



REPUBLIC OF KENYA



**Karimi v Tradco Services Limited (Cause E096 of 2023)
[2025] KEELRC 980 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 980 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E096 OF 2023
M MBARŪ, J
MARCH 27, 2025**

BETWEEN

HILDAH NYAGUTHII NDUNGE KARIMI CLAIMANT

AND

TRADCO SERVICES LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant as a project manager on 1 November 2020 and assigned duties within Nairobi County. In 2021, the claimant was promoted to Regional Coordinator and posted to the respondent's Mombasa branch within Mombasa County.
2. The claim is that the respondent relocated the claimant and her family to Mombasa in 2021. There, she attended to her duties as the regional coordinator.
3. Under clause 2.4 of the employment contract, the claimant was to work for the respondent until retirement at 60 years, but clause 3.1 provided that she would work for one year, leading to ambiguity. Her salary was Ksh. 145,000 per month.
4. On 20 January 2023, the claimant received the respondent's new operations extended leadership team structure, which informed her that her position as the regional coordinator had been made redundant. She was expected to move to Nairobi to resume her duties as the project manager.
5. On 21 January 2023, the claimant called the human resource manager, Robert Wambugu, and requested to be facilitated back to Nairobi together with her family, who had settled and were going to school in Mombasa. She was informed that the position had been rendered redundant and that, contrary to what had been communicated earlier, she was not expected to move to Nairobi.



6. The claimant protested the respondent's decision because she had not been served with any redundancy notice. The human resource manager informed the claimant that her position was rendered redundant because the costs of moving her to Nairobi were so high, and the respondent was not ready to pay.
7. Through an email dated 30 January 2023, the claimant was informed that a decision to terminate her employment was driven by a change of operational structure, different from the previous structure that had required her to move to Nairobi. The reason for redundancy was based on logistical challenges and client budgets, which would not allow the claimant to be facilitated from Mombasa to Nairobi.
8. The claimant continued working in the Mombasa office without any notice of redundancy being served and without facilitation back to Nairobi.
9. On 6 March 2023, the claimant wrote to the respondent that she was unaware of her last working date. There was no reply. Despite working in February and March 2023, the due salary was not paid, which amounted to constructive dismissal. This forced the claimant to call the human resources manager, who directed the claimant to stop working immediately. The respondent no longer required her employment.
10. Through an email dated 9 May 2023, the claimant requested to be paid her commission earned for business she had brought to the respondent. There was no payment until 12 August 2023, when the client forced Pwani Fest Activators' directors moved the respondent to a meeting in Mombasa for the payment. In June 2023, the claimant received Ksh.313, 000 without details or a breakdown of the terminal dues.
11. The claim is that there was an unlawful and wrongful termination of employment. The respondent failed to follow the procedures under the *Employment Act*, which led to unfair termination of employment. No redundancy notice was issued or served upon the claimant or the labour office. There was no payment of the due salary for February and March 2023, which amounted to constructive dismissal. The claimant was not informed of the reason for the redundancy, was not issued the necessary notice, or was not called to a hearing over any matter leading to termination of employment. Another person was hired to replace the claimant despite the alleged redundancy, which amounted to unfair labour practices.
12. The claimant is seeking the following terminal dues;
 - a. Two months' notice pay Ksh.290,000;
 - b. Unpaid salary for February 2023 Ksh.290,000;
 - c. Unpaid salary of 15 days in March 2023 Ksh.72,495;
 - d. Unpaid leave days for 2 years ksh.304,479;
 - e. 12 months compensation for unfair termination of employment Ksh.1,740,000;
 - f. Service pay for 2 years Ksh.145,974;
13. The claimant is seeking payment of terminal dues and a declaration that there was unfair termination of employment, and the respondent engaged in unfair labour practices leading to constructive dismissal. A certificate of service be issued with costs.
14. The claimant testified in support of her case that she was based at the Nairobi office upon employment by the respondent. The director called and requested that she take over the Mombasa regional office and facilitated her movement and her family's settlement in Mombasa. She got to school for the



- children, and they settled well. The respondent paid for the movement of her goods, including households, since this would be a long-term engagement. He even paid for the children's school fees.
15. In January 2023, the claimant got an email from the human resources manager (Wambugu), who indicated that her position would be made redundant. The effective date was not stated. She has been in Mombasa since July 2021 and has taken charge of the regional office per the employment contract. She called Wambugu, who said that there would be no transfer and the moving costs were too high to cover. He asked if she could move back to Nairobi to her previous office, but another person had taken up the position when she moved to Mombasa.
 16. In February 2023, the claimant noted that the salary for February had not been paid. She called Wambugu, who directed her to leave the office immediately. Her employment had been terminated, and her position had been declared redundant. Her last day at work was 15 March 2023.
 17. Previously, the respondent had shared the organizational structure with the project manager position. The claimant was advised she would be moving to Nairobi in this position in January 2023.
 18. The respondent refused to pay terminal dues, including salary for days worked. In June 2023, there was a bank deposit of Ksh.313, 000 without details. This did not include all the pending terminal dues. She had not taken leave for the period of employment because, in her position, she could not proceed on leave. Her leave application forms were rejected.
 19. The tabulation of terminal dues was not shared with the claimant to confirm before payment. The respondent deducted statutory PAYE dues, but when she checked with KRA in 2023, the respondent had only paid Ksh. 14,000, and no evidence of payment was filed.
 20. There is a payment of Ksh.78, 000 for the unworked day, which is not explained. The claimant remained at work until 15 March 2023. The respondent had not placed the claimant on the RNF app as part of management. She was on a 24-hour call, and the alleged unworked days should not have arisen in her case.
 21. No redundancy notice was issued, and the claims made should be allowed with costs.
 22. Upon cross-examination, the claimant testified that she was employed under a contract on 1 November 2020. She worked under the contract for 2 years and 4 months. The contract noted that his employment was permanent and pensionable and would continue until retirement at 60 years. The contract was changed to allow movement to the Mombasa regional office. It provided for a one-year contract. At the end of the term, there was no communication, and the claimant assumed that she had reverted to the original contract on permanent and pensionable terms.
 23. In the contract dated 1 November 2020, clause 2.4 allowed for retirement until 60 years, while clause 3 gave a term limit of one year. The respondent did not address this ambiguity, and she did not complete the first contract.
 24. The second contract commenced on 1 August 2021 to run for a year and was to automatically lapse. On 1 August 2022, the contract expired and was not renewed. There was no letter after this period. The assumption is that the claimant reverted to the original contract. The salary was not changed, and it was paid until January 2023 at Ksh.145, 000 per month.
 25. The claimant testified that she was subject to constructive dismissal and unfair labour practices when the respondent failed to issue a contract, declared her position redundant without notice, and then failed to pay for the work done. There was no due process or payment of terminal dues. A client had to intervene to pay the claimant her due commissions.



26. The claimant admitted that she was paid Ksh.290, 000 without a breakdown.
27. In reply, the respondent argues that the claimant was employed as a project manager through a contract dated 1 November 2020.
28. Through an agreement dated 26 July 2021, the claimant was promoted to regional coordinator to manage the Mombasa branch effective from 1 August 2021. A contract dated 23 July 2021 to this effect is also in place.
29. Under clause 3.1 of the agreement dated 26 July 2021, the employment period was one year, from 1 August 2021, for 12 months. Upon the lapse of the contract, the claimant continued working for the respondent as a regional coordinator at Ksh.145 000 per month until the position was declared redundant.
30. In December 2022, the respondent commenced restructuring and reorganizing its operations to transition into a new status. The claimant's position was declared redundant.
31. The employees were issued the operational structure for 2023 and the new extended leader team structure on 20 January 2023. A meeting was held with the claimant, during which she was informed of the restructuring and removal of her position. Despite the earlier structure indicating that the claimant could resume her position as a project manager in Nairobi, the same was not possible as the respondent was experiencing logistical challenges as a result of the restructuring, which affected the budget.
32. On 30 January 2023, the respondent emailed the claimant to clarify concerns raised by the claimant concerning the redundancy. The respondent complied with section 40 of the Employment Act and paid instead of notice.
33. Despite the earlier organizational structure indicating that the claimant could resume her earlier position as the project manager in Nairobi, the same was impossible due to logistical challenges and lack of budget. This was communicated to the claimant on 30 January 2023. There was the payment of terminal dues, including two months' salary in lieu of notice; and despite not issuing the claimant with the necessary redundancy notice, there was payment confirmed in the email of 28 September 2023 and transaction advice dated 10 March 2023 for;
- A. Notice pay;
 - B. Accrued leave days;
 - C. Severance pay;
 - D. Pay for days worked.
34. The termination of employment was not due to performance but operational matter. Taking up the previous position was not possible due to logistical challenges. The terminal dues paid included;
- a. Two months' pay Ksh.290,000;
 - b. Accrued leave Ksh.33,369.86;
 - c. Severance pay at 15 days for each year worked Ksh.143,013.70;
 - d. Less unworked days Ksh.78, 082.
- Total Ksh.388, 301.19
- Less statutory deductions
- Net pay Ksh.331, 025.24



35. The response is that the claimant's employment was terminated in January 2023 upon declaration of redundancy through a notice dated 20 January 2023. There was no further engagement after January 2023. In the email of 31 May 2023, the claimant demanded payment of her commissions, but there was no proof of having earned the same. In good faith, the respondent paid Ksh.100 000 on 29 July 2023.
36. On 12 August 2023, the parties negotiated and agreed to settle the commissions at Ksh.590, 120. The money was paid in full, and the claimant acknowledged receipt.
37. In evidence, the respondent called Robert Wambugu Maina, the human resource manager, who testified that there was no unfair termination of the claimant's employment as alleged. He communicated to the claimant on the new organization structure as part of management. It affected several positions and led to the separation. The claimant was called to Nairobi, and the human resource manager took her through the system and changes. The only option was to render her position redundant with payment of her terminal dues.
38. Wambugu testified that he had discussed her taking up her previous position as a project manager with the client. Still, all projects had managers and no new opportunity to pay her salary. The claimant has since been paid all her terminal dues.
39. At the end of the hearing, both parties filed written submissions, which were analyzed and addressed. The issues that emerged for determination were whether there was a proper redundancy leading to termination of employment and whether the remedies sought should be issued.
40. The respondent admitted that there was a one-year employment contract dated 26 July 2021. The contract lapsed, but the claimant was retained in the same position of regional coordinator at the Mombasa branch.
41. Wambugu, for the respondent, testified that the claimant's position became redundant, and due process of the law was followed in laying off the claimant. Employment was terminated on 31 January 2023.
42. In support of the response, the respondent filed various documents. These included the organizational structure that took effect in January 2023. There were email exchanges between the human resource manager, Wambugu, and the claimant on 30 January 2023. The claimant wanted to know why she had not been redirected to the head office after accomplishing her mission in the Coast region. In reply, Wambugu noted as follows;

... The management was only left with the last option of declaring your position redundant as notified, and your notice started counting on the same day. As we instructed earlier, we expect you to finalize your clearance once your notice expires.
43. The subject notice or notice leading to the termination of employment due to redundancy is not filed.
44. Was there such notice? What was the reason for the termination of employment? When was it to take effect? Was it served upon the claimant and the labour office?
45. Termination of employment, whether under the provisions of Sections 41, 44 or 40 of the [Employment Act](#), requires prior notice. Sections 41 and 40(1) of the [Employment Act](#) are couched in mandatory terms.
46. Where there is a redundancy, the notices issued must indicate the extent and reasons for it. The notices must be issued to the employee and the labour officer.



47. This position is reiterated by the Court of Appeal in the case of Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 103 others [2018] eKLR, where the court held that the procedures under Section 40 of the Employment Act require that the labour officer be notified of the extent of and the reasons for the termination of employment on account of redundancy. This position is reinforced in the case of Cargill Kenya Limited v Mwaka & 3 others [2021] KECA115 (KLR) that the affected employees are entitled to a notice before termination of employment due to operational reasons and further, a notice pay where the employer does not intend to have the employee at the shop floor.
48. The notices to the employees affected by the redundancy and the labour officer are mandatory. These notices set in motion crucial steps for the affected employee to be paid the separation dues.
49. In this case, in the absence of the due notice to the claimant and labour officer, it is apparent that the claimant sat back on her job until 15 March 2023, when she was directed to leave. This meant there was no clarity on the end date, no specific notice of when her employment would terminate, and no clarity on whether the option to return to Nairobi was still under consideration.
50. Ultimately, terminal dues were not paid until June and 1 August 2023, which required the intervention of a third party for the claimant to be paid.
51. In any event, termination of employment due to redundancy cannot affect a single employee, as held in Keen Kleeners Limited v Kenya Plantation and Agricultural Workers' Union [2021] KECA.
52. In Agnes Ongadi v Kenya Electricity Transmission Company Limited [2016] eKLR, the court held that;
- ... Redundancy, restructuring or reorganisation commenced with the sole purpose of laying off specific employees is a sham. Such is not justified and cannot be sanctioned by the court...
53. The respondent does not make any effort to outline the extent of the redundancy, save to urge a case that, due to logistical challenges, the claimant's employment had to be terminated. As much as the employer has the prerogative of organizing the business, termination of employment is protected to the extent that there must exist 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 in terms of Section 40(1)(a) of the Employment Act as emphasized in the case of Kenya Airways Limited v Aviation & Allied Workers Union of Kenya & 3 others [2014] eKLR, the court held that;
- ... This provision [Section 40(1)(a) of the Employment Act] is that when an employer contemplates redundancy, he should first give a general notice of that intention to the employees likely to be affected or their union. It is that notice that will elicit consultation between the parties, and I will shortly show that consultation is imperative, on the justifiability of that intention and the mode of its implementation, where it is found justifiable. At that initial stage, the employer would not have identified the employee(s) who would be affected. So that notice cannot have the names of the employees as ... It does not have to be a calendar month's notice as ... contended.
54. The scenario facing the claimant is replicated in the case of London Distillers (K) Limited v Kenya Union of Commercial Food & Allied Workers [2025] KECA 216 (KLR) where the court addressed at length the purpose of the notices required under Section 40(1) of the Employment Act and held that;
- The reasons advanced for the termination are clear. We can take judicial notice that the entire economy of our country was affected by the pandemic, and many operations were downsized, while others faced closure. The reasons given by the appellant to terminate were valid. However, the termination was not carried out in accordance with procedural and fair practice. The required notices and the required notice period were not met. We note that the



moment the respondent got to know about the notice of 12th August on the 17th August, it wrote to the appellant requesting for a meeting and also reminding it to be guided by the law and the CBA. Both requests were ignored.

55. Similarly in this case, despite the sharing of the new structure, the respondent failed to carry out termination procedures following procedural fairness.

This resulted in unfair termination of employment.

56. The other issue that arose in this case was the question of fixed-term contracts. Indeed, parties to an employment relationship are allowed to enter into a fixed-term contract. The contract dated 26 July 2020, promoting the claimant to the position of regional coordinator, Mombasa branch, was for one year. This is lawful, and the claimant accepted and signed the contract.

57. However, at the end of the contract, there was no renewal or communication. The claimant remained in the same position and salary. Without a written employment contract, the claimant became protected under Sections 35, 41, 43, and 45 of the *Employment Act*, read together with Section 40. Upon the respondent finding that there was a redundancy, the provisions of Section 40 of the *Employment Act* applied.

58. As outlined above, redundancy cannot affect one employee, as in the case of *Juma v Ayuda Ninos De Africa Kenya* [2025] KEELRC 74 (KLR). This position is reiterated in the case of *Jane I Khalachi v Oxford University Press E. A. Ltd*, Cause No.924 of 2010, where the courts have held that redundancy cannot affect a single employee. The employer must ensure the accommodation of its employees. It would defeat the purpose of reorganisation by removing a single employee and replacing her with a similar officer.

59. In addressing a similar case, the Court of Appeal in the case of *The German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018 (Consolidated)) [2023] KECA held that;

The employer is supposed to give two (2) distinct notices on account of redundancy, the notice must be in writing and it is to be given after the conclusion of consultations on all issues arising from the redundancy. Also, the respondent argued that no criteria or reasons were given as to why she was singled out for redundancy and that the termination process was unfair, as she was the only one targeted. She argued that no evidence of restructuring of the Finance Department was tabled before the court, but, the appellant simply wanted to get rid of her without following due process.

60. The court notes that the respondent had shared the company's organogram with the claimant in December 2022. It was reverting her position to project manager in Nairobi. Wambugu testified that this position was available, yet he could not explain what transpired between sharing the structure from December 2022 to 15 March 2023, when the claimant was directed to leave the office.

61. What came out clearly from Wambugu's evidence was that the respondent did not wish to pay the claimant the relocation costs from Mombasa to Nairobi. His case was that the client was not willing to pay. However, the claimant was the respondent's employee and not a third party. Where the respondent found it necessary to facilitate the claimant's move to Mombasa to take up a higher role as regional coordinator, it should have been easy to relocate her back to the original position or to Nairobi. The respondent necessitated the movement to Mombasa. This was not her original place of work. To move suo motto and declare a redundancy to terminate the claimant's employment under the guise of third-party directions is to engage in unfair labour practices.



62. At the end of the contract term in July 2022, without any written contract, the claimant's employment with the respondent became protected. By retaining the same position and salary, the rights under the *Employment Act* applied to the claimant.
63. Before termination of employment, the claimant was entitled to notice or payment thereof. Where a redundancy was declared, which is not the case here, as outlined above, the motions of Section 40 of the *Employment Act* should have applied.
64. Directing the claimant to leave her employment immediately on 15 March 2023 without notice, reasons, or justification amounted to unfair termination of employment. The purported declaration of redundancy was a cover-up meant to sanitize the unfair labour practices.
65. The claimant is entitled to notice pay and compensation for unfair termination of employment, coupled with unfair labour practices.
66. The last salary earned was Ksh.145, 000 per month. This is due to notice pay. The claim is for two months' payment; what is due under Section 40(1) (f) is one month's notice pay at Ksh.145, 000.
67. For compensation, the claimant was denied the right to earn a living after being relocated to Mombasa. The costs of relocation are not addressed, but it is clear to the court that the respondent went out of their way to facilitate the relocation, with the managing director paying for her children's school fees to settle them and make the claimant available and offer her labour at the Mombasa branch. The cumulative impact that is well addressed cannot be quantified in monetary terms. The court can only apply sections 45 and 49 to allocate compensation with a maximum allowed 12 months in the given circumstances. In this regard, the lapse in due process and, apparent unfair labour practices and, refusal to return the claimant to her original point of employment, failure to pay terminal dues immediately until the intervention of a third party are the factors the court is called to consider under Section 45(5) of the *Employment Act* while assessing the compensation to award.
68. In this case, the court finds that compensation at 10 months is justified.
At a salary of Ksh.145, 000 total due is Ksh.1, 450,000.
69. The claimant worked until 15 March 2023. The wage for February and 15 days in March 2023 is due. For work done, the salary is due regardless of the reasons leading to termination of employment, including redundancy. The 145,000 plus Ksh.72, 500 claim is due for a total of Ksh.217, 500.
70. There is no record filed by the respondent on the leave days taken for accrued leave. Under Section 28 of the *Employment Act*, annual leave is a right. The claimant applied for her annual leave as a diligent employee, but due to exigencies of duty, being in management, the application for leave was not approved. For the two years of accrued leave, the sum of Ksh.290, 000 is due.
71. The claim for service pay is due under Section 35(5) and (6) of the *Employment Act*, where the employer fails to remit statutory deduction or place the employee under a pension scheme. Under the claimant's contract, these aspects are covered.
72. The claimant admitted that save for the commissions earned, she received a general payment of Ksh.331, 025 which included;
 - a. Two months' pay Ksh.290,000;
 - b. Accrued leave Ksh.33,369.86;
 - c. Severance pay at 15 days for each year worked Ksh.143,013.70;



d. Less unworked days Ksh.78, 082.

Total Ksh.388, 301.19

Less statutory deductions

Net pay Ksh.331, 025.24

Severance pay was addressed.

73 However, there was a deduction of Ksh.78, 082 for alleged unworked days. This deduction creates a different tempo to the alleged redundancy. A redundancy does not relate to the conduct, misconduct or disciplinary proceedings against the employee. This must relate to purely that the position is no longer available.

74. Where the termination of employment is related to the claimant being absent from work and hence a deduction of her due salary, such matter is regulated under Section 41 of the *Employment Act*. Notice to give an account as to how such non-attendance of work arose should have been issued to allow the claimant to attend and give her representations. To move the effect a deduction and refuse to pay terminal dues further affirms the assessment above that the respondent engaged in unfair labour practices.

The deducted amount of Ksh.78, 082 is due and payable.

75 Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;

- a. a declaration that there were unfair labour practices and unfair termination of the claimant's employment by the respondent;
- b. 10 months' compensation Ksh. 1,450,000;
- c. Notice pay Ksh.145,000;
- d. Salary for February and 15 days in March 2023 Ksh.217,500;
- e. Leave pay Ksh.290,000;
- f. Unfair deduction Ksh.78,082;
- g. The dues shall be paid less Ksh. 331,025 already received;
- h. The claimant is awarded the costs of the suit.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 27 MARCH 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

