



**Mwanza v Riley Falcon Scurity Services Limited (Employment and Labour Relations Cause 192 of 2018) [2025] KEELRC 461 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 461 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 192 OF 2018  
MA ONYANGO, J  
FEBRUARY 13, 2025**

**BETWEEN**

**CHARLES KADIMA MWANZA ..... CLAIMANT**

**AND**

**RILEY FALCON SUCURITY SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a Statement of Claim dated 3<sup>rd</sup> May 2018 alleging that the termination of his Employment on account of redundancy was unfair and unlawful.
2. The Claimant averred that he was contractually employed by the Respondent as a security guard with effect from December 2014 and that he served the Respondent with loyalty and diligence until March 2017 when the Respondent wrongfully, orally and unlawfully declared him redundant without following the procedure laid down in the *Employment Act*. It was his case that as the time he was declared redundant he was earning a monthly salary of Kshs. 10,000.
3. According to the Claimant, the redundancy was malicious, ill willed and unlawful on the following grounds:
  - i. The Respondent purported to declare the Claimant redundant without following the provisions of section 40 of the *Employment Act*
  - ii. The Respondent did not issue the mandatory redundancy notice to the Claimant as contemplated under the provisions of the law.
4. The Claimant therefore contended that the redundancy was in fact an unfair termination of his employment. That owing to the unfair and unlawful termination of his employment, he is entitled to terminal benefits which he particularized as hereunder:
  - i. One month pay in lieu of notice.....Kshs. 11,532.07



- ii. 12 months compensation for unfair termination...Kshs 138,384.84
  - iii. Service Pay/Gratuity.....Kshs. 11,532.07
  - iv. Overtime dues.....Kshs 199,283.17
5. He thus prayed for judgment against the Respondent as follows:
- i. A declaration that he suffered unfair termination of employment by way of redundancy
  - ii. Reinstatement with full salary, benefits and continuity of service,
  - iii. In the alternative Kshs 360,723.15 in terminal benefits.
  - iv. Costs of this suit and Interests at court rates from time of filing suit until payment in full
  - v. A certificate of service as per section 51 of the Employment Act
  - vi. Any other further reliefs that the Court may deem just and fit to grant.
6. In reply, the Respondent filed a Response to the Claim and a Counter Claim on 6<sup>th</sup> June 2023. The Respondent denied that it unlawfully and unfairly declared the Claimant redundant as averred by the Claimant and stated that the Claimant voluntarily resigned from employment on 1<sup>st</sup> April 2017. It was the Respondent's case that the issue of unfair termination does not arise.
7. The Respondent stated that on 11<sup>th</sup> April 2017, it received a letter dated 10<sup>th</sup> April 2017 from the Claimant indicating that he had resigned as the Company's guard from 1<sup>st</sup> April 2017. In the letter, the Claimant requested to have his final dues and uniform fee paid to him. The Respondent contends that it accepted the resignation letter and advised the Claimant to pay the Company one month's salary in lieu of notice but the Claimant declined to pay
8. regarding the reliefs sought by the Claimant, the Respondent contended that the Claimant is not entitled to one-month salary in lieu of notice as there was no termination, the Claimant having resigned from employment. On the claim for overtime, the Respondent averred that clause 8.2 of the Claimant's employment contract stipulated that the Claimant was to notify the Respondent of any discrepancies in his remuneration within 7 days immediately following payment and that in default of such notification, the Claimant would have no right to claim against the Respondent. In this regard, the Respondent contended that since the Claimant did not notify the Respondent of any overtime he worked for within 7 days of receipt of his salary, he is not entitled to claim for the same from the Respondent. On the prayer for Gratuity/Service pay, the Respondent avers that the Claimant is not entitled to the same by virtue of him being a member of National Social Security Fund.
9. In the Counter Claim, the Respondent prayed for recovery of Kshs 11, 532.07 from the Claimant being one-month's salary in lieu of notice on account of him resigning from employment without any notice to the Respondent.
10. The Respondent urged the court to dismiss the Claimant's suit with costs and to enter judgment in its favour as sought in the Counter claim.
11. At the hearing on 23<sup>rd</sup> October 2023 when the Claimant testified on his own behalf and the Respondent called one witness.
12. The Claimant testified as CW1 and maintained that he was employed by the Respondent assigned to Safaricom Kapsoya shop as the in-charge. That on 30<sup>th</sup> March 2017, his manager, Mr. Olima informed the employees while in the parade that the contract between Safaricom and the Respondent had lapsed.



- They were told that a new company will take over the contract and they were directed to return the uniforms which they did on 1<sup>st</sup> April 2017. The Claimant told the court that upon returning the said uniforms, he was told by Mr. Olima to write and submit a resignation letter so that he could be paid his terminal dues. It was his evidence that he complied as directed but was not paid any terminal dues.
13. The Claimant contended that he was never given notice that the contract between the Respondent and Safaricom would expire and neither was he issued with a notice of termination. It was the Claimant's case that he used to report to work from 6am to 6pm but was never paid overtime. In response to the Respondent's counterclaim, the Claimant contended that he did not owe the Respondent notice on the basis that the Respondent was under an obligation to give him notice over the lapse of Safaricom contract. He prayed for grant of the reliefs he sought in his Statement of Claim.
  14. On cross examination, the Claimant stated that he signed the resignation letter on 11<sup>th</sup> April 2013 after clearing with the Respondent. He stated that he was coerced to write a resignation letter on the understanding that he would be paid his terminal dues but he was not paid. He stated that he was a member of NSSF. He stated he was only paid overtime during public holidays.
  15. Peter Olima, the Respondent's Area Branch Manager testified as RW1 in furtherance of the Respondent's case. He adopted his witness statement recorded on 9<sup>th</sup> May 2023 as his evidence in chief and also relied on the documents filed by the Respondent. It was RW1's evidence that he notified all the guards of the lapse of the contract between the Respondent and safaricom. RW1 further stated that he advised the guards that once the contract came to an end, they would converge in the office for redeployment. RW1 stated that on the last day of assignment, the Claimant went to the office and returned the uniforms an action which was construed to mean that he had chosen not to continue working for the Respondent. RW1 stated that days later, the Claimant sent his resignation letter which letter was accepted and signed by Respondent's Director. Regarding the Claimant's claim for overtime, the Respondent's witness stated that the Claimant is not owed any overtime dues.
  16. During cross examination, RW1 reiterated that when the contract between the Respondent and Safaricom company came to an end, he informed the guards including the Claimant. He however stated that the Claimant was not given a written notice of termination. RW1 also stated that the Claimant worked from 6am to 6pm.
  17. At the close of the Respondent's case, the court directed parties to file written submissions. The Claimant's submissions were filed on 6<sup>th</sup> December 2023 while the Respondent filed its submissions 16<sup>th</sup> January 2024.

### **Determination**

18. From the pleadings of the parties herein, the evidence adduced as well as the submissions filed by the parties, the issues that present themselves for determination are:
  - i. Whether the Claimant was terminated on account of redundancy or he resigned from employment
  - ii. Whether the Counter claim is merited
  - iii. Whether the Claimant is entitled to the remedies sought.
19. The Claimant contended that he was terminated from employment on account of redundancy and that due process set out under section 40 of the *Employment Act* was not complied with. The Respondent has however contended that the Claimant resigned voluntarily from employment while



the Respondent has in the process of reassigning him to another client after its contract with Safaricom Limited lapsed on 31<sup>st</sup> March 2017.

20. Redundancy is defined under Section 2 of the *Employment Act* as –
- “redundancy” means 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;
21. Section 40(1) of *Employment Act* outlines essential requirements to be followed by the employer for termination of employment on grounds of redundancy. The obligations by the employer in declaring redundancy are in summary the following: -
- i. Give notice to the union or labour office at least a month before the process commences.
  - ii. If employee is not a member of trade union the employer should notify the employee personally in writing and the labour officer.
  - iii. The employer should demonstrate he used criteria of seniority, ability and reliability to each employee.
  - iv. If there is a Collective Bargaining Agreement it should not be used to the disadvantage of an employee.
  - v. Employee to be given one month notice or pay in lieu of notice.
  - vi. Severance pay at the rate of not less the 15 days for each completed year of service.
22. The conditions outlined above are mandatory. In the instant case, there is no dispute that the Claimant was declared redundant upon the lapse of the contract between the Respondent and Safaricom Limited. According to the Claimant he was not given one month notice before he was declared redundant. The Respondent’s witness in his testimony stated that he informed the Claimant and the other guards on 30<sup>th</sup> March 2017 that the said contract with safaricom was to expiring on 31<sup>st</sup> March 2017.
23. The Claimant was not given 30 days’ notice prescribed under Section 40(1) (b) of the *Employment Act*. This position was confirmed by RW1 who testified under cross-examination that the Claimant was not given notice prior to the expiry of the Contract.
24. Although the Respondent in its defence has averred that the Claimant’s employment was not terminated on account of redundancy and that he resigned voluntarily, the failure to issue him with a 30 day notice rendered that whole process unfair. It matters not that the Claimant was to be redeployed as averred by the Respondent as this had not been communicated to him at the time he submitted his resignation letter. It is also worth noting that the Claimant resigned way later, that is on 11<sup>th</sup> April 2017 after the expiry of the subject contract. As at the time he tendered his resignation letter, there is no evidence that he had been redeployed despite being out of employment for almost 2 weeks.
25. The Respondent in this particular case failed to comply with the requirements of Section 40 of the *Employment Act* by failing to give notice to the Claimant. Consequently, the court is of the considered view that the decision taken by the Respondent to terminate the employment of the Claimant was unfair and unlawful.



### **Whether the Counter-claim is merited**

26. The Respondent sought for recovery of Kshs 11, 532.07 from the Claimant being one-month salary in lieu of notice on the basis that he resigned from employment without any notice to the Respondent.
27. Having already made a finding that the Respondent did not follow the due process stipulated in section 40 of the *Employment Act* by failing to issue the Claimant with one month notice, the counterclaim for notice pay is therefore without basis. The entire counterclaim therefore fails and is dismissed.

### **Whether the Claimant is entitled to the remedies sought.**

28. In his Statement of Claim, the Claimant prayed for one-month pay in lieu of notice, 12 months compensation for unfair termination, Service pay/Gratuity and overtime dues. These prayers shall be dealt with in separate heads as hereunder.

- i. One month's salary in lieu of notice

The Claimant is awarded this relief as the Respondent did not issue notice as required under Section 40 of the *Employment Act*. The notice must be issued whether an employer intends to pay in lieu thereof or not. The Claimant is therefore awarded Kshs 11,532.07 under this head.

- ii. Compensation for unfair termination.

Under this head, the Claimant has prayed for the maximum compensation of 12 months' salary. In evaluating what would be reasonable and fair compensation to the Claimant the court considers the factors as provided for under Section 49(4) of the *Employment Act*. I award the Claimant one month's salary taking into account the failure by the Respondent to give the Claimant notice of the expiry of the contract between itself and Safaricom Company on time.

- iii. Service pay/Gratuity

The Regulation of Wages (Protective Security Services) Order, *Legal Notice No. 53 of 2003* provides for gratuity at the rate of 18 days per year worked for employees who have completed 5 years of service. The Claimant worked for the Respondent for only three years. He is therefore not entitled to this award noting that he was also a member of NSSF.

- iv. Overtime dues.

The Claimant testified that he worked from 6am to 6pm for 7 days was never paid overtime. The Respondent's witness also confirmed during cross examination that the Claimant used to work from 6am to 6pm. Regulation 6 of Wages (Protective Security Services) Order, 1998 which applies to the sector where the Claimant was working provides for fifty two (52) hours of work per week spread over six (6) days. The uncontroverted evidence is that the Claimant worked from 6am to 6pm for a total of a total of thirteen (12) hours per day. For six (6) days, this would convert to seventy-two (72) hours. The Claimant therefore worked for an extra 20 days a week for 48 weeks assuming the Claimant was away on annual leave for 4 weeks being 960 hours. At an hourly rate of 50.25 times 1.5 comes to Kshs. awarded Kshs. 73.805 per year. For the 28 months the Claimant worked for the Respondent he is entitled to Kshs. 172,212 as overtime dues which I award him.

For the clarity, hours of work and overtime is provided for in the Regulation of Wages (Protective Security Services Order, 1998 as follows:



6. The normal working week of all employees including day and night guards shall be fifty-two hours of work spread over six days of the week.
  - (1) An employee who works for any time in excess of the normal hours of work specified in paragraph 6 shall be entitled to be paid for the overtime thereby worked at the following rates
    - (a) one-and-a half times his normal rate of wages per hour in respect of any time worked in excess of the normal hours of work; and
    - (b) twice the normal rate of wages per hour in respect of any time worked on a rest day.
  - (2) For the purpose of calculating payment for overtime in accordance with subparagraph (1), the basic hourly rate shall, where the employee is not employed by the hour, be deemed to be one-two hundred and twenty-fifth of the employee's basic monthly wage.
29. In conclusion, Judgment is entered for the Claimant in the following terms:
  - i. A declaration be and is hereby issued that the Claimant was unfairly terminated from employment on account of redundancy.
  - ii. The Claimant is awarded the following
    - a. One month's salary in lieu of notice - Kshs 11,532.07
    - b. Compensation for unfair termination - Kshs 11,532.07
    - c. Overtime dues Kshs 172,212.00
  - iii. The Respondent is directed to issue the Claimant with the Certificate of Service.
  - v. The Claimant is awarded costs of this suit
30. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 13<sup>TH</sup> DAY OF FEBRUARY 2025**

**MAUREEN ONYANGO**

**JUDGE**

