



Uwera v Fairtrade Labelling Organization International E.V (Cause E1031 of 2024) [2025] KEELRC 656 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 656 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1031 OF 2024
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

SANDRA UWERA APPLICANT

AND

**FAIRTRADE LABELLING ORGANIZATION INTERNATIONAL
E.V RESPONDENT**

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion dated 4th December 2024 seeking the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. Pending the hearing and determination of this suit, a temporary/injunction does issue restraining the Respondent, by itself, servants or agents from terminating the Applicant's employment pursuant to the notice of termination of employment on account of redundancy dated 11th November 2024.
 5. Pending the hearing and determination of this suit, a temporary injunction does issue restraining the Respondent, by itself, its servant or agents from embarking on a restructure which may lead to the termination of the Applicant's employment.
 6. Costs of this Application be provided for.
2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Sandra Uwera, the Claimant/Applicant herein. Grounds in support of the Motion are that by an



employment contract signed in February 2022, the Respondent employed the Applicant as its Global Chief Executive Officer commencing 20th April 2022. The contract was expressed to be a "permanent employment contract" which was only terminable upon terms set out in the said contract or upon the Applicant attaining the age of 67 years.

3. In her Supporting Affidavit, the Applicant deposes that in a meeting held on 3rd October 2024 which was followed by a letter dated 4th October 2024, the Respondent informed her of a Board Resolution that had been passed on 26th August 2024, by which the Organization's future leadership structure was approved under what is known as "Project Simple".
4. She further avers that she was informed that in the new leadership model, her role would no longer exist and in the circumstances the Board proposed a settlement agreement to facilitate a mutual separation between herself and the Respondent.
5. According to the Applicant, this decision was made contrary to the Resolution passed in the meeting of the General Assembly of 19th June 2024, where it was agreed that further work and consultations with respect to the proposed changes in the Respondent's governance structure ought to be done. It is her further assertion that it was agreed that any changes to be made would be discussed in an extraordinary meeting of the General Assembly within 12 months of the meeting held on 19th June 2024.
6. The Applicant contends that the General Assembly is yet to meet to approve the "Project Simple" which the Respondent's Board has anchored its decision to terminate her employment.
7. She avers that upon her request for time to ponder over the developments, the Respondent without taking into account the gravity of the matter at hand, unilaterally directed that she furnishes the Board with a response by midday, Friday, 11th October 2024. That this deadline was prescribed well knowing that a weekend lay ahead and that she would be travelling on official duty to Colombo, Sri Lanka on Monday, 7th October 2024 following the said discussion.
8. The Applicant further avers that in spite of the Respondent being advised by her lawyers that the proposed termination on account of redundancy does not comply with the requirement of Section 40 of the *Employment Act*, the Respondent has persisted in violating the express provisions of the law with the knowledge that the benefits of its illegal actions will well outstrip any damages that may be awarded by this Court on account of unlawful termination.
9. The Applicant further contends that the Respondent in its letter dated 11th November 2024 conveying its intention to terminate her employment on 11th December 2024, failed to take into account the need to issue a general notice to facilitate consultation before the issuance of the termination letter.
10. The Applicant has further averred that upon receiving the letter of 11th October 2024, she noticed that she could not access her emails and that she had been removed from all central servers of the Respondent, which in effect rendered her unable to execute her duties or communicate internally to staff or externally to members.
11. That further, a member of staff was deployed to remove IT equipment from her office, yet her employment has yet to be terminated.
12. The Applicant has further averred that by a letter dated 31st October 2024 which was sent on her behalf by her Advocates on record, she informed the Respondent that she was keen on negotiating a separation agreement on mutually agreed terms.
13. The Respondent, in disregard of her request, and in yet another condescending manner, proceeded to serve her with a notice of its intention to terminate her employment on account of redundancy by a



- letter dated 11th November 2024. The letter indicated that the said termination would take effect on 11th December 2024.
14. She has been advised by her Advocates, which advice she verily believes to be true, that the said notice is fatally defective as it does not comply with the express provisions of the law.
 15. She is further advised by her said Advocates, which advice she verily believes to be true, that the process adopted by the Respondent in carrying out the redundancy exercise does not address the requirement of substantive justification and procedural fairness.
 16. In response to the Application, the Respondent filed a Replying Affidavit sworn on 10th September 2024 by Laurence Tanty. Ms. Tanty avers that whereas the contract of employment was expressed to be a permanent employment contract which would automatically terminate when the Applicant attained the age of 67 years, she is advised by her advocate on record which advice she verily believes to be true that the said contract was not insulated from other modes of termination prescribed under the Employment Act.
 17. Ms. Tanty further confirms the Applicant's assertions that a meeting was held on 3rd October, 2024 and followed by a letter dated 4th October, 2024 by which the Respondent informed the Applicant of a Board Resolution of 26th August 2024 by which the Respondent's future leadership structure was approved. According to her, the change in leadership structure communicated to the Applicant had nothing to do with "Project Simple", which is related to internal governance.
 18. It is Ms. Tanty's further assertion that the decision to do away with the position of Global CEO was an administrative one reached pursuant to a Board Resolution passed on 26th August 2024. She maintains that the said Board Resolution had absolutely nothing to do with "Project Simple".
 19. She further avers that the date of 11th October 2024 was not cast in stone and was purely for administrative purposes. That the Applicant was given an option to attend the meeting in Colombo, Sri Lanka either in person or virtually, but she opted to attend in person.
 20. Ms. Tanty further asserts that the Respondent forwarded to the Applicant's Advocates a draft Separation Agreement vide a letter dated 26th October 2024 which also constituted a substantive response to the Applicant's Advocate's letter of 16th October 2024.
 21. That neither the Applicant nor her Advocates on record reverted to her Advocates on the draft Separation Agreement by letting the Respondent know what the Applicant would have wanted included or omitted from the said draft Agreement.
 22. That when it became apparent to the Respondent pursuant to the letter of 31st October 2024, from the Applicant's Advocates that the Applicant was not willing to pursue the mutual separation route, the Respondent resolved to proceed with termination of the Applicant's employment by reason of redundancy as prescribed by law.
 23. Ms. Tanty is advised by her Advocates on record which advice she verily believes to be true, that the process followed by the Respondent in terminating the Applicant's employment is aligned to the provisions of Section 40 of the Employment Act.
 24. It is Ms. Tanty's views that the orders sought in the Notice of Motion have been overtaken by events as the Applicant was formally terminated from her employment on 11th December 2024 and the Respondent is now operating under a new governance structure.



25. In response to the Respondent's Replying Affidavit, the Applicant filed a Further Affidavit dated 19th December 2024.
26. The Applicant avers in the Further Affidavit that from the email correspondence exchanged between herself and the Respondent from 18th September 2024 to 1st October 2024, it is evident that the discussion leading up to the purported redundancy was anchored on "Project Simple". That this position was further confirmed in the Respondent's letter dated 26th October 2024 in response to her lawyer's letter dated 16th October 2024.
27. She is advised by her Advocates on record, which advice she verily believes to be true, that under Section 40 of the *Employment Act*, termination on account of redundancy is subject to the fulfilment of the conditions contained in the said section. It is her position that the said conditions have not been fulfilled and, therefore, her employment has not been terminated.
28. It is the Applicant's further assertion that the Respondent has deliberately failed to exhibit the Board Resolution referenced in the Replying Affidavit, which was purportedly passed to do away with the position of Global CEO, an issue which was subject of pending deliberation by the General Assembly.
29. She further avers that it is not true, that the time extended to her to respond to the Respondent's letter of 4th October 2024 was not driven by ill motive or cast in stone as not only did the Respondent limit the time to seven (7) days, but it also gave a hard-stop time of midday on 11th October 2024.
30. The Applicant further avers that upon receiving the Respondent's letter dated 11th December 2024, she responded to the same by her letter dated 11th December 2024, drawing the Respondent's attention to its unlawful conduct.

Submissions

31. The Application was canvassed by way of written submissions. Both parties complied and the Court has given due consideration to the said submissions.

Analysis and Determination

32. The Court has considered the Application, the Respondent's Replying Affidavit, the Applicant's Further Affidavit as well as the rival submissions and has isolated the following issues for determination;
 - a. Whether the instant Application has been overtaken by events;
 - b. Depending on (a) whether the Application is merited;

Whether the instant Application has been overtaken by events

33. The Respondent is categorical that the Applicant was formally terminated from her employment on 11th December 2024 and that the letter of termination was signed by its Board Chair and Board members. Accordingly, the Respondent has posited that the restraining orders sought by the Applicant in the instant Motion have been overtaken by events. To this end, the Respondent has taken the view that the orders sought by the Applicant are moot.
34. The Applicant has strongly opposed the position taken by the Respondent on this issue. According to her, the letter upon which the Respondent takes its position could not have terminated her employment by reason of the *Employment Act* and under the terms of her employment contract. In this regard, the Applicant has anchored her argument on Section 40 of the *Employment Act* which sets out the preconditions that must be fulfilled prior to an employer terminating an employment on



- account of redundancy. Placing reliance on the case of *Gesrishom Mukhutsi Obayo vs DSV Air and Sea Limited* (2018) eKLR, the Applicant has proceeded to cite a number of procedural requirements which she contends the Respondent has not complied with.
35. On this issue, the Applicant is of the view that the wording of Section 40 of the *Employment Act* is that termination on account of redundancy crystallizes only when the conditions set out therein have been met.
 36. It is the Applicant's position that the mere writing of a letter purporting to terminate her employment does not in itself terminate an employment unless on the face of it, the employer can demonstrate that it has met the conditions prescribed by Section 40 of the *Employment Act*.
 37. On record is a copy of a letter dated 11th December 2024 addressed to the Applicant referenced: "TERMINATION OF YOUR EMPLOYMENT ON ACCOUNT OF REDUNDANCY UNDER SECTION 40 OF THE *EMPLOYMENT ACT*".
 38. The said letter reads in part; "As intimated in the notice of 11th November 2024, aforesaid and for the reasons set out therein, the position of Global CEO has now been rendered redundant. In view of the foregoing, we hereby formally terminate your employment for the reason of redundancy of your position with effect from 11th December 2024. Further, to our previous requests, all of the equipment in your possession which is the property of Fairtrade Labelling Organization e.V is to be returned to the office of Fairtrade Africa,..."
 39. My reading of the aforementioned letter reveals that the Applicant's employment was formally terminated with effect from 11th December 2024 on account of redundancy. This is further confirmed by the fact that the Applicant was advised through the same letter to hand over the Respondent's equipment in her possession.
 40. Termination of employment is a question of fact and in this case, the same has been evidenced by the letter of termination dated 11th December 2024.
 41. As to whether the Respondent complied with the preconditions stipulated under Section 40(1) of the *Employment Act* is another issue altogether that cannot be determined at this juncture.
 42. Further, it should be appreciated that the issues raised by the Applicant with respect to the procedural flaws attendant to the redundancy exercise cannot be examined microscopically at this interlocutory stage. In any event, any finding that there was a procedural lapse in the redundancy process does not negate the fact that termination of employment has occurred.
 43. In addition to the foregoing, a finding that the Respondent failed to comply with the statutory requirements under Section 40(1) of the *Employment Act* ought to be preceded by a full trial and upon evaluation of the facts and the evidence presented by both sides.
 44. What's more, such a finding will render the termination of employment unfair and unlawful but by all means does not and cannot change the fact that termination of employment occurred.
 45. In the circumstances, the Court cannot at this juncture conclude that the Applicant has not been terminated from employment on the basis that the Respondent has not satisfied the conditions prescribed under Section 40(1) of the *Employment Act*. To do so would be to jump the gun.
 46. In light of the foregoing, it is this Court's respectful view that the Applicant having been terminated from employment with effect from 11th December 2024, it follows that the instant Application has been overtaken by events hence moot and it would therefore be unnecessary to proceed with the



hearing of the Application in whichever manner. And if it proceeds to success, the victory would be pyrrhic.

47. In view of the foregoing findings, I find no justifiable grounds to proceed to determine this Motion on its merit.
48. Accordingly, the Application dated 4th December 2024, is declined with an order that 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. Manani instructed by Mr. Odera for the Claimant/Applicant

Ms. Ouma for the Respondent

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

