



Wanyama v United Nations Sacco Society (UN SACCO) Limited (Cause E581 of 2022) [2025] KEELRC 899 (KLR) (20 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 899 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E581 OF 2022
S RADIDO, J
MARCH 20, 2025**

BETWEEN

ROSE MBITA WANYAMA CLAIMANT

AND

UNITED NATIONS SACCO SOCIETY (UN SACCO) LIMITED .. RESPONDENT

JUDGMENT

1. Rose Mbita Wanyama (the Claimant) sued the United Nations Sacco Society Ltd (the Respondent) on 19 August 2022, alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response on 26 September 2022, and the Cause was heard on 19 June 2023, 27 November 2023, 25 May 2024, 4 November 2024 and 3 February 2025. The Claimant and the Deputy Chief Executive Officer of the Respondent testified.
3. The Claimant filed her submissions on 6 March 2025 (should have been filed and served before 21 February 2025), and the Respondent on 6 March 2025.
4. The Claimant set out the Issues for adjudication in her submissions as:
 - i. Whether the Claimant was the successful applicant as interviewee for the Respondent's internally advertised position of Head of Credit Management?
 - ii. Whether the re-advertisement for the position of Head of Credit was in the circumstances justified?
 - iii. Whether the separation of the Claimant from the Respondent was procedural, lawful and/or justified in the circumstances?
 - iv. Whether the Claimant is entitled to the prayers sought?
 - v. Who shall bear the costs of the Cause?



5. The Respondent on its part isolated the Issues in contention as:
 - i. Was the Claimant's termination unlawful, unprocedural and unfair?
 - ii. Is the Claimant entitled to general damages for emotional stress, anguish and trauma allegedly occasioned by the Respondent's alleged unlawful, unprocedural and unfair treatment and termination of the Claimant's employment?
 - iii. Is the Claimant entitled to special damages amounting to Kshs 4,925,801/84?
 - iv. Has the Sacco refused to issue the Claimant with a Certificate of Service?
 - v. What order ought to be made in respect of costs?
6. The Court has considered the pleadings, evidence and submissions.

Whether Claimant was appointed Head of Credit Management?

7. The Respondent engaged a Human Resource Consultant to lead its organisational restructuring in 2018.
8. When phase one of the restructuring was completed, the Respondent through the Human Resource Consultant invited applications from the staff to apply for several positions including, Head, Credit Management.
9. The Claimant applied for the position, was interviewed and was informed by the Human Resource Consultant through an email of 5 March 2021 that she was successful and had been re-appointed to the position of Head, Credit Management awaiting a formal contract.
10. The Claimant asserted that the email served to confirm that she was successful and had been appointed as Head of Credit Management.
11. However, the Respondent denied being privy to the email and appointment and contended that the Terms of Engagement of the Human Resource Consultant did not include making appointments, a role reserved to its Board.
12. The Claimant was not Head, Credit Management before the restructuring and therefore could not be re-appointed to a position she did not hold. Re-appointment signifies being appointed to the position one held previously after lapse of tenure or end of contract.
13. The Respondent placed the contract with the Human Resource Consultant before the Court and the terms did not include making appointments on behalf of the Respondent.
14. The Claimant did not call the Human Resource Consultant to disclose whether the Claimant was the successful applicant for the position of Head, Credit Management, or under what circumstances he penned the email purportedly re-appointing the Claimant to the position she had not held previously.
15. The Court answers the question in the negative.

Whether re-advertisement was justified?

16. The Respondent re-advertised the position of Head, Credit Management and the reason it gave was that there was an error in the qualifications.
17. The error was that the qualification of Certified Credit Professional Certificate was omitted in the initial advertisement.



18. The initial advertisement had professional qualification of CPA(K), ACCA and related qualifications while the re-advertisement had the qualifications CPA(K), or Certified Credit Professionals – CCP (K) or equivalent.
19. The Claimant contended that the re-advertisement was not justified because she had one of the alternative professional qualifications, CPA (K).
20. The Court cannot micromanage an employer and it finds that it was up to the Respondents managerial prerogative to re-advertise for the position in terms of its restructuring objectives.

Unfair termination of employment

Procedural fairness

21. Sections 35(1) and 41 of the *Employment Act*, 2007 set out the steps an employer should follow before terminating an employment contract to meet the demands of procedural fairness if the termination is due to misconduct, poor performance or physical incapacity.
22. If the contract has additional protections, the employer should comply with them as well.
23. The Claimant's employment was not terminated on account of any of the grounds set out in section 41 of the *Employment Act*, 2007 (misconduct, poor performance or physical incapacity).
24. The termination came about because of organisational restructuring. In other words, the termination was precipitated by operational reasons as envisaged under section 45(2)(b)(ii) of the *Employment Act*, 2007.
25. By dint of section 45(1) and (2) of the *Employment Act*, 2007, the Respondent had the burden of showing that the termination of the Claimant's employment as a result of reorganisation was for valid and fair reasons, and that a fair procedure was followed.
26. The Claimant asserted that the Respondent did not comply with the rules of natural justice before terminating her employment.
27. On 22 January 2021, the Respondent notified all staff that a job evaluation exercise commenced in 2018 had been completed (the job evaluation and organisation design exercise was to put in place new structures (grading, descriptions and specifications).
28. The Respondent held a meeting with all Heads of Departments on 20 January 2021 to update them on the restructuring exercise.
29. The notification informed the staff that they were being given the opportunity to apply for the new positions whose details were attached.
30. The Claimant applied for the position of Head, Credit Management and through an email of 5 March 2021, the Respondent's Human Resource Consultant informed her that she had been re-appointed to the position of Head, Credit Management.
31. However, when the Respondent's Finance and Administration Committee met on 27 April 2021, it resolved that the position of Head, Credit Management be re-advertised because of some inconsistencies on the job description.
32. The Human Resource Consultant sent an email to all staff, including the Claimant informing them that the position was being re-advertised and calling for applications before 10 May 2021. Those who had applied earlier were advised not to reapply.



33. The Claimant questioned the re-advertisement and the Respondent held a meeting with her to discuss the concerns on 14 May 2021.
34. The Claimant did not reapply but on 21 June 2021, the Respondent's Finance and Administration Committee met and resolved that the position of Head, Credit Management be given to one Moses Amolo who was said to be the top candidate. The staff were updated of the new appointments on 3 July 2021.
35. On or around 6 October 2021, the Respondent issued a show cause to the Claimant and the allegation was that the Claimant had scanned and sent payroll data thus breaching data confidentiality clause 2.7 and By Law 55. The cause instructed the Claimant to respond by close of 8 October 2021.
36. The Claimant did not respond within the timeline and on 14 October 2021, the Respondent sent her an email reminding her to respond.
37. The Claimant responded to the show cause and on 25 October 2021 met with one of the Respondent's Managers.
38. On the same day, the Manager sent an email to the Claimant capturing the items discussed.
39. The email was followed with a letter dated 1 November 2021, referenced Separation Letter.
40. The letter informed the Claimant that since she did not apply for any of the positions of Heads of Department established under a new organisation structure or any lower positions and had declined the position of Finance Officer offered her, she was being given 1-month notice of termination pursuant to section 35 of the *Employment Act*, 2007.
41. At the time, the Claimant was serving as a Finance Officer, a position she had been appointed to through a letter dated 15 September 2021. It is this contract that the Respondent was bringing to an end.
42. Did the Respondent follow a fair procedure in bringing the relationship to an end?
43. Fair procedure would have required the Respondent to unambiguously and in a formal way inform the Claimant that it intended to terminate her contract on account of restructuring or operational requirements after declining to accept the offer made to her and called upon her to make representations.
44. The Respondent, despite having made an offer to the Claimant did not caution her that it was considering terminating the existing contract upon her refusal to accept the new appointment.
45. The Court finds the termination failed the test of fair procedure as contemplated by section 45(2)(c) of the *Employment Act*, 2007.

Valid and fair reasons

46. The ground given by the Respondent for terminating the Claimant's employment was adoption of a new organisational structure.
47. And the reasons leading the Respondent to terminate the contract were that the Claimant had not applied for:

any of the lower positions after you were unsuccessful in the position of Head of Credit. In view of the above, the Board offered you a suitable position of Finance Officer in the new structure (the same position that you still held). You declined the appointment letter dated 15th September 2021. The Legal



- and Human Resource Officer subsequently held a discussion with you on the same and you indicated that you would not accept the offer letter.
48. The Claimant asserted unfair termination of employment on the basis that a Human Resource Consultant engaged by the Respondent had informed her on email of 5 March 2021, after interviews that she was successful and had been re-appointed as Head Credit Management, and that she would get a formal contract in due course.
 49. According to the Claimant, the re-advert was a scheme to put another person into the position.
 50. The Respondent contested the premise that it had unfairly terminated the Claimant's employment. It asserted that the Claimant's position at all material times was that of a Finance Officer.
 51. The Respondent acknowledged that the Claimant applied for the position of Head, Credit Management but contended that it was not privy to the email by the Human Resource Consultant informing the Claimant that she had been reappointed to the position of Head, Credit Management.
 52. According to the Respondent, the mandate and terms of engagement of the Human Resource Consultant did not bestow on him any power to make appointments after interviews.
 53. The Respondent further contended that it was forced to re-advertise for the position of Head, Credit Management because of an omission on qualifications and that the Claimant participated in the new process.
 54. In the interview, the Claimant scored 78% while another candidate scored 79.5%, and the job was given to the best candidate while the Claimant declined a position offered to her leading to the separation.
 55. The separation, the Respondent asserted was attributable to the decision of the Claimant to decline the offer of Finance Officer, a position she was then serving in, at a higher remuneration.
 56. It is not in dispute that the Respondent tasked a Consultant to help in setting up a new organisation structure. When the exercise was completed, the Respondent invited applications from its staff and the Claimant applied for the position of Head, Credit Management.
 57. The Claimant was interviewed and the Human Resource Consultant informed her in writing that she was successful.
 58. Despite urging that she was the best candidate at the first interview and being informed of appointment, the Claimant did not show that the mandate of the Human Resource Consultant included making or announcing appointments.
 59. The terms of engagement of the Consultant produced in Court did not include such a role.
 60. The Respondent decided to re-advertise for the position allegedly because of change of qualifications. The employees who had initially applied were instructed not to reapply because the Respondent already had their applications.
 61. The Respondent asserted that the Claimant was invited for a new interview and she accepted and attended the interview but was not the best candidate. The ranking of the interviews was placed before the Court.
 62. On 1 July 2021, the Respondent invited the Claimant to apply for the position of Finance Officer or Credit Team Lead/Senior Officer but she declined.
 63. The substantive position of the Claimant at the material time was that of Finance Officer. The Respondent offered her the position at a higher remuneration but she declined.



64. The contract between the Claimant and Respondent was one for personal services. The Respondent could not force or coerce the Claimant to offer the services after she declined.
65. In the circumstances, the Court finds that the Respondent did not have much of an option, and that it has proved valid and fair reasons for terminating the contract.

Remedies

Compensation

66. The Claimant served the Respondent for about 12 years. The Respondent has proved valid reasons for the termination but it did not adhere to a fair procedure.
67. Considering these factors, the Court is of the view that the equivalent of 4-months' gross salary as compensation would be fair (gross salary was Kshs 421,771/- in January 2021).

Pay in lieu of notice

68. In the submissions, the Respondent admitted having offered the Claimant Kshs 222,117/- as pay in lieu of notice and the Court will allow this relief.

November 2021 to August 2022 salary

69. The Claimant separated with the Respondent effective 1 November 2021, and she cannot legally claim salary for a period after termination of employment.

November 2021 to August 2022 travel allowance

70. The Claimant did not provide or establish a foundation for an award of allowances outside the contract period.

Pension

71. The Claimant ceased being an employee of the Respondent in November 2021 and cannot validly claim pension contributions after the end of the contract.

Leave allowance

72. The Claimant claimed Kshs 108,319/- as leave allowance. An evidential foundation to this head of the claim was not given.
73. The Respondent offered Kshs 27,147/37 as leave allowance and this is the amount the Court will allow.

Leave days

74. On account of leave days, the Claimant pleaded Kshs 296,156/- for the year 2021. The Respondent offered the Claimant accrued leave days' pay of Kshs 22,117/- upon clearance and therefore nothing turns on this head of the claim.

NSSF contributions

75. The [National Social Security Fund Act](#) has provisions for claiming unremitted contributions.



76. If the Respondent deducted but did not remit any contributions, the Claimant should report to the Fund otherwise there is no legal basis for an employer to deduct or remit contributions post-employment.

Certificate of service

77. A certificate of service is a statutory entitlement and the Respondent should issue one to the Claimant.

Conclusion and Orders

78. The Court finds and declares that the termination of the Claimant's employment was procedurally unfair and the Claimant is awarded:

- (i) Compensation Kshs 1,687,084/-
 - (ii) Accrued leave Kshs 222,117/-
 - (iii) Leave allowance Kshs 27,147/-
 - (iv) Pay in lieu of notice Kshs 346,344/-
- TOTAL Kshs 2,282,692/-

79. The award to attract interest at court rates from date of judgment.

80. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant A.S. Kuloba & Wangila Advocates

For Respondent Ombonya & Co. Advocates

Court Assistant Wangu

