



**Chege v Marketforce Technologies Limited (Cause E890 of 2023)  
[2025] KEELRC 905 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 905 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E890 OF 2023  
CN BAARI, J  
MARCH 21, 2025**

**BETWEEN**

**TOM MAINA CHEGE ..... CLAIMANT**

**AND**

**MARKETFORCE TECHNOLOGIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant's claim is dated 30<sup>th</sup> October, 2023. It seeks the following reliefs: -
  - a. A declaration that the Claimant's termination was unprocedural and unfair
  - b. The sum of Kshs. 1,560,870 as particularized in paragraph 9 of the Statement of Claim.
  - c. General damages for unfair termination under Section 49 of the *Employment Act*, 2007.
  - d. Costs of this suit
2. The Respondent entered appearance and subsequently filed a Response to the claim dated 24<sup>th</sup> April, 2024, but did not file a witness statement, documents nor present a witness to defend the suit.
3. The Claimant's case proceeded as undefended claim.
4. The matter was certified to proceed for formal proof and the Claimant's evidence was taken on 28<sup>th</sup> October, 2024.
5. Submissions were filed for the Claimant.



### **The Claimant's Case**

6. The Claimant's case is that he was at all material times an employee of the Respondent. He states that vide a letter dated 1<sup>st</sup> January 2022, the Respondent employed him as a Product Manager at a gross monthly salary of Kenya Shillings Two Hundred Thousand Only (Kshs. 200,000/-).
7. He avers that he was receiving instructions from the Respondent herein, thereby creating an employer-employee relationship. It is his case that he served the Respondent with loyalty and diligence until 31<sup>st</sup> July 2023, when the Respondent notified him that his employment shall be terminated with effect from 12<sup>th</sup> August 2023 on grounds of redundancy.
8. The Claimant states that he is aggrieved as he considers the termination of his employment as unlawful and unfair, as due process was not followed, and his terminal dues were not remitted.
9. It is his case that the notice of intention to declare the redundancy dated 14<sup>th</sup> July, 2023 was not served upon the Labour Officer as prescribed under the *Employment Act*, 2007. He avers further, that the notice of intention to declare redundancy period of 30 days did not lapse before the Respondent declared him redundant vide the letter dated 24<sup>th</sup> July, 2023.
10. That the termination of employment due to redundancy dated 24<sup>th</sup> July, 2023 set the last working day as 12<sup>th</sup> August, 2023.
11. It is his prayer that the Court awards him the reliefs listed in his claim.

### **The Claimant's submissions**

12. It is submitted for the Claimant that an employment relationship was created between the Claimant and the Respondent vide a letter dated 1<sup>st</sup> January, 2022 and invention assignment agreement dated the same day, which the Claimant produced as his exhibit number 1 and 2 as per the Claimant's list of documents. The Claimant submits further that he produced KRA income tax deductions for the year 2023 as evidence that the Respondent was paying his PAYE as required under the law for all the employees.
13. It is further submitted that the Respondent acted unlawfully in terminating the Claimant's employment contrary to Section 40 of the *Employment Act*, which expressly provides for the procedure of termination of employment on account of redundancy.
14. The Claimant submits that the termination of his employment was also wanting in terms of substantive fairness, as the sole reason for his termination was alleged restructuring of the Respondent's company resulting in the abolishment of his position.
15. He submits that the Respondent failed to demonstrate that seniority ability, reliability and availability was considered before rendering him redundant. He placed reliance in the case of *Joseph Macharia Warutere & 3 Others v. Saab Kenya Ltd (2017) eKLR*, for the holding that:-

“The selection criteria must be objective and where questioned; the employer should be able to show that there was a criterion in place.”
16. He implores the Court to find that his termination was substantively and procedurally unfair for failing to adhere to the redundancy procedures and for fair reasons.



## **Analysis and Determination**

17. Upon careful consideration of the pleadings, the Claimant's oral testimony and his written submissions, the issues for determination are:-
- i. Whether the Claimant's termination was fair
  - ii. Whether the Claimant is entitled to the reliefs sought

### **Whether the Claimant's termination was fair**

18. The Respondent evidently employed the Claimant vide an employment agreement dated 1<sup>st</sup> January, 2022 and signed by both parties herein, and produced in evidence before this court. It is also clear to court that his monthly gross salary was Kshs. 200,000/-.
19. The Respondent issued the Claimant notice of intention to declare him redundant dated 24<sup>th</sup> July, 2023, which notice indicated the Claimant's last day of employment as 12<sup>th</sup> August, 2023.
20. Section 40(1) of the [Employment Act](#) provides 7 steps that an employer must adhere to in a redundancy situation, thus:-

“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 the 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 to 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.
21. The general principle is that redundancy is a legitimate ground for terminating a contract of employment, provided that the employer can prove that actual redundancy was the reason for the dismissal.



22. The Claimant contends that he was issued less than one (1) month notice of the redundancy, and further that no such notice was issued to the Labour Office on his redundancy. The Claimant similarly contested there having been a criteria that objectively identified him or his position for redundancy, contrary to Section 40 of the *Employment Act*.
23. For reason that the Respondent did not defend the suit, the Claimant's case is uncontroverted. The Claimant has proved that he was an employee of the Respondent and further confirmed that indeed, a redundancy notice was issued. It is also clear from the evidence before court that the notice is dated 24<sup>th</sup> July, 2023 and that the Claimant's last day in the employ of the Respondent was 12<sup>th</sup> August, 2023.
24. The notice obviously did not meet the statutory period. There was also no evidence of discussions/ meetings to discuss the redundancy prior to the notice.
25. No notice to the labour office was issued going by the Claimant's evidence, so that it is glaringly obvious that the Respondent did not attempt to comply with the 7 steps set out in Section 40(1) of the *Employment Act*, 2007.
26. In whole, this court finds and holds that the Claimant's termination was both procedurally and substantively unfair, and so I hold.

#### **Whether the Claimant is entitled to the reliefs sought**

27. The Claimant's claim is for a declaration that her termination was unprocedural and unfair, payment of the sum of Kshs. 1,560,870 on account of leave, notice pay, severance pay, salary arrears, general damages for unfair termination and the costs of this suit.
28. The Claimant's documents produced in evidence, confirm that the Respondent had computed the Claimant's terminal dues amounting to Kshs. 767,742 and a further Kshs. 548,805 as salary arrears.
29. In the absence of a defense to the suit, the court cannot confirm that these dues were paid out to the Claimant upon computation. The least this court can do in the circumstances, is award the same.
30. I therefore find the claim merited and order that the Respondent pays the Claimant terminal dues amounting to Kshs. 1,316,547/-.
31. On the prayer for general damages, the Claimant confirmed that he was terminated on the ground of redundancy, which generally is a fair reason to terminate and all the employer needs to do is adhere to the procedure set under Section 40(1) of the *Employment Act*, 2007.
32. In the case of Elizabeth Wakanyi Kibe v Telkom Kenya Ltd [2014] eKLR the Court cited the case of D.K. Marete v Teachers Service Commission Cause No. 379 of 2009, for the holding that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees, but are meant to redress economic injuries in a proportionate way.
33. Guided by the foregoing pronouncement, I deem an award of 4 month's salary sufficient compensation for the unfair termination.
34. In the final analysis, I find that the Claimant's claim merited, and grant orders as follows:-
  - i. A declaration that the Claimant was unfairly terminated
  - ii. An order that the Respondent pays the Claimant Kshs. 1,316,547/- on account of terminal dues



- iii. That the Respondent pays the Claimant 4 month's salary for the unfair termination at Kshs. 800,000/-
- iv. Costs shall be borne by the Respondent.

35. Judgment of the Court.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 21<sup>ST</sup> DAY OF MARCH, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Kirui h/b for Mr. Juma for the Claimant

N/A for the Respondent

Ms. Esther S - CA

