

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. 1424 OF 2018

LUCY WAIRIMU KIBERA
CLAIMANT

VERSUS

MIKE MUTHII KARIUKI
PAUL M. MWANGI
LAWRENCE MUGA (Sued respectively on behalf of and
in their capacity as Chairman, Secretary & Treasurer of
RUIRU CATHOLIC CHURCH
MEMBERS DEVELOPMENT FUND.....
RESPONDENT

JUDGMENT

Introduction

1. In a Statement of Claim dated 5th October, 2018, and filed on even date, the Claimant seeks the following reliefs as against the Respondent:-
- i) Pay the Claimant the service pay for the period of 13 years worked
 - ii) Pay the Claimant monthly salary for the period of 12 months for damages for unfair termination
 - iii) Pay the Claimant leave allowances and leave traveling allowances
 - iv) Pay the claimant's costs of this cause
 - v) Interests on I, II, and III above

2. The Respondent filed a Statement of defence dated 10th July, 2019, denying that the Claimant was unfairly terminated, and further arguing that the Claimant was let go for reason of redundancy.
3. The Claimant's case was heard on 2nd July, 2025, with the Claimant testifying in support of her case, adopting her witness statement and producing the list and bundle of documents filed as exhibits in the matter.
4. The Respondent's case was subsequently heard on 13th November, 2025. Mr. Mike Kariuki, a former Board Member of the Respondent Fund, testified in support of the Respondent's case. He adopted his witness statement dated 10th July, 2019, as evidence in the matter.
5. Thereafter, parties filed written submissions, which have been duly considered.

The Claimant's Case

6. The Claimant's case is that she was employed by the Respondent from 2005, initially serving as a casual labourer before being formally appointed as a System Administrator on 16th January 2007, reporting to the Operations Manager.
7. It is her case that she later rose to the position of Operations Manager in 2011 and served in that capacity until June 2018. She avers that during her tenure, she diligently contributed to the growth of the Respondent's business, helping expand it from a small Christian based self help

group of about 200 members to over 20,700 members by June 2017.

8. It is her case that upon her appointment as Operations Manager, she served in that role from January 2010 to the end of 2016, before the creation of the General Manager position in July 2017. She states that during this period, she significantly contributed to the Respondent's growth by increasing the Fund's income from Kshs.22,257,887 to Kshs.100,876,048 between the 2010 and 2016 financial years.
9. The Claimant states that in recognition of her performance and contribution, the Respondent, through a letter dated 1st January 2018, reviewed her employment contract and increased her basic monthly salary to Kshs.108,000 effective January 2018.
10. It is her case that on 16th June 2018, she worked at the Respondent's offices until 12.00 noon when the offices closed, and that later that day, at about 1.30 p.m., she was served with a termination letter dated the same day by the office secretary one Alice Njuguna and immediately after service of the letter, she was denied access to her office and prevented from collecting her personal belongings.
11. She avers that the termination letter, authored and/or signed by the Respondent's Board Chairperson, Mike Muthii Kariuki, informed the Claimant that following a review of the Respondent's operational requirements and due to an

economic downturn resulting in poor returns that could not sustain operational costs, the position of Operations Manager had become redundant. It is her case that her employment was consequently terminated with immediate effect, and she was advised that she would be paid one month's salary in lieu of notice in accordance with her contract.

12. The Claimant further states that shortly before her termination, between May and June 2018, she had been elevated to the position of Business Manager, a position which was not referenced in the termination letter. She avers that the termination of her employment was unlawful, unfair, and in violation of her contractual and statutory employment rights.

13. The Claimant avers that she was never informed of, nor involved in, any alleged operational review undertaken by the Respondent's Board which purportedly led to the abolition of her position. She further contends that the Board Chairman began treating her discriminatorily because she remained firm in her principles regarding the management of the Fund.

14. The Claimant also faults the Respondent for disregarding her dedicated service and substantial contribution to the growth of the Fund, including the increase in membership from approximately 200 members in 2005 to over 20,700 members by June 2017, with membership continuing to grow in 2018.

15. It is the Claimant's assertion that the Respondent failed and/or refused to issue her with a Certificate of Service as required under the law and further failed to pay her service pay for over 13 years she had worked for the Respondent, contrary to the applicable employment laws and regulations.
16. The Claimant contends that her termination was carried out unfairly, maliciously, and in a discriminatory manner, disregarding both her immense contribution to the Respondent and the rights guaranteed to employees under employment laws and regulations. She avers that the Respondent treated her with spite and subjected her to humiliation despite her years of dedicated service.
17. The Claimant further states that approximately three months after the termination, while she was still traumatized by the loss of employment, the Respondent's General Manager, Francis Njenga Gitahi, began contacting her, alleging that investigations had uncovered unexplained occurrences leading to loss of funds between 2015 and 2018. According to the Claimant, she was informed that the Board was conducting inquiries and was required to appear before it.
18. The Claimant states that the demands were formalized through a letter dated 26th September 2018, requiring her to attend before the Board on 1st October 2018 at 8.00 a.m. The Claimant states that she understood the contents of the

letter and accompanying calls to imply that she was being accused of misappropriating the Respondent's funds.

19. The Claimant maintains that at the time of her termination, no allegations of financial impropriety or loss of funds had ever been brought to her attention; instead, the termination letter commended her for her valuable contribution to the Fund.

20. It is her contention that the subsequent calls and letter were actuated by malice and intended to infringe upon her rights, subject her to mental anguish, embarrassment, and financial distress following the unfair termination.

21. The Claimant also challenges the Respondent's computation and payment of her terminal dues. She states that although the Respondent purported to calculate her dues at Kshs.198,000, deductions were made towards an alleged loan repayment amounting to Kshs.109,500, leaving her with a net payment of only Kshs.155. The Claimant contends that the deductions were unlawful and unfair because loan repayment was not part of her contractual terms of employment, and she remained a member of the Respondent's Fund after termination with an agreed monthly repayment arrangement of Kshs.40,000, and the deductions were deliberately intended to financially embarrass and mentally torture her.

22. It is her position that the failure to pay her full terminal dues and the imposition of unlawful deductions amounted to a further act of unfair treatment arising from her termination.
23. On cross-examination, the Claimant indicated that her gross salary was Kshs.108,000, having gotten a rise vide a letter dated 1st January, 2018. It is her evidence that she did not receive pay in lieu of notice.
24. It is her position that, though the Respondent summoned her, she did not adhere to the summons since she was already terminated and was no longer an employee of the Respondent.
25. She avers that the loan she received from the Respondent was not attached to her employment.
26. It is her prayer that the claim be allowed.

The Respondent's Case

27. The Respondents' case is that the Claimant's termination was lawful, fair, and in compliance with both the Employment Act 2007 and the terms of her contract of employment. They further aver that, despite serving as Operations Manager, the Claimant was not a member of the Board and was therefore not entitled to be informed of or to participate in Board meetings or reviews concerning the Respondent's operations.
28. The Respondents state that Section 40 of the Employment Act, 2007, permits termination of employment on account of

redundancy, and states that the Claimant's termination was effected pursuant to those statutory provisions.

29. It is their case that the termination letter clearly communicated that the reason for termination was redundancy arising from the unsustainability of the Respondent's Fund, and not the Claimant's past performance or achievements.

30. The Respondent further states that, in accordance with both the Claimant's contract and Section 40(1)(f) of the Employment Act, they offered to pay the Claimant one month's salary in lieu of notice, and contends that they have always been ready and willing to issue her a Certificate of Service.

31. The Respondents deny the Claimant's allegations of discrimination and unfair treatment, contending that the Claimant has failed to demonstrate how other employees in similar circumstances were treated differently.

32. The Respondents aver that the Claimant was summoned to appear before the Board to explain the alleged misappropriation and loss of funds, but maintain that the Claimant's termination was lawful, fair, and solely based on redundancy. It is their position that the purpose of summoning the Claimant before the Board was strictly to seek clarification regarding discrepancies discovered in the management of funds under her supervision. The Respondent further states that the information concerning

the alleged loss of funds was only discovered after the Claimant's termination and therefore could not have been communicated to her at the time the termination letter was issued.

33. The Respondent reiterates that the calls and letters addressed to the Claimant did not bear the meaning attributed to them by the Claimant, nor were they intended to imply wrongdoing or to subject her to embarrassment or mental anguish.

34. The Respondents contend that the deductions made from the Claimant's terminal dues were lawful and justified under Section 19(d) of the Employment Act, 2007, which permits an employer to deduct or withhold wages in respect of loss suffered to funds or property entrusted to an employee. The Respondent further avers that the Claimant, by virtue of her position, was responsible for and in charge of the Respondent's funds during the course of her employment and was therefore accountable for any losses or shortages discovered in relation to those funds.

35. The Respondents state that the deductions effected from the Claimant's terminal dues were intended to reimburse the Respondent for the financial shortages allegedly discovered at the time of separation, and maintain that there existed a lawful basis for the deduction and withholding of the sums payable to the Claimant.

36.The Respondents further aver that the deductions were made pursuant to the employer-employee relationship that existed between the parties and were related to the financial losses discovered under the Claimant's management.

37.The Respondent maintains that the Claimant's status as a member of the Respondent's Fund and her outstanding loan obligations were irrelevant to the deductions made and had no bearing on the Respondent's decision to withhold part of her terminal dues.

38.RW1 on cross-examination told the court that the Claimant was terminated vide a letter dated 16th June, 2018, on account of low returns.

39.It is RW1's position that the pay slip of June 2018 was the Claimant's last salary and that the amount on the pay slip is what she was paid. He stated that the loan given to the Claimant was in her capacity as an employee and was given against salary.

40.RW1 confirmed that no loss was attributed to the Claimant.

41.It is the Respondent's prayer that the Claimant's case be dismissed with costs.

Analysis and Determination

42.Upon careful consideration of the pleadings, the witnesses' oral testimonies, and the rival submission, the issues that present for my determination are: -

- i. Whether the Claimant's termination on account of redundancy was lawful and fair.
- ii. Whether the deductions made from the Claimant's terminal dues were lawful.
- iii. Whether the Claimant is entitled to the reliefs sought.

Whether the redundancy was lawful and fair

43. The Respondent's position is that the Claimant's employment was terminated on account of redundancy pursuant to Section 40 of the Employment Act, 2007. The Claimant, on her part, however, disputes both the substantive justification and procedural propriety of the redundancy process.

44. Under Section 40(1) of the Employment Act, an employer must adhere to the following procedure in a redundancy situation: -

"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."**

45. The Court of Appeal in ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2014] KECA 404 (KLR)***, held that redundancy must satisfy both substantive justification and procedural fairness, and that failure to comply with Section 40 renders the termination unfair.

46. The same Court in ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] KECA 492 (KLR)***, emphasized that the requirements under Section 40 are mandatory and not optional.

47. In the present case, the Respondent merely issued the Claimant with a termination letter dated 16th June 2018 stating that the position of Operations Manager had become redundant due to poor economic returns. There is no evidence that the Respondent issued the mandatory one-month redundancy notice to either the Claimant or the labour officer as required under Section 40(1)(a) and (b) of the Employment Act.

48. Further, there is no evidence that the Respondent undertook any consultation process with the Claimant prior to the termination. Under Section 40 of the Employment Act, consultation is a fundamental component of procedural fairness in redundancy situations. In ***Barclays Bank of Kenya Ltd & Another v Gladys Muthoni & 20 Others [2018] KECA 718 (KLR)***, the Court held that consultation is an indispensable aspect of a fair

redundancy process.

49. The Court further notes the contradiction in the Respondent's position as to why it terminated the Claimant's services. While the Claimant was allegedly terminated because her position was no longer necessary, evidence was led showing that she had been elevated to the role of Business Manager shortly before. The Respondent did not rebut this assertion or explain whether the new position had also become redundant.

50. It is also evident that the Respondents subsequently summoned the Claimant to explain alleged financial discrepancies and losses occurring between 2015 and 2018. RW1 nevertheless admitted on cross-examination that no loss was directly attributed to the Claimant.

51. This sequence of events further casts doubt on the genuineness of the redundancy and suggests that the redundancy may have been used as a convenient means to terminate the Claimant's employment without following the disciplinary procedures contemplated under Sections 41, 43, and 45 of the Employment Act.

52. The Court is guided by the holding in ***Walter Ogal Anuro v Teachers Service Commission [2013] KEELRC 386 (KLR)***, where the Court held that for termination to pass the fairness test, there must be both substantive justification and procedural fairness.

53. In the end, I reach the conclusion that the Respondents failed to demonstrate compliance with the mandatory procedural safeguards prescribed under Section 40 of the Employment Act, 2007.

54. I consequently find the redundancy both procedurally and substantively unfair and unlawful.

Whether the deductions from terminal dues were lawful

55. The Claimant contends that the Respondent unlawfully deducted Kshs.109,500 from her terminal dues, leaving her with only Kshs. 155. The Respondent relies on Section 19(d) of the Employment Act to assert that the deductions related to financial losses discovered under the Claimant's management.

56. Section 19 of the Employment Act permits deductions in limited circumstances, but an employer bears the burden of proving the actual loss suffered and the employee's responsibility for the same.

57. In the instant case, the Respondent produced no audit report, investigation findings, or any other documentary evidence linking the Claimant to any proven financial loss. Crucially, RW1 admitted during cross-examination that no loss was attributed to the Claimant.

58. The Court therefore finds that the deductions were unsupported by evidence and were consequently unlawful.

In ***Muthaiga Country Club v Kudheiha Workers***

[2017] KECA 282 (KLR), the Court underscored that deductions from an employee's dues must be strictly justified and lawful.

59. The Respondent's action in withholding almost the entirety of the Claimant's terminal dues without proof of liability thus amounts to an unfair labour practice contrary to Article 41 of the Constitution.

Whether the Claimant is entitled to the reliefs sought
Compensation for unfair termination

60. Having found the termination unfair, the Claimant is entitled to compensation under Section 49(1)(c) of the Employment Act.

61. Considering the Claimant's long service spanning approximately 13 years, her clean employment record, her contribution to the growth of the Respondent's Fund, the abrupt manner of termination of her employment, and the Respondent's failure to comply with statutory redundancy procedures, I deem an award of 10 months' salary sufficient compensation for the unfair termination.

Service pay

62. Under Section 35(6) of the Employment Act, service pay is not payable where an employee was a member of NSSF or any comparable statutory pension or social security scheme.

63. The Claimant's June 2018 pay slip, produced in evidence, demonstrates that she was contributing to NSSF. This

disentitles her to service pay under Section 35(6). This claim, therefore, fails on this account.

Leave and leave traveling allowance

64.The Claimant prayed for leave allowances and leave traveling allowances, but did not specifically prove the outstanding leave days or the contractual basis for leave traveling allowance.

65.The claim under this head, therefore, fails for want of proof.

Certificate of Service

66.Under Section 51 of the Employment Act, an employer is obligated to issue an employee a Certificate of Service upon termination, irrespective of the reason for termination.

67.The Respondent shall issue a Certificate of Service to the Claimant within fourteen (14) days of this Judgment.

68.In the final analysis, Judgment is entered for the Claimant against the Respondent as follows: -

- a) A declaration that the Claimant's termination is unfair and unlawful.
- b) Compensation for the unfair termination equivalent to ten (10) months' gross salary at Kshs.1,080,000/-
- c) The Respondent shall issue the Claimant a Certificate of Service within fourteen (14) days of this Judgment.
- d) The Claimant shall have the costs of the suit together with interest on item (b) at court rates from the date of judgment until payment in full.

69. Judgment accordingly.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 14TH DAY OF MAY, 2026.**

**C. N. BAARI
JUDGE**

Appearance:

Mr. Magani present for the Claimant

N/A for the Respondent

Ms. Esther S-C/A

ORIGINAL