



**Macharia v Kenya Institute of Management (Cause E037 of 2023)
[2025] KEELRC 1212 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1212 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E037 OF 2023**

J RIKA, J

APRIL 30, 2025

BETWEEN

NAOMI WAIRIMU MACHARIA CLAIMANT

AND

KENYA INSTITUTE OF MANAGEMENT RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim on 9th August 2023.
2. She avers that she was employed by the Respondent, as an Officer Training, on 7th August 2005.
3. She was promoted to Branch Manager, on 9th March 2018. She had previously been appointed as Branch Manager Nyahururu, on 29th June 2016 and 25th January 2017.
4. She was advised by the Respondent on 30th October 2020, that the Respondent was restructuring its business, and her position of Branch Manager, rendered redundant.
5. Her monthly salary was Kshs. 130,000.
6. Her contract was terminated on 30th October 2020. She was not paid anything, not even the salary for October 2020.
7. The Respondent wrote to the Claimant undertaking to pay her salary up to and including 28th November 2020. The Respondent wrote later, stating it would start paying in February 2023.
8. The Respondent however only paid to her a sum of Kshs. 100,000.
9. The Respondent failed to contribute 5% of the Claimant's basic salary to the pension scheme, while the Claimant contributed 10%.



10. Redundancy did not conform with Section 40 of the *Employment Act*. Redundancy dues were not paid to the Claimant.
11. The Claimant prays for: -
 - I. Declaration, that declaration of redundancy by the Respondent, is an offence and a violation of the Claimant's rights.
 - II. The Respondent to pay Claimant's benefits.
 - III. The Respondent to remit deducted HELB loan instalments.
 - IV. The Court to enter Judgment against the Respondent, including-
 - a. Payment of 5% pension contributions.
 - b. Deductions for the months of July, August, September and October 2020, to be paid with interest.
 - c. August, September and October 2020 salary at Kshs. 130,000 per month, adding up at Kshs. 390,000. [the amount is divided by 2, resulting in a claim for Kshs. 195,000]
12. Other prayers which are pleaded without the benefit of structured paragraphing, include: -Severance pay at Kshs. 650,000. House allowance of 3 years: May 2017 to April 2018 at Kshs. 126,000; 1st May 2018 to 30th April 2019 at Kshs. 234,000; 1st May 2019 to 31st October 2020 at Kshs. 273,000 – total Kshs. 633,000. Leave allowance at Kshs. 130,000. Imprest refund at Kshs. 723. Total... Kshs. 1,673,723.
13. Further, the Claimant prays for compensation for unfair termination, equivalent of 12 months' salary at Kshs. 1,950,000.
14. Interest is pleaded from 30th October 2020. The Claimant prays for costs.
15. The Respondent filed its Statement of Response, on 31st October 2023. It is conceded that the Claimant was an Employee of the Respondent. Her salary was consolidated, and the prayer for house allowance is misplaced. All her dues were paid. Her contract was not unfairly terminated. Compensation is not awardable. The Claim was instituted prematurely, and the Claimant failed to exhaust communication channels, which the Respondent kept open. The Respondent prays the Court to dismiss the Claim with costs.
16. The Claimant filed a Reply to the Statement of Response, on 8th November 2023. She reiterates the contents of her Statement of Claim. She restates that she is entitled to house allowance in arrears and that termination was unfair, with her benefits remaining unpaid for 3 years, from the date of termination, to the date she filed the Claim.
17. The Claim was referred for mediation. The Mediator filed a report before the Court, dated 19th September 2024. It states that Parties agreed: [a], the Claimant is owed salary arrears at Kshs. 195,000; and [b] she is owed severance pay at Kshs. 650,000.
18. The mediation report is adopted as partial Judgment of the Court. The Respondent shall pay to the Claimant arrears of salary at Kshs. 195,000, and severance at Kshs. 650,000.
19. The Mediator identified the remaining issues to be: compensation, house allowance, pension contribution, HELB loan, leave allowance, and November 2020 salary.



20. The Claimant, and Raymond Mwangi, Respondent's Head of Shared Services, both gave evidence on 30th January 2025, closing the hearing. The Claim was last mentioned before the Court on 18th March 2025, when the parties confirmed filing and exchange of their submissions.
21. The Claimant relied on her Witness Statement on record, which replicates the averments in her Statement of Claim. She adopted her documents [1-14] as her exhibits. She was advised that her position had been rendered redundant. She was not paid her dues. Statutory deductions were made, but remained unremitted to the relevant bodies.
22. Cross-examined, the Claimant told the Court that she did not raise complaint on validity of redundancy. Severance was agreed upon, but was not paid. Salary was consolidated. She did not have HELB statements showing that her loan was unpaid. She had statements from pension scheme administrator, Jubilee Insurance. There was a letter of temporary suspension of pension deduction. On redirection, she told the Court that her pay slips, did not capture house allowance.
23. Raymond similarly adopted his Witness Statement, which replicates the contents of the Statement of Response. The Claimant was Branch Manager at Naivasha. Her Branch was closed. Her position became redundant. The Respondent was up-to-date on pension contribution. Pension rules require she engages the pension trustees on her dispute.
24. On cross-examination, Raymond informed the Court that his docket, Shared Services, includes Human Resource Services. The Claimant was issued pay slips. House allowance was not specifically captured. Salary was all-inclusive. She was not given a house by the Respondent. The Respondent did not pay to the Claimant, what was agreed at mediation. Redirected, Raymond stated that salary was all-inclusive.
25. The issues are whether termination of the Claimant's contract through redundancy, was unfair and unlawful; and whether she is entitled to the remedies claimed, with costs and interest.

The Court Finds: -

26. The Statement of Claim, particularly the prayers, is not clearly pleaded. After "Reasons Wherefore," the prayers are quite untidy. There is no sequence. The prayers are helter-skelter. Rather than simply state the prayers, in clear paragraphs, the Claimant goes back into pleading, explaining in detail why the prayers are sought, blurring her pursuit of remedies.
27. Her employment history with the Respondent, is not contested. Parties agree that she left employment on redundancy, after her Branch was closed. She served as Branch Manager. She does not dispute the genuineness of redundancy.
28. While she does not dispute the existence of a genuine redundancy situation, she questions the manner in which it was carried out by the Respondent.
29. She pleads that Section 40[1] of the *Employment Act*, states that an Employer shall not terminate the Employee's contract on account of redundancy, unless the Employer has complied with Section 40 [1] [a] to [g].
30. The Court agrees with her reading of Section 40 [1] of the *Employment Act*. This law states that an Employer, shall not terminate a contract of service, on account of redundancy, unless the Employer complies with the conditions at paragraph [a] to [g].
31. The conditions, including all the contemplated payments, shall be met, before an Employer terminates the contract on account of redundancy.



32. Termination on account of redundancy under Section 40, does not contemplate promissory notes. Redundancy benefits, must be made, before the effective date of termination, on account of redundancy.
33. The Respondent informed the Claimant that her contract had been terminated, with effect from 29th November 2020. The letter informing her is dated 30th October 2020.
34. She was told that she would be paid salary up to and including 28th November 2020, and severance at the rate of 30 days' salary for each complete year of service. Her pension would be paid in accordance with the pension rules.
35. She therefore left employment on 29th November 2020, on account of redundancy. She was not paid her benefits.
36. The Respondent instead wrote to her, a letter bearing the date Monday, November 2021, stating that its revenue projections for December 2022, and January 2023 was very dim. She was advised that the Respondent would not be able to pay her redundancy dues, which she was promised would be paid, back in the year 2020. She was told that she would be paid in February 2023.
37. She was not paid.
38. This Claim was filed in August 2023. It was referred for mediation, and a report generated, dated 19th September 2024. The Respondent was directed to pay arrears of salary at Kshs. 195,000 and severance at Kshs. 650,000. At the time Raymond gave evidence before the Court, nothing had been paid.
39. Redundancy benefits, which under Section 40 [1] of the *Employment Act*, ought to have been paid before the Claimant's contract was terminated on account of redundancy, have remained unpaid for close 5 years.
40. Section 45 of the *Employment Act*, not only calls for valid reasons, and hearing of an Employee in justifying termination; Section 45 [4] [b] demands that in all circumstances of the case, the Employer shall act in accordance with just and equity, in terminating the Employee's contract.
41. Redundancy process was unfair and unlawful. It amounted to unfair and unlawful termination, warranting payment of compensation to the Claimant.
42. Withholding of the Claimant's redundancy benefits, for close to 5 years after she left employment was unfair, unlawful and contrary to the principles of justice and equity. She is entitled to compensation.
43. She did not establish her prayer for house allowance in arrears. Her contract dated 7th August 2015, indicates that she would receive a gross monthly salary of Kshs. 70,000.
44. The letter promoting her as Branch Manager, dated 9th March 2018, indicates that she would be entitled to a monthly consolidated salary, of Kshs. 130,000.
45. Her pay slip which described the sum of Kshs. 130,000 paid to her monthly as basic, does not appear to the Court, to have been intended as a variation of the main contract, which clearly defined the salary payable as consolidated.
46. Her prayer for arrears of house allowance is declined.
47. The Claimant did not articulate the rules governing her pension scheme. The Respondent's position, that she ought to have engaged the scheme trustees, rather than seek the aid of the Court, appears reasonable.



48. In this Court's decision in *Ringo v. Kenya Railways Corporation* [2024] KEELRC 1931 [KLR], the Court held that retirement benefits schemes, are regulated under the [Retirement Benefits Act](#). The responsibility to compute and pay pension, or arrears of pension, rests with the scheme trustees.
49. The Court applied the decision of the Supreme Court of Kenya in *Albert Chaurembo Mumba & 7 Others [Trustees of KPA Pension Scheme] v. Maurice Munyao & 148 Others* [2019] e-KLR, where it was held that pension disputes are not employer-employee disputes, to be resolved by the E&LRC.
50. The claim for pension was not articulated well by the Claimant, and appears not well-grounded in law. It is declined.
51. She conceded in her cross-examination, that she did not have HELB loan statements to support her prayer on HELB. The prayer has not been established and is declined.
52. The issue concerning her November 2020, was not resolved on mediation. The Court is not able to discern why the Respondent did not pay salary for November 2020. The notice issued to the Claimant in October 2020, took effect on 29th November 2020. The Claimant was still an Employee of the Respondent, until the notice took effect. There was no reason not to pay her November 2020 salary, which is hereby granted, at Kshs. 130,000.
53. The prayers for imprest refund and leave allowances were imprecise and not supported by the Claimant's evidence, and are declined.
54. The Claimant worked for about 5 years. She did not cause or contribute to the circumstances leading to termination. She did not disclose if she was able to secure alternative employment, after her contract was terminated by the Respondent. She was in a permanent and pensionable position. As concluded above, she was paid nothing on termination, despite the multiplicity of promissory notes issued upon her by the Respondent. She is granted equivalent of 8 months' salary, at Kshs. 130,000 x 8 = Kshs. 1,040,000, in compensation for unfair, unlawful, unjust and inequitable termination.
55. The Court accedes to her request for interest to accrue at court rate, from 29th November 2020. This is the date by which, redundancy benefits ought to have been paid to the Claimant. Interest from 29th November 2020, shall however be confined to severance pay at Kshs. 650,000, salary arrears at Kshs. 195,000 and salary for November 2020.
56. Interest on the compensatory award of Kshs. 1,040,000, shall apply from the date of Judgment at court rate, till payment is made in full.

In Sum, It Is Ordered: -

- a. It is declared that termination of the Claimant's contract by the Respondent was unfair, unlawful, unjust and inequitable.
- b. The Respondent shall pay to the Claimant severance at Kshs. 650,000 and arrears of salary at Kshs. 195,000, in accordance with the mediation report on record.
- c. The Respondent shall pay to the Claimant her November 2020 salary at Kshs. 130,000.
- d. The Respondent shall pay to the Claimant, compensation equivalent of 8 months' salary at Kshs. 1,040,000 for unfair, unlawful, unjust and inequitable termination.
- e. The sums under paragraph [b] and [c] above, shall attract interest at court rate, from 29th November 2020, until payment is made in full.



- f. The sum in paragraph [d] shall attract interest at court rate, from the date of Judgment, till payment is made in full.
- g. Costs to the Claimant.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 30TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

