



**Njuguna v National Organisation of Peer Educators (Cause E305 of 2023)  
[2025] KEELRC 575 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 575 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E305 OF 2023  
L NDOLO, J  
FEBRUARY 27, 2025**

**BETWEEN**

**ALICE NJUGUNA ..... CLAIMANT**

**AND**

**THE NATIONAL ORGANISATION OF PEER EDUCATORS ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By her Statement of Claim dated 27<sup>th</sup> February 2023, the Claimant makes a case of unlawful and unfair termination of employment by the Respondent. The Respondent filed a Reply dated 29<sup>th</sup> May 2023.
2. When the matter came up for hearing 15<sup>th</sup> May 2024, there was no appearance by the Respondent, despite due notice. I therefore heard the Claimant's case ex parte. By an interlocutory ruling delivered on 13<sup>th</sup> February 2025, I declined the Respondent's plea for re-opening of the case. Both parties filed final submissions.

**The Claimant's Case**

3. The Claimant states that she was employed by the Respondent as a Receptionist in January 2004. She worked until sometime in 2019, when her employment was terminated on account of reduced funding.
4. The Claimant was re-engaged by the Respondent in the position of Human Resource Officer, on a four (4) months' contract from October 2020. She earned a monthly salary of Kshs. 136,500.
5. The Claimant's contract was extended from January 2021 to April 2021, with a further extension running until 31<sup>st</sup> December 2021.
6. The Claimant claims that her monthly salary kept fluctuating within the range of Kshs. 28,000 to 60,000.



7. The Claimant's employment was terminated on 11<sup>th</sup> February 2022 on account of lack of funds. She states that she was not subjected to due process. She therefore makes a case of unlawful and unfair termination of employment and now claims the following:
  - a. Compensation for unfair termination;
  - b. Salary arrears accrued as underpayment in the sum of Kshs. 980,497;
  - c. Severance pay @ 30 days per year in the sum of Kshs. 1,690,000.

### **The Respondent's Case**

8. In its Reply dated 29<sup>th</sup> May 2023, the Respondent admits having employed the Claimant, under diverse and independent fixed term contracts that automatically terminated upon effluxion of time.
9. The Respondent denies the allegation that it unilaterally terminated the Claimant's employment and avers that the donors in the Claimant's Department withdrew funding before completion of the project, making it impossible to continue with the employment relationship.
10. The Respondent further admits re-engaging the Claimant on a 4 months' contract after securing alternative funding.
11. The Respondent states that the difference in the Claimant's salary and renewal of the 4 months' fixed term contracts was based on independent projects with diverse donor funding.
12. The Respondent avers that withdrawal of donor funding made it impossible to keep the Claimant in employment.
13. The Respondent asserts that the Claimant was duly notified of the reasons for the separation and paid all her accrued dues.

### **Findings and Determination**

14. There are two (2) issues for determination in this case:
  - a. Whether the Claimant has made out a case of unlawful termination of employment;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

15. From the evidence on record, the Claimant had two working stints with the Respondent, with the first one terminating in 2019. She was re-engaged from October 2020 until January 2022.
16. It would appear that at the end of the first employment stint, the Claimant did not raise any disputes either regarding the termination or payment of accrued dues. It is therefore logical to conclude that there was no cause of action arising from this period.
17. Regarding the second stint, the Respondent states that the employment relationship came to an end due to lack of donor funds. This reason falls under redundancy which is defined under Section 2 of the *Employment Act* as:

“ the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where



the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

18. The law on termination of employment on account of redundancy is codified in Section 40 of the *Employment Act*, which provides as follows:

40.

- (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 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 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.

19. Emerging jurisprudence is to the effect that the foregoing conditions are mandatory.

20. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee, their union (where applicable) and the local Labour Officer. By definition, this notice, should set out the reasons for and the extent of the intended redundancy.

21. It is now settled that the redundancy notice is separate and distinct from the termination notice provided under Section 40(1)(f).

22. In *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR the Court of Appeal stated as follows:

“It is quite clear to us that sections 40 (a) and 40 (b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a union, the notification is to the union and the local labour officer at least one month before the effective redundancy date. Where



the employee is not a member of the union, the notification must be in writing and to the employee and the local labour officer. Section 40 (b) does not stipulate the notice period as is the case in 40 (a), 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.”

23. In the subsequent decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR Maraga JA (as he then was) rendered himself as follows:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...ILO Convention No. 158-Termination of Employment Convention, 1982, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ 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.”

24. In the more recent decision in *The German School Society v Ohany & another* [2023] KECA 894 (KLR) the Court of Appeal held that the requirement for consultation is implied in Section 40 of the *Employment Act*, stating that:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”

25. Under Section 40(1)(c) the employer is required to follow an objective selective criterion for redundancy, which takes into account seniority in time, skill, ability and reliability of each employee affected by the redundancy.
26. In terminating the Claimant’s employment, the Respondent did not comply with any of the conditions set under Section 40 of the *Employment Act*. The termination was therefore unlawful and unfair.

## Remedies

27. In the result, I award the Claimant four (4) months’ salary in compensation. In making this award, I have taken into account the period served by the Claimant under the second stint of her employment and the fact that she did not contribute to the termination.
28. I have further considered the Respondent’s failure to follow the law in bringing the employment relationship to an end.
29. In light of the finding that the Claimant’s employment was terminated on the ground of redundancy, I will allow the claim for severance pay, limited to the service period in the second stint.
30. The Claimant’s claim for salary underpayment is based on the different salaries earned over the employment period. There is however evidence on record that the Claimant consented to the dissimilar salaries. The claim for underpayment is therefore without basis and is disallowed.
31. For purposes of tabulating the award, I will adopt the monthly salary of Kshs. 51,996 paid in December 2021.



32. Finally, I enter judgment in favour of the Claimant as follows:
- a. 4 months' salary in compensation.....Kshs. 207,984
  - b. Severance pay for 1 completed year of service.....25,998
- Total.....233,982

33. This amount will attract interest at court rates from the date of judgment until payment in full.

34. The Claimant will have the costs of the case

35. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Omari for the Claimant

Mr. Mwangi for the Respondent

