



**Muindi v Buzeki Enterprises Limited (Cause E501 of 2022)
[2025] KEELRC 746 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 746 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E501 OF 2022
DKN MARETE, J
FEBRUARY 26, 2025**

BETWEEN

JOHN SYLLAS MUINDI CLAIMANT

AND

BUZEKI ENTERPRISES LIMITED RESPONDENT

JUDGMENT

1. This matter come about by way of a Memorandum Claim dated 6th July, 2022. The issues in disputes therein are;
 - i. Whether the Claimant was lawfully terminated from the Employment of the Respondent on account of redundancy.
 - ii. Whether the Respondent discriminated against the Claimant during his termination on account of Redundancy.
 - iii. Whether the Claimants salary was lawfully deducted by the Respondent.
 - iv. Whether the Respondent exposed the Claimant to harmful materials without any protective gear during his employment.
 - v. Whether the Claimant is entitled to the relief remedies sought.
2. The Respondent in a Memorandum of Response dated 7th September, 2022 denies the claim and prays that it be dismissed with costs.
3. The claimant's case is that by a letter of appointment dated 30th August, 2023, he was employed by the Respondent on permanent terms in the position of Employee Mentor and Instructor. He earned Kshs.50,000.00 per month.



4. The claimant's further case is that due to his diligence, exceptional performance and demonstrated leadership, he was promoted to the position of Occupational Health and Safety Manager by a letter dated 29th June, 2014 in an acting capacity and was confirmed to be substantive position vide a letter dated 28th October, 2016. This was at a monthly salary of Kshs.108,750.00.
5. The claimant's other case is that due to his stellar performance, he was again promoted to the position of Health and Safety Manager at a monthly salary of Kshs.130,000.00. This was by a letter dated 21st November, 2019.
6. The Claimant's other case is that he continued to serve the Respondent diligently and was dismayingly shocked by a letter dated 4th March, 2022 notifying him that his employment would be terminated with effect 6th April, 2022 on grounds of redundancy.
7. It is his case that this termination for employment on account of redundancy was unlawful and unfair since the procedure anticipated under Section 40 of the Act, 2007 was not followed.
8. His narration of other defaults of the Respondent include;The Respondent without notice unilaterally varied the contract of employment by reducing his salary from Kshs.130,000.00 to Kshs.78,000,00 and from April to June, 2020 and thereafter to Kshs. 107,250 from July to November, 2021.Failure to remit his salaries for the months of December, 2021 till termination in April, 2021.He was exposed to harmful materials and was not provided with the requisite protective gear thereby developing chronic bronchitis and requiring frequent medical attention.
9. The Claimant again cites the following as particulars of illegality and unfairness by the Respondent
 - i. Without consultation and in a discriminatory fashion, declaring the Claimant redundant and terminating his employment contrary to Section 5 of the Employment Act and Article 10 of the Constitution;
 - ii. Failing to taken into account, in the selection of the Claimant as an employee to be declared redundant, due regard to seniority in time and to the skill, ability and reliability of each employee or the particular class of employees affected by the redundancy contrary to Section 40(1)(a) of the Employment Act Chapter 226;
 - iii. Failing to notify the labour officer the reasons for, and the extent of the intended redundancy at least one month prior to the date of the intended date of termination contrary to Section 40(1)(a) and (b) of the Employment Act;
 - iv. Unfairly terminating the employment of the Claimant contrary to Section 45(1) of the Employment Act Chapter 226;
 - v. Without notice, unilaterally varying the Claimant's contract of employment by reducing his salary from Kshs.130,000 to Kshs. 78,000 from the month of April 2020 to July 2020 and thereafter to Kshs.107,250 from the month of August 2020 till December 2021.
 - vi. Failing to pay the Claimant his salary for the months of December 2021till his termination in Aril 2022.
 - vii. Deliberately exposing the claimant to harmful materials and failing to provide him with requisite and critical protective gear.
 - viii. Unlawfully failing to remit the Claimants pension dues to NSSF for the months of April 2021, August 2021, September 2021, October 2021, February 2022 March 2022 and April 2022.



- ix. Illegally withholding the claimant's terminal benefit is contrary to Section 25 of the Employment Act.
10. Further, the Claimant enlist the following as particulars of repudiatory breach and frustration of contract on the part of Respondent.
- i. Without notice, unilaterally varying the claimant's contract of employment by reducing his salary from Kshs.130,000 to Kshs.78,000 from the month of April 2020 to July 2020 and thereafter to Kshs.107,250 from the month of August 2020 till December 2021.
 - ii. Failing to remit the claimant's salary for the month of July 2021.
 - iii. Failing to pay the claimant his salary for the months of December 2021 till his termination in April 2022.
 - iv. Maliciously, unfairly and unlawfully terminating the claimant from employment on the fictitious ground of redundancy after the claimant reported non-payment of salary to the labour officer.
11. He prays as follows;
- i. 12 months' salary as damages for unlawful termination
(12mths x Kshs.130,000)Kshs.1,560,000/
 - ii. One Month's salary in lieu of noticeKshs130,000
 - iii. Unpaid salaries from the month of December 2021 till April, 2022 (5mths*130,000)
.....Kshs.650,000
 - iv. Payment of all salaries withheld from the month of April 2020 to July 2020 when the Claimant's salary was unilaterally and unlawfully reduced from Kshs.130,000 to Kshs.78,000(4mths x Kshs.52,000).....Kshs.208,000
 - v. Payment of all salaries withheld from the month of August 2020 to November 2021 (with the exclusion of July 2021) when the claimant's salary was unilaterally and unlawful reduced from Kshs.130,000 to Kshs.107,250 (16mthsxKshs22,750)
.....Kshs.364,000
 - vi. Payment of salary withheld in the month of July 2021 when the claimant's salary was unilaterally and unlawfully reduced from Kshs.130,000 to Kshs31,355.
 - vii. Unremitted NSSF Dues for the seven months (Kshs.400 x Kshs.2,800 7 mths)
 - Viii. Severance pay at 1 month's salary for each year worked (Kshs.130,000 x 9 yrs)
.....Kshs.1,170,000.
- TotalKshs.4,183,445
12. The Respondent's case is an admission of a employer-employee relationship *inter partes* and further that prior to the effects of Covid 19 on her business, the claimant was fairly compensated in accordance with the prevailing market standards of his cadre.
13. The Respondent at paragraphs 5 and 6 of the Memorandum of Response categorically analyse the events resulting from the onset of Covid – 19 pandemic of the economy and his decision to undertake



- austerity measures to streamline business thereby effecting a redundancy plan and process that involved the Claimant.
14. The Respondent therefore denies any aspects of illegality, unfairness or repudiatory breach and frustration of contract of the Claimant.
 15. The issues for determination therefore are;
 1. Whether the Claimant termination of employment by the Respondent on account of redundancy was fair, lawful and procedural.
 2. Whether the Claimant is entitled to the relief sought.
 16. The 1st issue for determination is whether the Claimant termination of employment by the Respondent on account of redundancy was fair, lawful and procedural. The Claimant in his written submission dated 5th February, 2024 reiterates his case for unlawful termination of employment on account of a botched up redundancy where the Respondent declined to abide by the provision of section 40 of *Employment Act*, 2007.
 17. It is the Claimant's submission that he was not a member of a trade union and therefore the Respondent was mandated to issue a thirty (30) days notice to the labour officer of its intention to declare redundancy. No such notice was issued to the Mombasa labour office and the notice dated 28th August, 2020 is either entirely a counterfeit or was submitted to the labour office subsequent to the initiation of this claim.
 18. The said notice was materially defective and fails to meet the minimum legal requirements for not delineating the extend of redundancy or disclosing the anticipated number of affected staff to be affected. This was also not shared or copied to the Respondent's employees contrary to its allegation under paragraph (d) of the Memorandum of Response.
 19. The Claimant further submits that in Kenya, consultation is a fundamental aspect of fair labour practises as outlined Article 41 of *the constitution* and Labour Relation Act, 2007. This involves individual discussions with affected employees who should be informed of the upcoming situation and given an opportunity to challenge the redundancy process.
 20. The Respondent in her written submission dated 24th October, 2024 submits that with onset of Covid-19 in March, 2020 and its implications on the economy, austerity measures were undertaken and discussed with employees including reduction of salaries.
 21. It is the Respondent's further submission that the notices contemplated by section 40 of *Employment Act*, 2007 were made in that on 25th March, 2020 the Group Executive Director of the Respondent formally addressed all employees notifying them of the intended austerity measures. This was reaffirmed by a subsequence letter to the County Labour Officer dated 25th August, 2020. This communication was made in good faith and demonstrated Respondent's commitment to openness and transparency and interference to statutory requirement.
 22. Again, the Respondent submits that the selection criteria applied in determining the position to be declared redundancy were objective fair and tailored to the Respondent's operational needs.
 23. The Respondent hastens to point out that despite the clear computation and calculation of severance pay, the Claimant did not fulfil the condition specified in the Respondent's letter dated 4th March, 2022 on clearance with the Respondent before the severance payment could be processed. The Claimant failed to respond or fulfil this requirement which prevented the Respondent from completing the severance process.



24. The Claimant's case is a denial of an effective and lawful redundancy process by the Respondent. It is his case that this did not comply with the outline of section 40 on notice(s) or even consultation with the Claimant or Respondent's employees in general.
25. The Respondent on the other hand submits a case of a legitimate redundancy in which all compliances with section 40 of the *Employment Act*, 2007 were met. She displays letters dated 17th November, 2021 to the County Labour Officer Mombasa notifying the office of intended termination on account of redundancy in phases. Earlier, the Respondent had by a letter dated 25th March, 2020 issued a notice of salary reduction to the said County Labour Officer.
26. A letter of 4th March, 2020 to the Claimant notified him of his intended termination on account of redundancy. The Respondent's case therefore takes sway in the circumstances. The Claimant has failed to bring out a case of a botched up redundancy as claimed. He has failed to controvert the Respondent's case of a legitimate redundancy as demonstrated in her evidence and list of documents. I therefore find a case of fair, procedural and lawful termination of the employment of the Claimant by the Respondent on account of redundancy. This answers the 1st issue for determination.
27. On a finding of lawful termination on account of redundancy, the Claimant becomes disentitled to the relief sought.
28. I am therefore inclined to dismiss the claim with orders that each parties bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF FEBRUARY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Miss Mbugua instructed by Kaloki Ilia and Mbugua Advocates LLP for the Claimant.

Miss Maina instructed by Kisilu, Wandati & Company Advocates for the Respondent.

