Nzung'u v Pollman Tours & Safari Limited (Civil Appeal 126 of 2019)
[2024] KECA 1665 (KLR) (22 November 2024) (Judgment)

Neutral citation: [2024] KECA 1665 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 126 OF 2019

SG KAIRU, GWN MACHARIA & LA ACHODE, JJA

NOVEMBER 22, 2024

BETWEEN

FRANCIS KALAMBA NZUNG'U ..... APPELLANT

AND

POLLMAN TOURS & SAFARI LIMITED ..... RESPONDENT

(Being an appeal from the Judgement and Decree of the Employment and Labour Relations Court at Nairobi (Wasilwa, J.) dated 7{{^th}} February 2019 in ELRC Cause No. 175 OF 2015)

JUDGMENT

1. By a letter dated 18th October 1993, Francis Kalamba Nzung'u (the appellant) was appointed as an Airport Representative by Pollman Tours & Safari Limited (the respondent) in its Nairobi branch. The appellant rose through ranks within the respondent's company and he was promoted to the position of Customer Service Representative on 1st July 2020.

2. Citing alleged decline in the business volume and uncertainty regarding the future, in a letter dated 1st December 2014, the respondent through a restructuring programme, terminated the appellant's employment marking the end of the appellant's career with the respondent.

3. The appellant challenged the decision to have his employment terminated on account of redundancy, in the Employment and Labour Relations Court ('ELRC') through filing a Statement of Claim dated 12th February 2015. The appellant pleaded that he was employed on 1st October 1993 and performed his diverse duties with the respondent until 31st December 2014 when he was declared redundant. He stated that he worked with an untainted record for 21 years rising through ranks to be a member of the respondent's Senior Management Team until 1st December 2014 when it was communicated to him that there was an impending restructuring of the respondent's business operations due to alleged drastic decline in business. Accompanying this communication, was a letter dated 1st December 2014

titled 'Pollman's Nairobi Office Restructuring' giving the appellant one month's notice of termination of his employment by way of redundancy.

4. The appellant's complaint was that the purported grounds of redundancy were unlawful and contrary to section 40 of the *Employment Act*. The appellant pleaded that at the time of his termination, he was earning a salary of Kshs.99,752 plus benefits. He stated that as a permanent employee, he was entitled to meal, language, house, duty and fuel allowances and pension.

5. The appellant particularised the causes of action to be: wrongful termination and breach of contract; legitimate expectation; negligence; malice; breach of Articles 10, 26, 27, 41, 43, 47 and 50 of *the Constitution*; loss and damages, being loss of pension; loss of salary he was to earn

   for the remainder of the years prior to retirement at the age of 60 years; loss of house allowance not paid by the respondent; and threatened reputational risk as a non- performer following the unlawful termination of his employment.

6. As a result thereof, the appellant asked the ELRC to find his claim meritorious and prayed for:

   a) An order of reinstatement to his former employment and position without loss of benefits and/or seniority and continuity of service;

   b. In the alternative, an order that the respondent re-engages the appellant in the work of Customer Service Coordinator at the same salary, allowances and benefits;

   c. In the alternative, payment of the actual pecuniary loss suffered since the date of declaration of redundancy including payment for salary/wages as would have been earned, pension, housing allowance together with all accruing allowances;

   d. A declaration that the appellant has suffered unfair wrongful redundancy exercise in the first instance;

   e. A declaration that the respondent intentionally breached Section 40 of the *Employment Act*, Cap 226 and Articles 2, 10, 20, 26, 27, 28, 41, 43, 47 and 50 of *the Constitution*;

   f. A declaration that the action of the respondent is inoperative, unlawful, a nullity and/or void ab initio;

   g. Maximum compensation for loss of employment;

   h. General damages;

   i. Aggravated and exemplary damages;

   j. Any other further relief the court may deem fit to grant;

   k. Costs of the suit with interest."

7. In response, the respondent filed a Memorandum of Reply dated 13th March 2015. The respondent admitted that it did employ the appellant on 1st October 1993, and that he rose through the ranks and served in various non-managerial positions resting with the position of Customer Service Co- ordinator until 31st December 2014 when it terminated his employment on account of redundancy.

8. The respondent averred that, following the worsening security situation in the country in early 2014, several travel advisories against non-essential travel to Kenya were issued by authorities in North America and Europe; that this resulted in a collapse of the entire tourism industry, the net effect being cancelled flights, hotel bookings and a drop in tourist numbers; and that the outbreak of the Ebola

virus in West Africa exacerbated the situation as it spread fears that the virus could easily spread to Kenya, and this brought a further downturn in tourist numbers.

9. The respondent went on to state that as its core business is tours and safari targeting foreign tourists visiting Kenya, with the downturn in business, it was compelled to re-evaluate its structure and operations to ensure continued sustainability of the business; that one of the decisions arrived at in this regard was restructuring its operations by merging certain departments to cut operational costs; and that in or about July 2014, all employees including the appellant were notified of the restructuring program which the respondent had embarked on.

10. The respondent stated that it notified the Labour Office of the intended declaration of redundancies, and it also engaged and/or consulted its employees on an individual, group and/or department basis on the best way to restructure its operations and of selection of the employees to be declared redundant. According to the respondent, it selected the employees to be declared redundant based on an objective criterion which was uniformly applied; and importantly, it considered the field work experience and any special skills offered by the employees before making its decision.

11. The respondent asserted that the consequence of the restructuring process was that the appellant's position was abolished, which decision he was informed of, in a meeting followed up by a letter dated 1st December 2014 from the Human Resources & Administration Manager, giving him one month's notice of termination by way of redundancy; that it paid the appellant his salary for the month of December 2014, allowances, one month's salary in lieu of notice, together with the balance of his leave days accrued but not taken, severance pay calculated at the rate of one month's pay for each of his 21 completed years of service less statutory and other deductions.

12. The respondent defended the appellant's redundancy as justifiable, fair and proper and in accordance with the law; and that in any case, it paid the appellant his dues in full. It denied the particulars of the alleged wrongful termination and breach of contract, negligence, malice and of *the Constitution* as well as loss and damages claimed by the appellant.

13. On other alleged outstanding payments, the respondent averred that during the appellant's period of service, it was not a member of any pension scheme save for the National Social Security Fund, and the appellant had no right to recover lost salary which he would have earned up to retirement. It was contended that the appellant was paid full house allowance throughout his period of service which was consolidated in his monthly gross salary.

14. The respondent added that since the appellant was terminated by way of redundancy, he would not suffer any reputational risk as a 'non-performer' by reasons of termination of his employment, and that there is no sufficient basis to justify an order for reinstatement of the appellant. Further that, if it was to be found that it unfairly or unlawfully terminated the appellant's employment by way of redundancy, then the appellant would have no right in law to recover aggravated or exemplary damages.

15. The cause was heard by way of viva voce evidence. The appellant testified as CW1. He testified that the respondent was his employer since the year 1993 until 31st December 2014 when he was abruptly terminated; and that he was initially a Customer Service Representative and later promoted to the management level as Customer Service Co- ordinator earning a basic salary of Kshs. 98,000/=.

16. The appellant further testified that he was not given any notice or prior communication before he was declared redundant. He denied having a meeting with the respondent's Operations Manager who had been sacked on 26th November 2014. He stated that he worked until 31st December 2014 and that he was paid some money; and that he believed that he was being victimised due to tuff wars between directors of the respondent.

17. In cross examination, he stated that he was not aware that the respondent was going through financial difficulties; that even before the year 2014, there were other travel advisories which impacted tourism minimally and the said advisories were never communicated to them by the respondent; that he did not take part in the redundancies of the 4 staff members in his department who were declared redundant; and that after business stabilised, the respondent employed new employees. He denied being paid severance pay; and that he was paid about Kshs. 250,000/=. He admitted that he had a loan.

18. Gershom Odhiambo (RW1), the respondent's Human Resource Manager of 20 years testified on behalf of the respondent. His testimony was that he was aware of the redundancy which took place in the year 2014; and that the redundancy was occasioned by business downturns following travel advisories from their clients' sources. He produced in evidence, a newspaper cutting to demonstrate the figures in tourism decline and the number of jobs that had been lost in the tourism industry in the country because of the impact of the travel advisory. He testified that the loss incurred by the respondent in the year 2014 was Kshs.52,298,404; and that therefore, the respondent's business was affected and it (the respondent) had to take austerity measures to keep the company afloat.

19. Regarding the appellant's position, RW1 testified that it was merged with the Reservation Department. He referred the court to an email dated 9th October 2014 from the then Operations Manager informing the appellant of the redundancy; and stated that the appellant was paid his final dues vide a cheque of Kshs.1,513,859.

20. In cross examination, RW1 stated that the termination letter was delivered by one Abdi Hilal the then respondent's Operations Manager; that there was an agreement with Commercial Bank of Africa (CBA) to offset employees' loans; that the appellant was entitled to gratuity but not severance pay; that the appellant was a Customer Service Coordinator and that he was not in a managerial position.

21. The trial court (Wasilwa, J.) rendered its judgement on 11th February 2019. The learned Judge considered three issues for determination. The first was whether the respondent had a real redundant situation that warranted declaring the appellant redundant. On this, the learned Judge referred to section 40 of the *Employment Act* which makes provision for the conditions to be met before an employee is rendered redundant. She observed that the appellant was served with a one-month redundancy notice which was to take effect on 31st December 2014; and in the premise held that requisite notice was issued as per section 40 of the *Employment Act*.

22. The second issue was whether consultations were done between the appellant and the respondent prior to the termination. The learned Judge found that there was no evidence that consultations were done before termination; and for this reason, the appellant was awarded six months' salary as compensation, together with costs and interest from the date of judgment.

23. Thirdly, on the remedies sought, the court found that some of the redundancy dues were paid; and that all the dues for leave pending notice were also paid.

24. Aggrieved by the decision of the trial court, the appellant invoked this Court's jurisdiction by filing a Notice of Appeal dated 11th February 2019. The appellant also filed a Memorandum of Appeal dated 3rd April 2019 vide which he preferred 23 grounds of appeal, with further sub-grounds under each ground of appeal.

25. Rule 88 (1) of the Court of Appeal Rules 2022 provides that a memorandum of appeal shall be concise without being argumentative and/or contain a narrative. The grounds of appeal as framed by the appellant did not meet this criterion. We will however extend an olive branch to the appellant who

was in person. That said, being guided by the oral and written submissions of both parties, we have deduced the grounds of appeal to be as follows:

a. That the learned Judge erred in law and in fact in holding or implying that the respondent complied with section 40 of the *Employment Act* save for consultations;

b. That the learned Judge erred in law and in fact in holding that the respondent served the appellant with one-month redundancy notice when the evidence shows that no notice was issued save for the termination letter dated 1st December 2014 which reached the appellant on 4th December 2014;

c. That the learned Judge erred in law and in fact by only awarding 6 months' salary as compensation for unfair and unlawful termination of employment while the law recommends 12 months' pay under section 49 of the *Employment Act* and the redundancy payment as outlined under section 40 of the Act;

d. That the learned Judge erred in fact and in law in circumventing the crucial issue of the lack of evidence in respect of the allegation by the respondent that it presented a cheque for Kshs. 1,513,859/= to any bank on behalf of the appellant.

26. In asking us to allow this appeal, the appellant prayed that:

a. This appeal be allowed;

b. The judgement delivered on 7th February 2019 (Wasilwa, J.) be reviewed and/or set aside;

c. Judgement be entered for the appellant and claims/prayers awarded as prayed together with interest thereon from the date of filing the claim suit until payment in full; and

d. Costs of this appeal and that of the court below be borne by the respondent.

27. We heard this appeal virtually on 19th June 2024. The appellant appeared in person. He relied on his written submissions dated 17th December 2019 which he orally highlighted. Whilst referring to the respondent's submissions at paragraph *32*, he submitted that although compensation for unlawful termination is capped at 12 months salary by law, the court is at liberty to award more if it finds that there are constitutional breaches; that in his case, his termination was unlawful and wrongful, and that the appellant, in terminating his employment breached Articles 22, 27, 41 and 43 of *the Constitution*.

28. Regarding house allowance, it was submitted that the respondent relied on two documents to purport that it paid him, but which it did not expound much on; that on gratuity and the pay in lieu of notice, the respondent relied on a carbon copy of a cheque that he had never seen, received or discussed on with the respondent; and that if he had been paid as alleged, the respondent would have demonstrated and given evidence to the court, but not through a carbon copy of a cheque.

29. On damages, the appellant submitted that he was discriminated by being barred from joining a union, and in this regard referred to the emails at pages 224 and 225 of the record by the respondent's Managing Director one Mr. Khalid Shafi. He invoked Articles 27, 41 and 43, of *the Constitution* and section 5 of the *Employment Act* as a testament that the law was not followed when he was disallowed to join a union.

30. The respondent filed written submissions dated 17th February 2020. In highlighting the submissions, learned counsel Mr. Gibran Darr submitted that the respondent ably demonstrated that indeed there was justification that necessitated the redundancy; that the learned Judge was well-reasoned on this fact; that she rightly held that the only misstep by the respondent was failing to hold consultations

prior to declaring the redundancy; and that the respondent was awarded compensation for the minor breach which was sufficient. In this respect, the case of Butt vs. Khan (1978) eKLR was cited.

31. As regards the payment of terminal dues, it was submitted that there is incontrovertible evidence of proof of payment of the same at pages 165 to 167 of the record of appeal.

32. On the alleged constitutional breach, counsel relied on the persuasive decision of Anarita Karimi Njeru vs. The Republic (1976-1980) KLR 1272 which, he submitted, was later affirmed by this Court in the case of Mumo Matemu vs. Trusted Society of Human Rights Alliance, Attorney General, Minister of Justice & Constitutional Affairs, Director of Public Prosecutions, Kenyan Section of the International Commission of Jurists & Kenya Human Rights Commission (2013) KECA 445 (KLR) for the proposition that constitutional violations need to be pleaded with specificity. To the counsel, this threshold was not met by the appellant, consequent to which he could not claim or be awarded any damages for constitutional breaches. Counsel submitted that the doctrine of constitutional avoidance comes into play as not every breach of the law can be considered as a constitutional violation. In this regard, reference was made to the Supreme Court decision of Communications Commission of Kenya & 5 others vs. Royal Media Services Limited & 5 others (2015) KESC 15 (KLR).

33. Our mandate as a first appellate court is guided by the principles set out in the case of Abok James Odera t/a A.J. Odera & Associates vs. John Patrick Machira t/a Machira & Co. Advocates Civil Appeal No. 161 of 1999 (UR) by this Court as follows:

> "This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of Kenya Ports Authority versus Kuston (Kenya) Limited (2009) 2EA 212 wherein the Court of Appeal held inter alia that:-
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> > "On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence"

34. Further, the predecessor of this Court, the then Eastern Africa Court of Appeal, in Mbogo vs. Shah (1968) EA 93 stated as follows:

> "A court should not interfere with the exercise of the discretion of a judge unless it is satisfied that he misdirected himself in some matter and as a result arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge was clearly wrong in the exercise of his discretion and that as a result there has been misjustice"

35. We have duly considered the record of appeal, the written and oral submissions and the law. We have concluded that the issues that fall for our consideration are: whether there was justification for the appellant's redundancy; whether the redundancy was done in accordance with the laid down procedures set out in the *Employment Act*; whether the terminal dues to the appellant were paid; and whether the 6 months' salary pay as damages in lieu of consultations was sufficient.

36. The employer-employee relationship between the appellant and the respondent is not disputed. It also emerged from the pleadings that the appellant rose through the ranks to become the Customer

Service Co-ordinator of the respondent. It was also not disputed that the appellant's employment was terminated on 31st December 2014 on account of redundancy.

37. It is however disputed if the appellant was working at the managerial level. The respondent took the divergent position that the appellant was not working at a managerial position. The contract of employment of 1st July 2010 confirms that the appellant was indeed promoted to the position of Customer Service Representative. We have perused and appreciated the terms of the contract. There is nothing therein to suggest that the position was equivalent to being in a managerial position.

38. However, there is an email dated 3rd December 2014 to the appellant from one Khalid Shapi with the subject line 'pending review for remuneration.' The content thereof is a response to the appellant on why he was not considered in the salary review done by the respondent. The appellant was advised that it was only unionisable members who were entitled to salary increments in the year 2014, but not those in the managerial grades. This makes us draw the conclusion that the appellant was not a unionisable member for the fact that he was in a managerial position. Therefore, we reject the appellant's argument that he was discriminated in any way by not being allowed to join a union while holding a managerial position.

39. Termination on account of redundancy is codified in our laws under section 40 of the *Employment Act* which 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.

    2. Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.

40. The provision outlines two different notification procedures of redundancies; that is depending on whether an employee is a member of a trade union or not. A distinction arises where a unionisable employee under sub-section (1)(a) is guaranteed of a notice of not less than a month prior to the redundancy whereas under sub-section 40(1)(b) an employee who is not a member of a trade union is to be notified in writing together with the labour officer. There is no time frame set when an employee who is not in a trade union is to be notified of his termination on account of redundancy.

41. This Court in Thomas De La Rue (K) Ltd vs. David Opondo Omutelema (2013) KECA 492 (KLR) made an observation on the distinction of the timeframe of the notice to be issued prior to termination on account of redundancy under the two categories of employees under sub-sections 40(1) (a) and (b) as follows:

> " Section 40(1)(b) does not stipulate the notice period as is the case in 40(1)(a) (Sic), but in our view, a purposive reading and interpretation of the statute would mean the same notice period is required in both situations. We do not see any rational reason why the employee who is not a member of a union should be entitled to a shorter notice."

42. The bottom line is that whether an employee is a member of a union or not, in both situations, a notification must be issued to the employee intended to be declared redundant, of not less than a month prior to the intended redundancy. In this instance, the appellant was not a member of a trade union. We nevertheless see no reason to think otherwise of the findings of this Court in Thomas De La Rue (K) Ltd (supra) that an employee who is not a member of a union should be subjected to having a shorter notice period.

43. The law further places a burden on the employer to give reasons for, and the extent of, the intended redundancy. Going by the documents on record, there is a letter dated 1st December 2014 addressed to the appellant. The subject being the planned restructuring of the Nairobi office. In the letter, the respondent cited that it was compelled to restructure various activities and consolidation of departments due to drastic decline in business volume and uncertainty regarding the future. The appellant was informed that the termination notice was of one month effective 1st December 2014.

44. The appellant's complaint is that the letter reached him on 4th December 2014, three days short the required 30 days' notice period, and that therefore, it was not valid. Certainly, the appellant is admitting that indeed he was served with, and was aware of, the notice. The emails of 9th and 15th October 2014 are a testament that he was privy to the ongoing discussions of the intended redundancy. In fact, in the email of 9th October 2014, he is pleading on behalf of 3 staff members in his department to be retained.

45. We are inclined to believe that the appellant, being in a senior position and having 4 other employees under his supervision who were declared redundant, could not have failed to know that a letter intending to declare him redundant was in the offing. We are satisfied with the decision of the learned Judge that there was a proper and a valid one-month notice issued in accordance with section 40 (b) of the *Employment Act*.

46. The respondent cited a decline in business due to the travel advisories and the threatening Ebola virus as the justification for declaring a redundancy. Indeed, there are several newspaper cuttings on record which reported the impending closure of hotels due to the decline of tourists in the country. The inescapable conclusion we arrive at is that there were valid reasons put forth by the respondent as to why it had to declare redundancies.

47. In determining which employees are to be declared redundant, section 40 (c) requires an employer to consider seniority in time, the skill, ability and reliability of each employee of the particular

class of employees affected by the redundancy. Generally, for any termination of employment under redundancy to be lawful, it must be both substantially justified and procedurally fair. Apart from citing the low tourism season due to various travel advisories, the respondent did not adequately demonstrate that it applied the criteria set out in section 40(1) (c) in finding that the appellant was to be declared redundant. Perhaps a way in which the respondent might have done this was to come up with an evaluation score sheet indicating the score which a particular employee had against the various categories outlined in this provision and the continued employees' relevance in the business.

48. Furthermore, it is paramount that consultations between the employer and employees are done before termination notices on redundancy are issued. By dint of Article 2 (6) of *the Constitution*, the treaties and conventions ratified by Kenya now form part of the laws of Kenya. Kenya being a member of the International Labour Organization (ILO), is bound by ILO Conventions. Article 13 of Recommendation No. 166 of the ILO Convention No. 158 - Termination of Employment Convention, 1982 - provides:

    1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:-

        a. provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

        b. give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment." (Emphasis ours)

49. Maraga, JA. (as he then was) in Kenya Airways Limited vs. Aviation & Allied Workers Union Kenya, Minister For Transport, Minister For Labour & Human Resource Development & Attorney General (2014) KECA 403 (KLR) alluded to the importance of consultations as follows:

> "The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable. This means that if parties put their heads together, chances are that they could avert or at least minimize the terminations resulting from the employer's proposed redundancy. If redundancy is inevitable, measures should be taken to ensure that as little hardship as possible is caused to the affected employees."

50. In her concurring judgment, Murgor, JA. in the same case held that:

> "...consultations in redundancies are two-way discussions between the employer and the union to be conducted with candor, reasonableness and commitment towards addressing the concerns of both management and the employees and focused on reaching solutions."

51. We agree with the findings of the learned Judge that it was not demonstrated that prior consultations were done before issuance of the termination notice to the appellant. Much as the respondent had valid reasons for termination, consultations with employees is a requirement under the law which cannot be bypassed.

52. In view of the foregoing discourse, we think that we have settled the first two issues for determination: that there was justification to declare the redundancies by the respondent; and that the laid down procedure under section 40 of the *Employment Act* was followed save for the consultations.

53. The appellant has contended that his full redundancy payment, being severance, gratuity, payment in lieu of notice, house allowance, pension and other attendant allowances thereto were not paid to him. In his testimony, the appellant conceded that he was paid his salary for the month of December 2014.

54. At page 167 of the record of appeal is a tabulation of the final dues to the appellant. There is evidence that he was paid his gratuity and pay in lieu of notice. The total amount due to the appellant was Kshs.1,513,859.45. The respondent submitted that the cheque for the amount was issued to the Commercial Bank of Africa to offset a loan. The appellant admitted in cross examination that he indeed had a loan. If at all it is true, as the appellant wants us to believe that the respondent did not pay the monies due to him, either directly to him or to the bank, then one of his complaints would have been that the bank was demanding some outstanding loan amount from him, which is not the case here. We again come to the inescapable conclusion that the terminal dues to the appellant were fully paid by the respondent.

55. On the appropriate damages, the learned Judge found that 6 months' salary was adequate compensation. Section 49 of the *Employment Act* provides for a wide range of remedies for wrongful and unfair termination. When awarding damages, the trial court exercises discretion which we are cautioned not to interfere with unless we find that the same was awarded with no regard to the laid down legal principles. See Mbogo vs. Shah (supra).

56. The totality of the circumstances of the case before us demonstrates that the respondent complied with the procedure laid down in the law for termination on account of redundancy save for the consultations. The appellant was given one months' notice and the necessary due terminal payments. In asking us to consider that he is entitled to 12 months' pay as damages, the appellant did not sufficiently lead evidence in the trial court to justify the claim for an award of 12 months' salary as compensation so as to warrant us to disturb the exercise of discretion of the learned Judge. We find that the award of 6 months' salary was adequate compensation for the breach of failure to conduct consultations.

57. As we conclude our findings, the appellant has cited several constitutional provisions which he alleges were breached by the respondent. The superior court's decision in Anarita Karimi Njeru (supra) and as later affirmed by this Court in Mumo Matemu (supra) remains to be good law. In drafting constitutional petitions alleging breach of certain rights, the petitioner must state with reasonable precision that which he complains of, the provision(s) said to be infringed and the manner in which they are alleged to be infringed. The claim as filed by the appellant does not disclose with particularity the alleged rights breached by the respondents. We cannot therefore make favourable orders on behalf of the appellant on that front.

58. In the upshot, we are satisfied that the decision of the trial court was sound. We find no reasons to disturb the findings therein. Accordingly, we find this appeal to be unmeritorious and we hereby dismiss it with an order that each party bears its own costs.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024.

S. GATEMBU KAIRU, FCIArb

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

G. W. NGENYE - MACHARIA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR