



REPUBLIC OF KENYA



**Musau & 4 others v Board of Directors Habitat for Humanity Kenya & another
(Cause 638 of 2019) [2025] KEELRC 550 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 550 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 638 OF 2019
B ONGAYA, J
FEBRUARY 27, 2025**

BETWEEN

**DANIEL NZAU MUSAU 1ST CLAIMANT
RISPER NKIROTE KAARIA 2ND CLAIMANT
NOREEN WAKIURU KARABA 3RD CLAIMANT
JUSTUS KIZITO LUNALO 4TH CLAIMANT
SAMWEL NYANGENA MOMANYI 5TH CLAIMANT**

AND

**BOARD OF DIRECTORS HABITAT FOR HUMANITY
KENYA 1ST RESPONDENT
BOARD OF DIRECTORS HABITAT FOR HUMANITY INTERNATIONAL,
INC 2ND RESPONDENT**

JUDGMENT

1. The Claimants filed the memorandum of claim dated 30.09.2019 through Lucy Kaaria, Matumbi & Company Advocates. The claimants prayed for orders as follows:
 - a. A declaration that the termination of the claimants' employment by the respondent on account of redundancy is unfair, irregular, and unprocedural and hence null and void.
 - b. A declaration that the respondents in identifying the claimants did not comply with the provisions of section 40(1) (b) and (c) of the *Employment Act* and their own Human Resource Manual in regard to redundancy process.
 - c. An order reinstating the claimants to their respective jobs positions with the respondent before the redundancy process was undertaken.



- d. In alternative an order for general damages including 12 months' salaries; 30 working days for each served year; gross salaries for remaining number of years per contracts of service; and, unpaid annual leave allowances as per their employment contracts.
 - e. Any other relief that the Court may deem fit to grant.
 - f. Costs of the claim.
2. The respondents filed the memorandum of defence on 06.12.2019 through Coulson Harney LLP and learned Counsel Mr. Deya Advocate appeared in that behalf. The respondent prayed that the suit be dismissed with costs.
 3. Parties called their respective witnesses and final submissions were filed for the parties. The Court has considered the material on record. The Court finds as follows.
 4. To answer the 1st issue, the Court finds that the claimants were employed by the 1st respondent and were sometimes seconded or assigned to work for 2nd respondent. The employer was the 1st respondent. There was no dispute that the 1st respondent was the manager on behalf of Habitat for Humanity Kenya and as such manager or agent of the employer, the 1st respondent falls within the definition of employer under the *Employment Act*.
 5. To answer the 2nd issue, the Court returns that the employment relation terminated by redundancy as per the account of the witnesses and the exhibited correspondence. Each claimant received on or about 28.08.2017 a letter dated 29.08.2017 notifying that redundancy would take effect on 30.09.2019. Further, the County Labour Officer received a letter dated 29.07.2019 on 31.07.2019 at Nairobi and on 30.07.2019 at Kisii where one of the claimant was serving. The claimant's witnesses also testified that prior to taking effect of the redundancy, they attended counseling sessions and a committee was in place to assist in consultation meetings which were held. CW1 also confirmed that each claimant held a sole position in the 1st respondent's establishment so that the need for selection based on seniority in time and suitability for retention did not arise. The Court considers that the claimants have failed to show that section 40 of the *Employment Act*, 2007 on redundancy prescribing notice to employees and area labour officer on extent and reasons for redundancy and on selection criteria had been breached. The evidence was that the claimants were duly prepared for the redundancy. Termination was effective 30.09.2019 whereby 2 weeks were designated for working and 2 weeks for handing over and clearing with the employer prior to the taking effect of the redundancy. Notification letters were issued on 29.07.2019, termination letters on 29.08.2019 and termination was to take effect on 30.09.2019. Any discrepancies in the dates of the notification on the letters were duly explained to the claimants in writing as typographical. It appears to the Court that the redundancy based upon restructuring was undertaken substantially in accordance with the applicable law. As urged for the respondents, it was not unfair in substance and procedure and the 3rd issue is determined.
 6. The claimants confirmed that they were duly paid their terminal and redundancy dues. The respondents explained the delay in payment in view that the claimants rushed to file suit as at time redundancy was taking effect and the claimants had not cleared. They were subsequently paid. The Court finds that any of the reliefs as prayed for is not justified as the 4th issue is accordingly determined. The Court has considered all circumstances of the case and each party to bear own costs of the suit.

In conclusion judgment is entered for the respondent for dismissal of the suit with orders each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 27TH FEBRUARY, 2025



**BYRAM ONGAYA
PRINCIPAL JUDGE**

