b) A declaration that the Claimant was discriminated against on tribal basis by the Respondents.**
- c) The amounts as stated under paragraph 20 of this claim.**
- d) A salary of 12 months based on the gross monthly salary of the employee at the time of dismissal.**
- e) Damages for wrongful and unfair termination.**
- f) Cost of the suit.**
- g) Interest on (c) (d) (e) and (f) above at courts rates until payment in full.**
- h) The Respondents be compelled to issue a certificate of service that is in strict compliance with section 51 (1) (2) of the Employment Act.**
- i) Any other relief that this Honourable Court may deem fit to grant**

2. The Respondent filed a joint defence dated 12th April 2021 denying the allegations by the Claimant and put him to strict proof thereof. It further averred that the Claimant secured employment through deceit and later it was discovered that she lacked the required professional and academic qualifications. Therefore the court was urged to dismiss the

suit with costs because the contract of service was null and void.

3. The suit went to full trial where both sides gave evidence and thereafter filed written submissions.

Facts of the case

4. The Claimant was employed by the 2nd Respondent as a Human Resource Manager vide appointment letter dated 17th April 2019. His monthly salary was Kshs. 120,000. He served diligently until 18th March 2020 when the 1st Respondent (Managing Director for the 2nd Respondent) issued him with a letter terminating his employment with immediate effect. The reason cited was reduction of staff that rendered his role unwarranted. The 1st Respondent also repossessed the laptop and office keys and asked him to leave the office.
5. Subsequently the Claimant was given a discharge summary dated 19th March 2020 setting out the terminal dues payable to him including salary for 17 days worked in March 2020, and 4 leave days. The Respondent did not add overtime pay and salary in lieu of notice.
6. In the circumstances, the Claimant averred that he was subjected to unlawful and unfair redundancy because the

reason was not valid and wrong procedure was followed. He was also issued with certificate of service that did not state the nature and the usual place of his employment.

7. He further averred that he was subjected to discrimination on ground of ethnicity and frequently insulted in Kamba Language. He also worked overtime without pay. Therefore he averred that he was exposed to circumstances that left him with no option but to resign from employment.
8. The Respondent maintained that the Claimant having obtained the job through deceit, all his claims are null and void. They further averred that due to lack of academic and professional qualifications his rightful position was a general clerk.

Evidence

9. The Claimant adopted his written statement dated 5th August 2020 as his evidence in chief. He further produced six (6) documents as exhibits.
10. On cross examination, he confirmed that he applied for the job and he started working on 23rd April 2019. He holds a Bachelors Degree in Human Resource and other certificates which he produced. He had a registration number when he applied for the job.

11. He confirmed that his job was managerial and he was the only one in the department. The employees fluctuated between 10 and 15. He was not aware that the company was going through turbulence, but he was aware that it lost a major contract. He also confirmed that his dismissal happened at the onset of Covid -19 but contended that the business was not affected.
12. He contended that no restructuring was done but employees were forced to resign. He confirmed that his redundancy was communicated to him and he never accepted it.
13. He admitted that he was given a discharge summary dated 19th March 2020 for payment of Kshs. 141,713 and received without any protest or on a without prejudice basis. He maintained that the termination was through redundancy because the reason cited was that his position was unwarranted because of reduction of employees. However, he contended that the number of employees remained the same as there was no reduction in numbers. Finally he contended that there was no prior notice to him.
14. The 1st Respondent testified as RW1 and adopted his written statement dated 12th April 2021 as his evidence in chief. He also produced a bundle of documents as exhibits. He confirmed that the Claimant was terminated on account of redundancy due to Covid - 19. He contended that company lost business and staff dropped to 3 or 4 and the position of

Claimant became superfluous. He was also not qualified for the job.

15. After the redundancy, the Claimant was paid his dues and he signed a discharge summary voluntarily.
16. On cross examination he issued a redundancy notice to the employees but not to the Labour officer. Finally he contended that he followed the appointment letter which provided for one month termination notice.
17. I have carefully considered the pleadings, evidence and submissions and the following issue fell for determination:-
 - a) Whether the Respondent terminated the Claimants employment unfairly and unlawfully.
 - b) Whether the Claimant is entitled to the reliefs sought.

Analysis

Unfair termination

18. Section 45 (1) and (2) of the Employment Act provides that:-

“(1). No employer shall terminate the employment of an employee unfairly.

“(2) A termination of employment by an employer is unfair if the employer fails to prove-

 - a) That the reason for the termination is valid;***

b) That the reason for the termination is a fair reason-

(i) Related to the employees conduct, capacity or compatibility; or

(ii) Based on the operational requirements of the employer; and

c) That the employment was terminated in accordance with fair procedure.”

19. In the instant case, the reason cited was redundancy and the procedure followed was to pay the Claimant salary for one month in lieu of notice. He was also paid for 2.5 leave days plus salary for 17 days worked in march 2020.

20. The Claimant contended that the redundancy was not justified and the procedure under Section 40 of the Act was not followed. Section 40 provides that:-

“(1) 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."

21. The foregoing mandatory provision was not followed. RW1 admitted in evidence that he followed the appointment letter instead. He confirmed that he never served the Labour officer with notice of the intended redundancy as required under subsection (1) (b) above. In **Francis Maina Kamau v. Lee Construction [2014]eKLR** the court held that:-

" Where an employer declares a redundancy the conditions set out in Section 40 of the Employment Act must be observed and where the employer fails to do so, the termination becomes unfair termination within the meaning of Section 45 of the Employment Act."

22. I need not belabor the point since it is clear the termination was procedurally unfair and therefore unlawful.

Reliefs

23. As concluded above the termination was unlawful and therefore under Section 49 of the Employment Act the Claimant is entitled to payment of compensation for unfair termination. Considering that he worked for only one year, and that he did not contribute to the termination through misconduct, I award him two month salary as compensation.

24. He prayed for declaration he was discriminated on tribal grounds but no sufficient evidence was adduced to support the said violation. However, in view of the finding that the redundancy was unlawful, he is entitled to declaration that the termination was unfair.

25. The Claimant further prayed for a proper certificate of service indicating his job title and work station. I direct the Respondent to forthwith grant a proper certificate of service as provided under Section 51 of the Employment Act.

Conclusion

26. I have found that the termination of the Claimant's employment was unfair within the meaning of Section 45 of the Employment Act. I have further found that he is entitled to compensation under Section 49 of the Act. Consequently I enter judgment for the Claimant against the Respondents jointly and severally as follows:-

- a) Declaration that the termination of employment was unfair
- b) Compensation Kshs. 240,000/-
- c) The award is subject statutory deductions.
- d) Costs and interest at court rate from the date of this judgment.

DATED SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

**ONESMUS MAKAU
JUDGE**

Appearance

Mutuli for Claimant

Kibet for Respondent