



Ngure v Sheer Logic Management Consultants Limited (Cause E146 of 2021) [2025] KEELRC 1219 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1219 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E146 OF 2021
CN BAARI, J
APRIL 30, 2025**

BETWEEN

JULIUS MWANGI NGURE CLAIMANT

AND

SHEER LOGIC MANAGEMENT CONSULTANTS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant's claim is dated 14th January, 2021 and filed on 19th February, 2021. He seeks an order directing the Respondent to pay him the sum of Kshs. 532,653/= being salary for the remainder of the contract from 1/11/2019 to 30/9/2020, as well as costs of the suit and interest thereon.
2. The Respondent entered appearance on 1st March, 2021 and subsequently filed a Memorandum of Response to the claim dated 10th March, 2021, admitting that it employed the Claimant on a fixed term contract, and that it terminated him within the law.
3. The Claimant's case was heard on 29th November, 2023. The Claimant testified in support of his case, adopted his witness statement and produced documents filed as exhibits in the matter. The Respondent's case was heard on 16th October, 2024 when one Fidel Okoth, a client's relationship manager, testified in support of the Respondent's case. Mr. Fidel produced the Respondent's list and bundle of documents in support of their case, and adopted his witness statement.
4. Submissions were filed for both parties.

The Claimant's Case

5. It is the Claimant's case that he was employed by the Respondent on or about 1st July, 2019 as a driver on a three months contract commencing on 1st July, 2019 and lapsing on the 30th September, 2019.



6. He avers that on 1st October, 2019 his contract was extended for a further period of one year and was scheduled to lapse on the 30th September, 2020. It is his case that he worked for the Respondent faithfully up to 1st November, 2019 when his employment contract was unlawfully terminated by the Respondent without any justifiable cause.
7. The Claimant states that prior to his dismissal, he was earning Kshs. 48,423 / = as his net salary. He avers further, that the Respondent has refused, ignored and or neglected to pay him salary for the remaining 11 months of the contract.
8. On cross-examination, the Claimant confirmed that his contract would not be renewed if there was no work at Rent works Limited.
9. It is the Claimant's prayer that the Court awards him the reliefs listed in his claim.

The Respondent's Case

10. The Respondent states that it formally engaged the Claimant as a driver on a contractual basis, purely dependent on work availability from its client Rent Works E.A Ltd. It states that the nature of its business is to provide outsourced labour services for organisations, and that it assigned the Claimant duties at Rent Works E.A Ltd.
11. The Respondent states that the nature of its business is thereby heavily determined on the term of the contracts between the Respondent and their clients and the work available.
12. It states that on or about 29th October, 2020, it informed the Claimant that the expatriate he was assigned to chauffeur was relocating from Kenya with effect from 2nd November, 2019. That it further informed him that given the abrupt circumstances, and because the car he was using was leased and would be returned to its rightful owner, the Respondent would not terminate his employment immediately, but would invoke a termination clause of his contract and issue him with a one-month notice of termination.
13. It is the Respondent's case that it informed the Claimant to pick his one month notice of termination, which he promised to pick up, but did not. It states further, that the Claimant was reminded on 4th November 2019 to pick his notice, but the Claimant averred that he was not able to pick his notice of termination letter as he had proceeded on leave on 30th October, 2019, after being informed on call that he would be relieved off his duties on 29th October, 2019.
14. The Respondent avers that after numerous calls and reminders, the Claimant intentionally avoided picking his notice of termination letter, and the Respondent then resorted to have the notice of termination scanned to him. It states that when the Respondent was informed that the Claimant was at their fleet manager's office on 18th November, 2019, and in an effort to find out if he was in receipt of the notice of termination, the Claimant still refused to pick the Respondent's calls.
15. It is the Respondent's case that the Claimant deliberately avoided to pick his notice of termination in early November, and signed it on 27th November, 2019, when he was also expected to clear with the Respondent so that he can be paid his final dues, and issued with a certificate of service.
16. The Respondent in view of the foregoing, denies the Claimant's Claim in its entirety, and further denies the particulars of terminal dues as set out in his Memorandum of Claim.
17. The Respondent prays that the Claimant's claim be dismissed with costs.



The Claimant's submissions

18. It is submitted that the Respondent never formally served a redundancy notice upon the Claimant nor the relevant labour office. He submits that the Respondent's witness confirmed on cross-examination, that no redundancy notice was issued and served upon the relevant labour office, and further that the notice of termination dated 1st November 2019, cannot be inferred to be a redundancy notice. He placed reliance in the case of *Michira vs. Insteel Limited* (20231 KEELRC 3070 (KLR)) to support this position.
19. It is submitted further that on cross examination, the Respondent's witness confirmed that he had no evidence in proof of settlement of the Claimant's leave dues and/or any other dues for that matter.
20. It is submitted that the termination of the Claimant's employment by the Respondent was procedurally unfair. He sought to rely in the case of *Alex David v Serena Beach Resort & SPA* 12017) eKLR for the holding that: -

“The question whether redundancy was unfair has in part been answered in the preceding paragraphs in this Judgment. Although there was a genuine economic reason necessitating declaration of redundancy, requisite notices of intended redundancy did not issue. The selection criterion was not made clear by the Respondent to its Employees. Consultations between the Respondent and the Union were brief and quite friendly, where the Respondent merely informed the acquiescent Union of a decision already made, to declare redundancies. There was no redundancy package negotiated by the Union on behalf of the Employees. There was nothing that came out of the meetings between the Respondent and the Union. Redundancy procedure was not fair. It did not meet the standards of fairness under the *Employment Act*, 2007. The Claimant is granted the equivalent of 5 months' salary in compensation for unfair termination, at Kshs. 157,180.”

21. The Claimant submits that having established that his termination was unfair, it then automatically follows that he is entitled to compensation under the *Employment Act*.

The Respondent's Submissions

22. The Respondent submits that the contract between their client was terminated prior to the end of the fixed term contract between it and the Claimant, and based on that, it proceeded without delay to give the Claimant 1 month notice in line with clause 9(a) of his employment contract. The Respondent submits further, that it reserved the right of termination by giving the employees a one-month notice, and that the notice was issued on 1st November, 2019 without delay, but the Claimant refused to acknowledge receipt.
23. The Respondent submits that it has shown both the substantive justification and procedural fairness in terminating the Claimant's employment, and that there is no ambiguity in the terms and conditions of his employment contract.
24. It is the Respondent's submission that upon receiving the oral notice of termination from their client, it acted without delay and issued the Claimant with the one month notice of termination. It is their further submission that it acted in accordance with Section 35 of the *Employment Act* as well as the terms of the employment contract, and there was no breach of contract whatsoever. The Respondent had reliance in *Naima Khamis v Oxford University Press (EA) Limited* [2017] eKLR to buttress this assertion.



Analysis and Determination

25. I have carefully appraised the pleadings herein, the witnesses' oral testimonies and the rival 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

26. The Respondent initially issued the Claimant a three months' fixed contract, which was renewed for a further one year, from 1st October, 2018 to 30th September, 2019 on similar terms and conditions.
27. The Respondent's position is that the Claimant was issued with notice of termination of contract dated 1st November, 2019, which notice the Claimant also produced in evidence before this court.
28. The ground for the said termination as deduced from the termination notice, is termination of the lease of the motor vehicle which the Claimant was employed to drive. This in my view, was termination arising from the employer's operational reasons, which then is termination on the ground of redundancy.
29. The Respondent only cited compliance with notice requirement under both the Claimant's contract and Section 35 of the Employment, 2007.
30. I should mention at this point, that it is no longer enough for an employer to terminate by solely giving notice or payment in lieu of such notice. An employer is bound to adhere to the tenets of fair procedure, and to prove substantive justification for the termination for the same to pass muster. In *Kenfreight (EA) Limited v Benson K Nguti* [2016 eKLR, the Court of Appeal held that:-
- “ Apart from issuing proper notice according to the contract (or payment in lieu of notice as provided) an employer is duty bound to explain to the employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, the employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service is taken.”
31. This clearly being a case of redundancy, the Respondent was bound to comply with the 7 steps set out under section 40(1) of the *Employment Act*.
32. Section 40(1) of the *Employment Act* sets out 7 steps that an employer must adhere to in a redundancy situation, as follows: -
- “ 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.
33. It is generally fair to terminate an employee on the ground of redundancy where the employer can show that actual redundancy was the reason for the termination.
34. The Respondent renewed the Claimant's contract on 1st October, 2019 upon an earlier contract expiring on 30th September, 2019. It then proceeded to issue termination notice on 1st November, 2019, just a month into the Claimant's second contract, which in my view confirms the Respondent's predicament of having had its contract/lease terminated by a third party which it outsourced workers to, as nothing explains why it would issue a longer contract only to terminate the same one month later.
35. In my view, the Respondent's reason to terminate the Claimant was fair, reasonable and justified as it would not be tenable to keep an employee when it was clear that the employer had no work for him.
36. On the issue of procedural fairness, the question is whether the Respondent adhered to the requirements of procedural fairness. The Respondent neither acknowledged this to have been a redundancy situation nor having attempted compliance with Section 40(1) of the Employment Act, 2007.
37. The notice that the Claimant was issued with was certainly not the notice envisaged under Section 40(1)(a) of the Employment Act, and neither was any notice given to the labour office.
38. In light of the foregoing, it is clear that the termination of the Claimant, did not meet the mandatory requirements of Section 40(1) of the Employment, 2007, and which render the termination unlawful and unfair, and so I hold.

Whether the Claimant is entitled to the reliefs sought

39. The Claimant's claims is for an order directing the Respondent to pay him the sum of Kshs. 532,653/ = being salary for the remainder of the contract from 1/11/2019 to 30/9/2020, as well as costs of the suit and interest thereon.
40. The claim for payment for the remainder of contract is not tenable on the premise that there was no guarantee that the Claimant would serve to the end of his contract.



41. I will therefore proceed to make an award for unfair termination as provided for under Section 49 and 50 of the *Employment Act*, 2007.
42. The Claimant was unfairly terminated having worked for the Respondent for four (4) months. Considering the time he served the Respondent, and further taking into account the reason for his termination, I deem an award of 3 months' salary sufficient compensation for the unfair termination, and which is hereby awarded.
43. In whole, the claim is allowed in the following terms: -
 - a. That the Respondent shall pay the Claimant 3 months' salary as compensation for the unfair termination at Kshs. 145,269/-
 - b. That the Respondent shall bear the costs of the suit from the date of this judgment until payment in full.
44. Judgment of the Court.

DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Watuka Present for the Claimant

Ms. Maiga h/b for Ms. Kariuki for the Respondent

Ms. Esther S - CA

