



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Njuguna v Torrent East Africa Limited (Cause E648 of 2023)  
[2025] KEELRC 853 (KLR) (14 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 853 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E648 OF 2023  
AK NZEI, J  
MARCH 14, 2025**

**BETWEEN**

**SAMUEL THINI NJUGUNA ..... CLAIMANT**

**AND**

**TORRENT EAST AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 2<sup>nd</sup> February, 2023 and sought the following reliefs:-
  - a. Twelve months' salary being compensation for wrongful dismissal, unfair and/or unlawful termination of employment (Kshs.225,111 x 12) ..... Kshs.2,701,332/=.
  - b. Nine months' salary arrears (from January 2022 to October 2022) ..... Kshs.121,419/=.
  - c. General damages for pain, suffering and emotional distress.
  - d. Costs of the claim.
2. The Claimant pleaded:-
  - a. that he was employed by the Respondent as an Assistant Financial Accountant on 18<sup>th</sup> April, 2017, earning an initial consolidated monthly salary of Kshs.100,000/=, which was subsequently increased to Kshs.225,111/= as at the time of termination of employment on 13<sup>th</sup> October, 2022.
  - b. that the Claimant rendered honest, diligent and dedicated services until 13<sup>th</sup> October, 2022 when he was wrongfully and illegally dismissed from employment by the Respondent on alleged account of redundancy. That on 13<sup>th</sup> October, 2022, the Claimant informed the



Finance and Human Resource Manager, who was the Claimant's immediate Supervisor, that he would be applying for a one day leave. That the procedure was that one notified the Manager verbally before proceeding to fill in the leave application on the Sage HR System.

- c. that on the same day (13<sup>th</sup> October, 2022) at 4 pm, the said Manager called the Claimant into a meeting room and presented him with two letters/documents:-
    - i. a letter of termination of employment by reason of redundancy dated 14<sup>th</sup> October, 2022.
    - ii. "a termination of my employment" letter written in the first person and dated 14<sup>th</sup> October, 2022.
  - d. that at the instance of the said manager, the Claimant acknowledged receipt of the said letters, under protest, by signing on them.
  - e. that the Claimant had not received a redundancy notice.
  - f. that at the time of being handed the said two letters, the Claimant was asked to hand over any company assets in his custody, to clear and to leave the Respondent's premises promptly. That this was humiliating to the Claimant in the eyes of all his colleagues.
  - g. that although the termination letter by reason of redundancy referred to "recent review by the company of the operational and strategic requirements", there had not been such review, and that the allegation came as a surprise to the Claimant.
  - h. that the Respondent did not show or explain how it was only the Claimant's position that had been rendered redundant in the entire workforce, as the termination letter read as follows, "as a result of the review, the position of Assistant Financial Accountant is no longer needed and accordingly redundant. We are therefore left with very last option of workforce restructuring as a mean to ensure that the company remains afloat."
  - i. that there was no legitimate reason for declaring the Claimant redundant, and that after the Claimant's termination, two persons, Josphat Kamau and Pius Makokha, were employed by the Respondent in the Finance and Accounts department.
  - j. that redundancy is not a knee jack event, but a process which includes rationalization of various positions by the employer, taking into account the principle of Last In First Out (LIFO). That the Claimant had worked for 5 years, with fresh staff having joined the Respondent's accounting and finance department, and having been trained by the Claimant. That the said principle was not considered by the Respondent.
  - k. that whereas the Claimant's employment was maliciously terminated under the guise of redundancy, communication given to the Claimant's colleagues and other employees via the Respondent's Staff WhatsApp created a false impression that the Claimant had left employment on his own volition.
3. Documents filed alongside the Claimant's Memorandum of Claim included the Claimant's written witness statement and a list of documents dated 2<sup>nd</sup> February, 2023, listing some 9 documents. The listed documents included the Claimant's contract of employment dated 18<sup>th</sup> April, 2017, a confirmation of employment dated 30<sup>th</sup> January, 2018, dismissal letter dated 14<sup>th</sup> October, 2024, a letter dated 14<sup>th</sup> October, 2022 and authored by the Respondent in the Claimant's name and addressed to the Respondent's Board of Directors, and a screenshot of WhatsApp message/communique made to the Respondent's staff on 14<sup>th</sup> October, 2022, among other documents.



4. The Respondent defended the Claimant's suit vide a Statement of Response dated 12<sup>th</sup> September, 2023, denying the Claimant's claim. The Respondent, however, admitted having employed the Claimant as pleaded by him, and at the pleaded salary.
5. The Respondent further pleaded:-
  - a. that the Claimant did not have any cause of action against the Respondent, and denied liability.
  - b. that the Respondent followed proper procedure in terminating the Claimant; and that all relevant offices were duly notified and requisite notices were issued to the Claimant.
  - c. that the Claimant executed the termination letter on his own volition and the Respondent duly conveyed the message to the rest of the staff.
  - d. that the Claimant's termination was due to financial constrains affecting the Respondent Company and that the Respondent extended a sign of goodwill and made available psychosocial support from Amani Counsellors to the Claimant at the expense of the Respondent.
6. Documents filed alongside the Respondent's Statement of Response included a witness statement of Teresa Anyango dated 8<sup>th</sup> September, 2023 and a list of documents dated 12<sup>th</sup> September, 2023, listing 12 documents. The listed documents included copies of the Claimant's employment letter dated 18<sup>th</sup> April, 2017, confirmation of employment letter dated 30<sup>th</sup> January, 2018, copies of salary adjustment letters, Annual Report and Financial Statement dated 31<sup>st</sup> December, 2022, termination letter by the Respondent dated 14<sup>th</sup> October, 2022, termination letter "by the Claimant" dated 14<sup>th</sup> October, 2022, copies of payslips for January 2022 to October 2023, proof of payment of final dues and final payslip, and a certificate of service.
7. The Claimant filed Reply to the Respondent's Statement of Response on 20<sup>th</sup> September, 2023.
8. Trial commenced before me on 14<sup>th</sup> October, 2024. The Claimant adopted his filed witness statement dated 2<sup>nd</sup> February, 2023 as his testimony, and produced in evidence the documents referred to in paragraph 3 of this Judgment. Cross-examined, the Claimant testified that he was seeking to be paid compensation for unfair termination. He confirmed payment of his terminal benefits, and confirmed that the salary deductions that he was seeking to be paid were deductions made from his salary towards pension; and that he had made a follow-up with the Pension Manager. Regarding his claim for general damages for pain, suffering and emotional distress, the Claimant conceded that he had not presented any medical report in support of that claim, and that he had not reached out to Amani Counsellors as set out in his termination letter. He confirmed having been issued with a certificate of service.
9. Re-examined, the Claimant testified that although his termination letter was dated 14<sup>th</sup> October, 2022, he was terminated on 13<sup>th</sup> October, 2022 and asked to leave his employment, and that he on that day received the said termination letter under protest. That he had neither been consulted nor given any notice prior to being terminated. That a copy of his termination letter was shown to have been delivered to the Labour Officer on 14<sup>th</sup> October, 2022. That he (the Claimant) did not receive any notice prior to termination.
10. The Respondent's witness (Teresa Josephine Anyango – RW-1) testified on 17<sup>th</sup> December, 2024. She adopted her witness statement dated 8<sup>th</sup> September, 2023 as her testimony, and produced in evidence the Respondent's documents referred to in paragraph 6 of this Judgment. RW-1 explained that the reason why the Claimant's termination letter was received on 13<sup>th</sup> October, 2023 while it was dated 14<sup>th</sup> October, 2022 was because the letters had been written earlier as the redundancy was set to take effect



on 14<sup>th</sup> October, 2022. That since the Claimant was around on 13<sup>th</sup> and was not going to be around on 14<sup>th</sup> October, 2022, he agreed to take the letters on 13<sup>th</sup> October, 2022.

11. RW-1 further testified that the Respondent company was undergoing a normal restructuring process as the company was making losses, that costs had to be cut, and that regrettably one of the steps that had to be taken was the redundancy. That the Respondent tried the best to compensate the Claimant, and that whereas the redundancy took effect on 14<sup>th</sup> October, 2022, he was paid upto the end of the month, and was allowed a medical cover for some time. That the Claimant's termination was not unfair.
12. Cross-examined, RW-1 testified:-
  - a. that the Claimant indicated on the termination letter that he had received it on 13<sup>th</sup> October, 2022 under protest due to lack of consultation and sufficient notice, and that the termination had been done after he had requested for leave.
  - b. that the contents of the Claimant's termination letter were similar to those in the letter to the Labour Officer. That the letters are dated 14<sup>th</sup> October, 2014, and that the Labour Officer was given his letter on 14<sup>th</sup> October, 2022.
  - c. that although the Claimant's clearance form was signed by RW-1 on 13<sup>th</sup> October, 2022, it had been signed by the other concerned officers on 14<sup>th</sup> July, 2022, long before termination of the Claimant's employment. That this was a mistake.
  - d. that the criteria used in selecting the Claimant for redundancy was the company's performance. That there were other employees of the Respondent who had been affected by the redundancy at different times, though there was no evidence to that effect.
  - e. that the Claimant was given a 30 days' notice as per the termination letter, and that the notice was in form of payment.
13. Having considered pleadings filed herein and evidence presented thereon by the parties, issues that fall for determination are as follows:-
  - a. Whether termination of the Claimant's employment was unfair.
  - b. Whether the Claimant is entitled to the reliefs sought.
14. On the first issue, the Claimant's termination letter dated 14<sup>th</sup> October, 2022 reads as follows, in part:-

“RE: TERMINATION OF YOUR EMPLOYMENT BY REASON OF REDUNDANCY

. . . The purpose of this letter is to confirm the outcome of a recent review by the company of its operational and strategic requirements, and what this means for you. As a result of the review, the position of Assistant Financial Accountant that you currently hold is no longer needed and accordingly redundant.

In the present circumstances, your current employment as Assistant Financial Accountant will terminate immediately. Based on your contract, your notice period is one month. Instead of receiving that notice, you will be paid full gross pay for the month of October 2022 plus the redundancy entitlement as set out below . . .”



15. The Black's Law Dictionary (10<sup>th</sup> Edition) defines redundancy as follows:-
- “ A situation in which an employee is laid off from work because the employer no longer needs the employee.”
16. Section 40(1) of the *Employment Act* 2007 provides that 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 extend of, the redundancy not later than a month prior to the date of the intended 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 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 bargaining agreement between the 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 not less than one month's wage in lieu of notice; and
  - (g) the employer has paid an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.”
17. None of the parties herein pleaded or testified on the issue of whether or not the Claimant was unionised. No redundancy notice is shown to have been served, either on a trade union or on the Claimant personally pursuant to Section 40(1)(a) and (b) of the *Employment Act* 2007; and none is shown to have been served on the areas labour officer. All that is shown to have been served on the Claimant on 13<sup>th</sup> October, 2022 was a letter dated 14<sup>th</sup> October, 2022 terminating the Claimant's employment immediately. It is a copy of this letter which the Respondent (RW-1) demonstrated was delivered to the Labour Officer, Industrial Area Nairobi, on 14<sup>th</sup> October, 2022.
18. Further, the Respondent did NOT demonstrate what criteria it used in selecting the Claimant for redundancy from the class of employees to which the Claimant belonged. The Court was not told that the Claimant was in a class of his own. The Claimant testified that there were other more junior employees in his class of employees whom he had trained, and who remained in employment. He also testified that after his termination, some other two employees, whom he named, were employed by the Respondent to undertake the duties that he had been doing. The Respondent did not rebut or controvert this evidence.



19. The foregoing failure by the Respondent to adhere to the aforesaid mandatory statutory procedure in declaring the Claimant redundant rendered the process of terminating the Claimant's employment unprocedural, and therefore unfair. It amounted to unfair termination of the Claimant's employment. I so find and hold.

20. It was stated as follows in the case of Kenya Airways – vs – Aviation and Allied Workers Union Kenya and 3 Others [2014] eKLR:-

“ 57. The other important aspect of procedural fairness is the criteria employed to determine the employees to be laid off. The requirement is expressly provided for in Section 40(1)(c) of the Employment Act which places the burden of proving its compliance on the employer . . . The selection of workers to be affected by the reduction of the work force should be made according to precise criteria, which it is desirable should be established wherever possible in advance, and which gives due weight both to the interest of the undertaking establishment or service and to the interest of the workers . . . ”

21. On the second issue, and having made a finding that termination of the Claimant's employment was unfair, I award the Claimant the equivalent of six (6) months' salary as compensation for unfair termination of employment. It was a common ground that the Claimant's gross monthly salary at the time of termination of his employment was Kshs.225,111/=. That fact was pleaded by the Claimant and was admitted by the Respondent in its Response to the claim, and is clearly stated in the Claimant's termination letter dated 14<sup>th</sup> October, 2022. The equivalent of six month's salary is, therefore, Kshs.225,111/= x 6 – Kshs.1,350,666/=: which I award to the Claimant. I have taken into account the period of time the Claimant worked for the Respondent, and the abrupt manner in which his employment was terminated. I have also taken into account the fact that the Claimant was not shown to have in any way contributed to termination of his employment.

22. The claim for nine months' salary arrears amounting to Kshs.121,419/= is declined. The Claimant admitted in evidence (under cross-examination) that the deductions in issue were made towards his pension (scheme), and that he had taken up the issue with the Pension Manager. Indeed, recoverable pension fund was listed in the Claimant's termination letter as one of the payments payable to the Claimant upon termination. According to the letter, the total amount (pension) payable was to be advised by the Pension Manager. The Claimant confirmed in evidence in Court that he had taken up the pension issue with the Pension Manager. Further, the Claimant confirmed payment of terminal dues payable to him.

23. The claim for general damages for pain, suffering and emotional distress was not proved, and is declined. No medical or expert evidence was presented to demonstrate pain, suffering and emotional distress by the Claimant. The stated conditions and any mortal affliction associated with them could only be proved by appropriate expert evidence. No such evidence was called by the Claimant. Further, the Claimant is not shown to have utilized the medical and psycho-social support offered by the Respondent upon termination, and which was to run upto 17<sup>th</sup> April, 2023. The Claimant's termination letter states, in part:-

“ For your transport home, feel free to use the Corporate Uber Account. Your medical cover remains available for you until 17<sup>th</sup> April, 2023. In an event that you need to get psycho-social support, you may reach out to Amani Counsellors supported by the Medical cover.”



24. In sum, and having considered written submissions filed on behalf of both parties herein, Judgment is hereby entered for the Claimant against the Respondent for a sum of Kshs.1,350,666/= being compensation for unfair termination of employment.
25. The awarded sum shall be subject to statutory deductions that applied to the Claimant at the time of termination, pursuant to Section 49(2) of the *Employment Act*.
26. The Claimant is awarded interest on the awarded sum, to be calculated at court rates from the date of this Judgment.
27. The Claimant is also awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF MARCH 2025**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Njoroge for the Claimant

Miss Mulongo for the Respondent

