



Wanja v North Coast Medical Hospital (Employment and Labour Relations Cause E003 of 2023) [2025] KEELRC 1241 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1241 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E003 OF 2023**

K OCHARO, J

APRIL 30, 2025

BETWEEN

JACQUELINE WANJA CLAIMANT

AND

NORTH COAST MEDICAL HOSPITAL RESPONDENT

JUDGMENT

1. At all material times, the Claimant was an employee of the Respondent until 31st January 2023, when her service was terminated. Charging that the termination was unfair, unprocedural, unfair, unlawful and illegal, she sued the Respondent seeking the following reliefs against it:
 - a. A declaration that the Claimant's dismissal from the Respondent's service vide redundancy was an unlawful action to terminate the Claimant from employment was unfair, illegal, and unprocedural.
 - b. An order that the Respondent pay the Claimant his terminal dues and compensatory damages totaling Kshs. 1,657,411.27.
 - c. A certificate of service in line with section 51 of the *Employment Act*.
 - d. Costs of this claim and interest.
2. Contemporaneously with filing the Memorandum of Claim, the Claimant filed her witness statement dated 16 June 2023 and documents under a list of documents of the same date.
3. Upon being served with summons to appear, the Respondent filed a Memorandum of Appearance dated 28th March 2023 and subsequently filed a Response to Memorandum of Claims on 15 May 2023. The Memorandum was filed side by side with its witness's statement. The Respondent denied the Claimant's claim in toto.



The Claimants case

4. The Claimant adopted the contents of the witness statement as her evidence in chief and had the documents admitted as her documentary evidence. She briefly testified in chief, clarifying points that needed to be in the statement and documents.
5. She testified that she first came into employment with the Respondent on 2 March 2020 under a letter of appointment on the same date, as a Marketing Manager. Her monthly salary was KShs. 102,813.
6. The Claimant stated that she worked diligently and was resourceful to her employer, the Respondent, during her employment.
7. On 31 January 2023, she received a letter from the Respondent, terminating her employment, with instructions to leave the Respondent's premises by 1 February 2023. This was a notice of barely 24 hours.
8. The notice was contrary to the provisions of section 40 of the Employment Act. Further, as contemplated in the section, she was not paid one month's salary in lieu of notice.
9. Before the termination, she wasn't notified of an impending redundancy or consulted in any manner.
10. The Respondent had no valid reasons for terminating her employment. The termination lacked any explicit criteria for selecting her for the alleged redundancy. Further, contrary to their assertion, there was no restructuring of the Respondent's business. They continue to utilize the marketing and advertising strategies/ methods initiated and implemented by the Claimant during her time as the Marketing Manager to attract students to their college.
11. She contends that in the circumstances, she is entitled to;
 - a. One month's salary in lieu of notice.....KShs. 102,813.
 - b. Payment in lieu of untaken/ unpaid leave.....KShs. 110,721.69.
 - c. Severance Pay KShs. 177,945.58.
 - d. Compensation for unlawful, unfair, unprocedural and illegal termination, twelve months' gross KShs. 1,233,756.
 - e. Welfare Scheme savingKShs. 32, 175.
12. Cross-examined by Counsel for the Respondent, she testified that she was the topmost officer in the Respondent's Marketing Department. Before joining the Respondent, she had been working in another organisation.
13. After returning from her leave, she was issued with the termination letter dated 31 January 2023. No consultations preceded this.
14. On 15 December 2022, she met with the Respondent to discuss her performance improvement plan. The meeting was specifically for this matter and had nothing to do with an impending restructuring of the Respondent's marketing operations.
15. Under her were six officers: communication and admissions assistants.
16. She retained the Phone that was provided to her for her official work, as she had paid for it using her welfare funds.



17. She further testified that she didn't collect the cheque the Respondent had raised for her terminal dues, as they didn't show her how the cheque amounts arrived.

The Respondent's case

18. The Respondent's witness was Reuben Waswa Nabie, its Managing Director.
19. The witness urged the court to adopt the contents of his Witness Statement dated 8th May 2023, as his evidence in chief, and the Respondent's documents filed herein as its documentary evidence. The court adopted them as such. He stated that the Respondent employed the Claimant on 4th June 2020, under a short-term contract renewed on 31st July 2020. She was subsequently employed permanently on 1st January 2021.
20. On or about July 2022, the Respondent noted that its Marketing Department was not effectively marketing and publishing the college, and as such, it was not gaining clientele.
21. Resultantly, the Respondent placed the Claimant on a performance improvement plan. Areas of concern were identified and clearly outlined. The expected activities, timelines for improvement, expectations, and consequences for non-improvement were set out.
22. On 15 December 2022, the Respondent met with the Claimant and other staff to discuss the marketing department's performance improvement plan, evaluation, and future.
23. Despite the Respondent's efforts, it became apparent that the institution was not benefiting from having a marketing department. In the Respondent's convened meeting held on 15th January 2023, it was resolved that it wasn't necessary to maintain the Department.
24. On 16th January 2023, the Respondent, by letter, informed the Claimant that upon appraising the performance improvement plan, the Respondent's Board of Directors had decided to restructure the Marketing Department, or if need be, do away with it, at which point the Claimant would cease to be an employee.
25. On 30th January 2023, the Respondent notified the Labour Office, Kilifi County, of its intention to terminate the Claimant's employment due to redundancy.
26. By letter dated 31 January 2023, the Respondent notified the Claimant of the end of her employment contract with them due to redundancy. She was informed that her terminal dues would be cleared upon her duly clearing with the Respondent.
27. Her final dues were computed at KShs. 198,311.75, and a cheque was drawn for the amount. Also, a certificate of service was prepared for her. However, she has never availed herself to collect the same.
28. Cross-examined by Counsel for the Claimant, the witness testified that the Respondent didn't engage the option of sending the certificate of service to the Claimant via her Advocates.
29. The Respondent deducted an amount from her terminal benefits to settle the phone's value.
30. The minutes for the meeting of 15 December 2022 explicitly indicated that the agenda was "performance improvement evaluation and failure of the marketing department."
31. The Respondent did not present any document before the Court from which it can be discerned that the marketing department was restructured.
32. Per the notice issued to the Claimant on 31 January 2023, her employment was terminated effective 1 February 2023.



33. In their letter of 16th January 2023, the Respondent informed that they would get back to her after deliberations. This, they didn't do.

Analysis and Determination.

34. I have carefully analysed the pleadings, evidence and the submissions by the parties, and the following issues emerge for determination;

- [a]. Whether there was a genuine redundancy situation.
- [b]. Was the termination fair if the answer to [a] above is affirmative?
- [c]. Is the Claimant entitled to the reliefs sought?

35. In cause No. ELRC 1332 of 2018 Showkat Hussein Badat v Oshwal Education M Relief Board, this Court stated:

“ 50. The defining characteristic of termination on account of redundancy is a lack of fault on the part of the employee. It is a species of “no fault termination. One cannot be off mark to state that it is for this reason that the *Employment Act* places particular obligations on the employer, most of which are directed towards ensuring that those employees to be dismissed are treated fairly”.

36. Both section 2 of the *Employment Act* 2007 and section 2 of the *Labour Relations Act* define redundancy as:

“The loss of employment occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the employer's initiative where services of an employee are superfluous and practices commonly known as abolition of office, job or occupation and loss of employment”.

37. The locus classicus on redundancy under Kenyan Law is Kenya Airways Limited and Aviation and Allied Workers Union, Kenya M 3 others (2014) eKLR, where the Court of Appeal stated:

“There are two broad aspects of this definition. The first one is that the loss of employment in redundancy cases has to be by involuntary means and at the initiative of the employer; it should not be a contrived situation. It has to be non-volitional. I understand this to refer to a situation, in most cases, an economic downturn, brought about by factors beyond the control of the employer, which leaves the employer with no option but to take an initiative, the consequences of which will be inevitable loss of employment.....”

38. A redundancy situation may arise if significant changes in the mode of production, programmes, or activities of an employer entity are likely to cause, or have caused, a reduction in the necessary Labour force, along with a surplus of labour.

39. While the law does not recognise an inherent right to lifelong employment, the social equilibrium established within a constitutional framework, wherein the right to fair Labour practices is acknowledged as a fundamental right, affords employees protection against unfair dismissal. Concurrently, it allows employers the authority to terminate an employee for a justifiable reason, contingent upon adherence to appropriate procedural standards.



40. The employer bears the onus of demonstrating to the court that a legitimate redundancy situation existed, justifying a fair and valid rationale for terminating the employee's employment. Throughout her case, the Claimant maintained that the Respondent terminated her employment without any genuine basis. Essentially, the Claimant contended that the events constituted an unfair termination disguised as redundancy.
41. Due to the opposing positions taken by the parties regarding the alleged redundancy, it is this court's responsibility to determine whether there was a genuine redundancy.
42. Counsel for the Respondent argued that the Respondent successfully demonstrated a genuine redundancy situation; therefore, the termination of the Claimant's employment was based on a fair and valid reason. These submissions are unpersuasive for the reasons that will emerge shortly hereinafter.
43. In my perspective, it is insufficient for an employer merely to articulate that the organisation or entity underwent restructuring, resulting in the redundancy of certain positions. Employers are expected to provide reasonable details, and this expectation intensifies when the employee disputes the redundancy, perceiving it as obfuscated.
44. The process of restructuring and declaring redundancy is not a mere event; rather, it constitutes a series of actions. In circumstances such as those presented in the current case, it is reasonable to anticipate evidence from the employer regarding: when the concept of restructuring was first conceived; the rationale behind this concept; the dates when discussions about the idea occurred; the specific date when a decision was made regarding the restructuring; and the considerations regarding the steps necessary to facilitate the restructuring process, culminating in the exit of those affected.
45. The Respondent contended that the Claimant's employment terminated subsequent to the dissolution of the Marketing Department. I have meticulously reviewed their pleadings and the evidence provided by their witness and do not hesitate to assert that the same lacks the requisite specificity and is overly general. The pleadings and the evidence regarding the occurrence of the restructuring are ambiguous. Furthermore, there is no reference to the status of other personnel within the department, if at all, the Department was dissolved.
46. The termination notice, the statement of the Respondent's witness [which became evidence in chief], and the termination notice do not, in my estimation, accurately reflect the existence of a redundancy situation. The Claimant was accused of inadequate performance; however, for reasons known to the Respondent, they chose to terminate her employment under the pretext of redundancy.
47. In light of the aforementioned premises, I am convinced by the Claimant that the redundancy asserted by the Respondent was a mere pretence. There existed no authentic redundancy situation.

Whether the termination was fair

48. In the premises articulated above, this court encounters no challenges in asserting that the termination of the Claimant's employment on the grounds of alleged redundancy lacked substantive justification.
49. Assuming I am wrong on this, for the reasons hereinafter, this court will find the termination unfair due to a lack of procedural fairness. Section 40 of the *Employment Act* elaborately outlines the steps an employer must take when terminating an employee's employment on the grounds of redundancy. The section provides:

“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;
- c. 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;
- c. the employer has where leave is due to an employee who is declared redundant, paid out the leave in cash;
- c. 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
- d. 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."

50. It is unequivocal that the Claimant's employment was terminated by means of a letter dated 30 January 2023. The inquiry that this court is tasked with addressing pertains to whether the letter possessed the characteristics of the notice(s) contemplated by section 40(1) of the *Employment Act*, and whether it was sufficiently formulated to fulfil the objectives for which the provisions under that section establish.

51. In *The German School Society v Helga Ohany as Consolidated with Civil, 342 of 2018 Helga Ohany v The German School Society* [2023] KECA 894[KLR], Court of Appeal stated;

"Having regard to the legislative intention of the provision of section 40 of the *Employment Act*, and International Law and decided cases, we find that consultation on an intended redundancy between the employer and the employee is implied by section 40[1][a] and [b] of the *Employment Act*. Moreover, consultations is also specifically required by Article 47 of *the Constitution* and the *Fair Administrative Action Act*. Article 47 and section 4[3] of the *Fair Administrative Action Act* provide that where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give notice to the person affected by the decision. [See. *Cargeill Kenya Limited v Mwaka & Others*, para 35-37]."

52. The correspondence delivered to the Claimant resembles a termination letter significantly. It cannot be interpreted otherwise. No redundancy notice was issued or served. The evidence presented by the Respondents' witness indicates that this was the sole communication directed to the Claimant.

53. A redundancy notice, which I have concluded was neither issued nor served in the current matter, gives rise to the event of consultation prior to the declaration of redundancy. In accordance with our legal framework, consultation is imperative.



54. The significance of consultation in a redundancy process cannot be understated. This necessity was aptly articulated by Maraga JJA (as he then was) in the Kenya Airways case (supra). The Respondent failed to present any evidence indicating that consultations occurred prior to the termination. The Claimant's assertion that such consultations did not take place was not refuted. Furthermore, it is noteworthy that the minutes from the meeting of 15th December 2022 do not indicate redundancy, as the agenda for that day. They addressed a separate matter altogether.

Of the relief grantable

55. The Claimant sought inter alia compensation for wrongful termination, amounting to Kshs. 1,657,411.27, which represents 12 months' gross salary. I know that 12 months' gross wages or salary is the maximum compensatory amount provided under section 49(1)[c] of the *Employment Act*. Granting this relief is discretionary. Whether the maximum compensation is to be awarded, a portion thereof, or no compensation at all, depends on the circumstances of each case.

56. I have considered the circumstances surrounding the termination of the Claimant's employment, my finding that the grounds for termination were obscured, the fact that the Claimant did not contribute to the termination in any demonstrable manner. Additionally, I have taken into account the length of service with the Respondent and the Respondent's failure to adhere to the statutory requirements for both procedural and substantive justification, and conclude that the Claimant is entitled to a compensatory relief amounting to six months' gross salary.

57. The Respondent admits the Claimant's claim for severance pay [KShs. 177, 945.58], notice pay [KShs. 102,813], and compensation for earned but untaken leave [KShs. 15,355.85]. I will enter judgment on admission on these figures.

58. In the upshot, I enter judgment for the Claimant in the following terms;

- a. A declaration that the termination of her employment was procedurally and substantively unfair.
- b. Compensation for unfair termination pursuant to the provisions of section 49[1][c] of the *Employment Act*, six [6] months' gross salary, KShs. 616,878.
- c. Severance pay, KShs. 177,945.58.
- d. One month's salary in lieu of notice, KShs. 102,813.
- e. Compensation for earned but unutilised leave days..... KShs. 15,355.85
- f. A certificate of service is to be issued to the Claimant within 30 days of this judgment.
- g. Costs of the suit
- h. Interest on the awarded sums above, at court rates from the date of this judgment till full payment.

READ, SIGNED AND DELIVERED THIS 30TH DAY OF APRIL 2025.

OCHARO KEBIRA

JUDGE

