



Shako v Save the Children International & another (Cause E1018 of 2024) [2025] KEELRC 655 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 655 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1018 OF 2024
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

RITA KIJALA SHAKO CLAIMANT

AND

SAVE THE CHILDREN INTERNATIONAL 1ST RESPONDENT

SAVE THE CHILDREN INTERNATIONAL (COMPANY NO. CF/2012/70940) 2ND RESPONDENT

RULING

1. Through a Notice of Motion dated 28th November 2024, the Claimant moved this Court seeking the following orders:
 1. That this application be certified as urgent and heard ex-parte in the first instance.
 2. That pending the inter partes hearing and determination of this Notice of Motion, this Honourable Court be pleased to issue a conservatory order in the nature of a temporary injunction restraining the Respondents, their agents, servants, or representatives from enforcing, implementing, or in any way giving effect to the letter dated 30th October 2024 terminating the Claimant's contract of employment on account of redundancy and/or any actions, decisions, or outcomes arising from the "Fit for Future" and redundancy process.
 3. That pending the inter partes hearing and determination of this Claim, this Honourable Court be pleased to issue a conservatory order in the nature of a temporary injunction restraining the Respondents, their agents, servants, or representatives from enforcing, implementing, or in any way giving effect to the letter dated 30th October 2024 terminating the Claimant's contract of employment on account of redundancy and/or any actions, decisions, or outcomes arising from the "Fit for Future" and redundancy process.



4. That this Honourable Court grants orders that it deems just and fit to grant under the circumstances.
5. That costs of this application be provided for.
2. Having been brought under a Certificate of Urgency, the Application was placed before this Court on 29th November 2024. Upon considering the Application and the grounds in support thereof, the Court issued the following orders:
 1. That the Claimant/Applicant to serve the Application upon the Respondent who is to respond to the same within 14 days hereof.
 2. That the Application to come up for inter partes hearing on 17th December 2024.
3. When the matter came up for hearing on 17th December 2024, Ms. Mamburi Counsel for the Claimant informed the Court that they had complied with the court order issued on 29th November 2024 and had effected service upon the Respondents. To this end, Counsel referred the Court to an Affidavit of Service sworn by Fredrick K. Korir on 10th December 2024, in which he avers that he effected service of the Application dated 28th November 2024, the orders issued by the court on 28th November 2024, together with all the pleadings upon the Respondents through electronic means.
4. It is worth pointing out that the Respondents were not present in Court on the said 17th December 2024 and had not entered appearance in the matter.
5. Arguing in support of the Application, Ms. Mamburi urged the Court to allow the Application in terms of prayer no. 2 effectively maintaining the status quo on the basis that the Application was unopposed and the Claimant was still serving her notice period. She further urged that the 1st Respondent was about to roll out a new structure and that the 2nd Respondent may cease to exist.
6. The Court upon considering the Application and upon hearing the submissions of Ms. Mamburi and further noting that the Application was not opposed despite the Respondents being duly served, issued the following principal order:

That pending hearing and determination of the main suit and/or further orders or directions from this court, status quo ante 28th November 2024 to be maintained.
7. On 16th January 2025, when the matter came up for mention, the Respondents were represented by Mr. Garat Mohammed, who to that effect, had filed a Notice of Appointment dated 13th January 2025.
8. Mr. Garat informed the Court that the redundancy process had taken full effect by the time the orders were issued by the Court on 17th December 2024. Counsel further argued that there was no proper service upon the Respondents. To this end, Mr. Garat urged the Court to set aside the interim orders in place as there are remedies awardable to the Claimant in the event the Court finds the redundancy process was flawed.
9. Ms. Mamburi on the other hand, strongly opposed Mr. Garat's oral application to set aside the interim orders.
10. Subsequently, the Respondents filed a Notice of Motion dated 5th February 2025 seeking an order to set aside, discharge and/or vary the orders issued on 17th December 2024. It is that Application which now comes up for determination.



11. The Motion is premised on the grounds set out in the Application and the Supporting Affidavit sworn on 5th February 2025 by Yvonne Arunga who has described herself as the Regional Director of the 2nd Respondent.
12. Grounds in support of the Application are that the Applicant is a non-governmental organization that depends on aid and donations, and whose funding has been materially reduced in recent years, forcing it to restructure and declare certain employment roles redundant across many different jurisdictions globally in 2024.
13. As a result of the financial constraints and organizational restructuring, a total of thirteen (13) employees were declared redundant from employment at the 2nd Respondent/Applicant in Kenya.
14. That due to material non-disclosure and misrepresentation regarding the status of the redundancy process by the Claimant, the Honourable Court was misled into issuing the Ex Parte Orders in vain, as her position of Regional Head of Advocacy, Campaign, Communication and Media in Eastern and Southern Africa, within the 2nd Respondent/Applicant had previously been made redundant effective 30th November 2024.
15. The Applicant, via various correspondence, informed the Claimant about the transition of the Applicant's organization to a global structure, effectively abolishing the regional and center-based structure and that the Claimant was fully aware of these changes, yet she chose to select and present facts, misleading the court by failing to disclose that the role she had previously occupied had been made redundant prior to the issuance of the Ex-Parte Orders.
16. According to Ms. Arunga, the effect of the Ex-Parte Orders is to essentially suspend the Applicant's decision to declare the Claimant's role of Regional Head of Advocacy, Campaign, Communication and Media in ESA, redundant due to financial constraints and organizational restructuring, effective 30th November 2024.
17. Ms. Arunga further avers that the circumstances of this case effectively occasioned a great prejudice and compels the Applicant to retain the Claimant's personal services, provide her with work and duties, pay salaries, allowances, and allow entry to its business, despite the fact that the position she previously held has been made redundant.
18. It is further averred that the Applicant is currently facing significant financial challenges and is unable to pay the Claimant's salary and benefits. That as a result, the Applicant may be held in contempt of court for failing to comply with the Ex Parte Orders unless they are set aside and/or varied.
19. Ms. Arunga further avers that the Claimant's role and/or position was declared redundant, and she is currently drawing salary and benefits without performing any duty, which is to the detriment of the Applicant.
20. That the Applicant strictly adhered to the tenets of employment practice and the procedural requirements for declaration of redundancy in Kenya.
21. It is Ms. Arunga's further contention that the Applicants were not properly served with the pleadings herein and the directions of the Court issued on 29th November 2024 for the inter partes hearing on 17th December 2024. That the Applicants only learned of the matter herein upon receipt of the Ex Parte Orders dated 17th December 2024.



22. It is further averred that the Claimant shall not suffer any irreparable harm if the Ex-Parte Orders are set aside. That the Claimant/Respondent's claim is an employment dispute and should be treated as such and in case she is successful in that dispute, she shall be adequately remedied by damages.
23. The Claimant responded to the Application through her Replying Affidavit sworn on 12th February 2025.
24. The Claimant avers that the Application and the court orders were served upon the Applicants on 29th November via email upon Inger Ashing, the Chief Executive Officer; Kate brown, the Chief People Officer; Yvonne Arunga, the Regional Director East and Southern Africa Region; and Sipiwe Mlanga, the Regional Human Resource Director, East and Southern Africa Region, all of whom are principal officers within the organization.
25. It is the Claimant's deposition that the entire redundancy process was exclusionary, discriminatory, and marked by harassment. That despite assurances that the process would be participatory and consultative, the consultations were superficial, with no meaningful feedback from the Applicants and with decisions seemingly predetermined.
26. She is advised by her Advocates on record, which advice she verily believes to be legally sound, that the purported notice issued to the Nairobi County Office on 25th October 2024 does not meet the requirements of a notice as contemplated under Section 40 of the *Employment Act*, as it did not notify the Labour Office of the intention to conduct a redundancy but merely stated that her position had already been declared redundant.
27. She is further advised by her Advocates on record, which advice she verily believes to be legally sound, that the purported notice of 16th December 2024 to the labour office is inconsequential and was issued as an afterthought, long after termination notices had been issued and after the instant Claim had been filed in an attempt to demonstrate compliance with the provisions of the *Employment Act*.
28. The Claimant further states that the allegations of material non-disclosure and misrepresentation by the Applicants regarding the status of the redundancy process are completely unfounded. According to the Claimant, the contents of her Notice of Motion and Supporting Affidavit filed on 28th November 2024 clearly outline all material information within her knowledge at the time of filing the same.
29. The Claimant avers that on 2nd October, 2024, they received communication from the Respondents Deputy Chief Executive Officer and Chief Strategy Officer that the new organizational structure would go live on or about 1st January, 2025. That the communication further confirmed that the "the current structure would remain in place until the end of the year". The same position has been restated in letters of confirmation of employment issued by the Applicants which in part read "The new structure takes effect on 1st January, 2025".
30. The Claimant thus avers that it is the Applicants who are misleading the Court by asserting that the migration from the old structure to the new global structure had already taken place when the Orders of 17th December 2024 were issued.
31. That she has always been ready and willing to perform all lawful tasks assigned to her by the Applicants as per her job description. However, the Applicants have locked her out of the organization's platforms, rendering her unable to perform any tasks for the benefit of the organization.
32. She further avers that the Applicants have not been remitting any allowances and/or benefits to her. That she has attempted to access medical treatment using her medical cover without success. Despite the same being paid for by the Applicants, they have deliberately omitted her name from the list



forwarded to their agent Zamara Group Limited as a result of which she is unable to obtain the necessary approvals required for treatment. She believes that, to this extent, the Applicants are in contempt of this Honourable Court's orders issued on 17th December 2024.

33. She is advised by her Advocates on record, which advice she verily believes to be true, that the Orders issued by this Honourable Court on 17th December 2024 are status quo orders ante 28th November 2024, aimed solely at preserving the substratum of the matter in the interest of justice. That the said Orders do not constitute a substantive equitable remedy such as an injunction.
34. The Claimant further avers that the Applicants, having communicated that the migration from the regional structure to the global structure would take effect in January 2025, have demonstrated that there was, and still is, a likelihood that the 2nd Respondent may cease to exist if full migration to the new global structure is allowed to take place.
35. That should this Honourable Court vacate, vary, or set aside the Orders issued on 17th December 2024, she will be left without an income and unable to provide for herself and her three children due to an unprocedural redundancy process and they are likely to suffer irreparable harm if the said orders are set aside.

Submissions

36. Pursuant to the directions issued by the Court on 6th February 2025, the Application was canvassed by way of written submissions. All parties complied and I have considered their respective submissions.

Analysis and Determination

37. The Court has carefully considered the Application, the Claimant's Replying Affidavit as well as the rival submissions and evidently, the singular issue for determination at this juncture is whether this Court should exercise its discretion in favour of the Applicants and set aside the orders issued on 17th December 2024, maintaining the status quo ante 28th November 2024. I say so noting that the key prayer in the Motion is seeking to "...set aside, discharge and/or vary the ex parte orders issued on 17th December 2024".
38. It is settled that the discretion of the Court to set aside an order is unfettered and that a successful applicant is obligated to adduce material upon which the court should exercise its discretion. Differently expressed, an applicant should demonstrate the factual basis for the exercise of the Court's discretion in their favour.
39. The guiding principles with respect to exercise of the Court's discretion were established in the celebrated case of *Shah vs Mbogo* [1967] E A 116 and 123B, where it was held that: -

“The discretion is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist the person who has deliberately sought whether by evasion or otherwise, to obstruct or delay the course of justice.”
40. In the instant case, the Applicants have argued that there was no proper service of the court orders issued on 29th November 2024 for the inter partes hearing on 17th December 2024 and that they only learned of the matter herein upon receipt of the Orders issued on 17th December 2024.



41. On her part, the Claimant has averred that her Advocates effected service of the court orders upon the Respondents' principal officers on 29th November 2020 through electronic means. To this end, the Claimant has relied on the Affidavit of Service sworn by Fredrick Korir on 10th December 2024.
42. It is noteworthy that the Applicants have not disowned the email addresses through which service of the court order issued on 29th November 2024 and pleadings were effected.
43. Pursuant to Rule 28 of the Employment and Labour Relations Court (Procedure) Rules 2024, service on a corporate body may be effected on the secretary, director or any other authorised officer of the corporate body.
44. Accordingly, the Court is satisfied that the Applicants were effectively served through their principal officers, with the orders issued on 29th November 2024 together with the pleadings and their failure to attend Court on 17th December 2024 was on account of other reasons not on record but certainly, cannot be attributed to lack of service. As such, the Applicants' argument to this end, does not hold.
45. The Applicants have further sought to set aside the orders issued on 17th December 2024 on the basis that the Claimant's position of Regional Head of Advocacy, Campaign Communication and Media, was declared redundant effective 30th November 2024. It is further averred that the Applicants are facing financial challenges and unable to pay the Claimant's salary and benefits.
46. The Applicants have further averred that they adhered to the tenets of employment practice and the procedural requirements for declaration of redundancy.
47. Disputing the Applicants' position, the Claimant has averred that they received communication from the Deputy Chief Executive Officer and Chief Strategy Officer that the new organisational structure would go live on or about 1st January 2025.
48. What is evident from the positions advanced by both parties herein, is that the Applicants have developed a new organisational structure and the Claimant's position has been impacted.
49. In support of its position, the Applicants have relied on email communication exchanged between the Claimant and Yvonne Arunga with respect to the proposed organisational changes.
50. In an email dated 28th November 2024, whose subject was handover, Yvonne Arunga addressed the Claimant in part:

“I did not hear back from you following my email of the 8th October in which I requested a final consultation meeting to discuss the redundancy of your role following the Fit For Future Structure.

As we approach the 30th November 2024, marking your transition from the Save the Children, we are keen to ensure the seamless handover of your responsibilities. To support this process, I kindly request that you share your complete handover notes at your earliest convenience.”
51. The Court has further considered the Claimant's notice of redundancy dated 30th October 2024 and notably, the same indicates that her notice was effective 31st October 2024.
52. A perusal of the Claimant's contract of employment reveals that her notice period was for one (1) month. As such, it follows that the redundancy notice issued to the Claimant on 30th October 2024 expired on 30th November 2024.



53. In view of the email dated 28th November 2024 as read together with the Claimant's notice of redundancy and bearing in mind the Claimant's contractual notice period, I am led to conclude that the Claimant was declared redundant with effect from 30th November 2024. It is only for the foregoing reason that the Application will benefit.
54. In light of the foregoing, the Application dated 5th February 2025, by the Applicants is hereby allowed. Consequently, the orders issued by this court on 17th December 2024 are hereby set aside.
55. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Mamburi for the Claimant/Respondent

Mr. Garat for the Respondents/Applicants

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B** of the *Civil Procedure Act (Chapter 21 of the Laws of Kenya)* which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

