



REPUBLIC OF KENYA



**Tombo v Pabari Investment Limited (Cause E6539 of 2020)
[2025] KEELRC 700 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 700 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6539 OF 2020
DKN MARETE, J
FEBRUARY 26, 2025**

BETWEEN

JANET LEAH WARUGURU TOMBO CLAIMANT

AND

PABARI INVESTMENT LIMITED RESPONDENT

JUDGMENT

1. This matter came about by way of a Memorandum of Claim dated 16th October, 2020. The issue in dispute;

Failure by the Respondent to pay the Claimant her salary arrears for the Months of March, April and July 2020. Failure by the Respondent to remit statutory deductions.
2. The Respondent in a Respondent's Reply to Memorandum of Claim dated 22nd February, 2021 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that she was an employee of the Respondent from 2nd September, 2019 to 31st July, 2020 when she was declared redundant. This comes out thus;
 - a. That the Claimant herein was an employee of the Respondent from 2nd of September 2019 to 31st July 2020, when she was declared redundant.
 - b. That the Claimant had been employed as a Business Development Head – Sap.
 - c. That the gross salary of the Claimant was Kenya Shillings three Hundred and fifty thousand (Kshs.350,000/=)
 - d. That the Claimant worked diligently in accordance with the terms of her employment till 31st July 2020 when her services were terminated by reason of redundancy.



- e. That at the time of being declared redundant the Respondent still owed the Claimant salary arrears for the months of March, April and July 2020.
 - f. That later the Respondent paid part of the salary of the month of July 2020, Kshs.181,000/= instead of the net salary Kshs.250,000/=.
 - g. That the Claimant made several requests to the Respondent, requesting to be paid her salary arrears but the Respondent has refused/neglected the Claimant's request and no plausible explanation has been forthcoming.
 - h. That it also come to Claimant's attention that the Respondent has not been remitting statutory deductions making it impossible for the Claimant to file her annual returns and to access medical services using her NHIF card.
 - i. That as a direct consequence of the Respondent's action the Claimant has suffered damages.
4. The Claimant in crowning her case avers that she was been treated unfairly by being subjected to unlawful acts which contravene the Employment Act, 2007.

She prays thus;

- a. That this Honourable court be pleased to issue an order that the termination of the Claimant was unlawful and unfair and the Respondent be ordered to pay damages.
- b. That this Honourable court be pleased to issue an order directing the Respondent to pay Claimant her salary arrears amounting to Kshs.569,000/=.
- c. That this Honourable court be pleased to issue an order directing the Respondent to remit all statutory deductions made from the Claimant's salary during the period she was employed.
- d. That this Honourable court be pleased to issue an order directing the respondent to issue the Claimant with a certificate of service, payslips for the months of January 2020 to July 2020, and p9 forms for the year 2019 and 2020.
- e. That the cost of this suit be provided for by the Respondent.

4. The Respondent's case comes out thus;

- a. That the Claimant was engaged by the Respondent vides a letter dated 13th August 2019 as Business Development Head – SAP,
- b. That her effective date of employment was 2nd September 2019,
- c. That due to restructuring and Respondent had no choice but to render the Claimant's position redundant.
- d. That in accordance with Section 40 of the Employment Act, 2007 the Respondent vides a letter dated 26th June 2020 duly issued the Claimant with a one-month notice of redundancy which redundancy was to take effect on 31st July 2020.
- e. That further and in accordance with Section 40 of the Employment Act, 2007 the Respondent also vides a letter dated 26th June 2020 duly notified the Nairobi County Labour Office of the intended redundancy of the Claimant. The letter was duly received on 30th June 2020 at the County Labour Offices.



- f. That on 31st July 2021 the Claimant's final dues were duly calculated for payment but the Claimant contested the same and refused to collect her cheque.
5. Further,
 - a. That the Claimant was a serial absentee and was severally absent from work for no sufficient cause.
 - b. That in the months of March and April 2020 where she claims salary arrears the Claimant was absent throughout the whole two (2) months.
 - c. In the month of July 2020, the Claimant was duly paid for days worked.
 - d. That on or about 14th July 2020, after the Claimant had already been issued with a notice of redundancy, the Respondent company, to wit, Edgar Y Isohe who added his fingerprint to the Claimant's biometric profile to enable him be clocking into work for the Claimant.
 - e. That the said Edgar Y Isohe admitted to the conspiracy in writing on 15th July 2020 & apologized for the mistake. He also admitted the same orally in a meeting before the senior management of the Respondent Company on 14th July 2020. He was issued with a final warning letter dated 20th July 2020 for the offence of gross misconduct.
 - f. That in the circumstances the claim for salary arrears is misplaced and unmerited.
 - g. The Respondent further avers that the Claimant's statutory deductions were duly paid and puts the Respondent to strict proof to the contrary.
 5. The Respondent therefore denies that she treated the Claimant unfairly as alleged and avers that the Claimant's termination on grounds of redundancy was proper valid and fair just in the circumstances. She further denies the Claimant's entitlement to the prayers sought.
 6. This matter came for hearing on 16th April, 2024 when it was heard to fruition.
 7. The issues for determination therefore are;
 1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Respondent owes the Claimant salary arrears for the months of April, May and half of July, 2020.
 3. Whether the Respondent owes the Claimant severance pay in accordance with section 40 of the *Employment Act*, 2009.
 4. Whether the Claimant is entitled to the relief sought.
 5. Who bears the costs of this cause.
 8. The 1st issue for determination whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant on his part submits that he was not terminated on account of any disciplinary measure or wrong doing but only on account of redundancy.



9. Further, the Claimant submits that the Respondent in the letter of termination stated that redundancy was the reason for termination. It does not in any way cite disciplinary issues and absenteeism from work as was cited in termination letter. The Claimant posits that the letter of termination of employment only cited redundancy as the sole grounds for termination. Therefore, non-payment for the months of April, May and half July together with redundancy dues still owe to him by the Respondent.
10. Again, the Claimant submits that the Respondent failed to comply with the provisions of section 40 of *Employment Act*, 2007 which stipulates the procedure to be employed in cases of redundancy thereby denying her rightful terminal dues on redundancy.
11. The Respondent on the other hand submits that the Claimant was lawfully and fairly terminated and urges this court to dismiss the suit with costs. This is for the following reasons.
 - a. The Claimant's employment was terminated on account of redundancy as a result of restructuring and reorganization of the operational requirements of the Respondent.
 - b. In accordance to section 40 of the *Employment Act*, 2007, the Respondent served the Claimant a one Month's notice of redundancy via a letter dated 25th June 2020 which was to take effect on the 31 July 2020. (Refer to the Respondent's exhibit 2)
 - c. The Nairobi County Labour Office was also notified of the intended redundancy via a letter dated 26 June 2020 which was duly received on 30th June 2020. (Refer to the Respondent's exhibit 1)
 - d. On 31 July 2021 the Claimant's final dues were duly calculated for payment but the Claimant contested the same and refused to collect her cheque. (Refer to the Respondent's exhibit 5)
 - e. The Claimant was absent throughout the months of March and April as evidenced by the Respondent's biometric clock in system and in July, she worked for only ten (10) days which were duly paid. (Refer to the Respondent's exhibit 7 and 9)
 - f. Statutory deductions, PAYEE and NHIF were made on behalf of the Claimant and there is no evidence to the contrary.
 - g. The Claimant's Certificate of Service, pay slips and P9 forms are also ready for collection by the Claimant.
12. On this premises, a case for unfair and unlawful termination of employment would not arise. It is borne in mind that sometimes before March, 2020 the Covid – 19 pandemic struck and affected the entire global fraternity thereby destabilizing all social and economic activities worldwide. Kenya was no exception. Our industries and other public service industry and activities were polarised and grounded to a halt. It is no wonder that the Respondent set in a process of redundancy and laid off her employees.
13. The Respondent has demonstrated that she complied with all the requirements of section 40 of the *Employment Act*, 2007 in the modulation of the redundancy process. The Claimant cannot therefore be heard to raise a finger against the Respondent. It is all clear in evidence that the Claimant was treated fairly and lawfully but chose to put in fight instead of taking her terminal dues as computed by the Respondent.
14. Two, the Claimant was absent from work throughout the month of March, April and only worked for ten (10) days in July for which she was paid. I therefore find a case of lawful termination of employment on grounds of redundancy and hold as such. This answers the 1st issue for determination.



15. On a positive answer to the 1st issue for determination, all the other issues fall by the way side. They are not worthy of any analyses or answer.
16. I am therefore inclined to dismiss the claim with orders that each party bears their cost of the same.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Adai instructed by Alex Kibunja & Associates Advocates for the Claimant.

Miss Maina holding brief for Njiru instructed by Lloyd & Partners Advocated LLP for the Respondent

