



**Kiama v Brinks Security Services Ltd (Cause E787 of 2023)  
[2025] KEELRC 1085 (KLR) (4 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1085 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E787 OF 2023  
CN BAARI, J  
APRIL 4, 2025**

**BETWEEN**

**CECILIA KABURA KIAMA ..... CLAIMANT**

**AND**

**BRINKS SECURITY SERVICES LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant's claim is dated 25<sup>th</sup> September, 2023 and filed on 4<sup>th</sup> October, 2023. She seeks an order for payment of Kshs.2,653,500 comprising of: -
  - a. September 2022 salary
  - b. Days worked in the month of October, 2022
  - c. Payment in lieu of notice for one month
  - d. Compensation for unlawful termination (12 months)
  - e. Earned leave not taken (21 days)
  - f. Severance pay (7 years)
2. The Respondent filed a Statement of Response to the claim dated 11<sup>th</sup> February, 2024, admitting that the Claimant was her employee, but denying that she was unfairly terminated, and instead, aver that she was procedurally declared redundant.
3. Both the Claimant's and the Respondent's cases were heard on 8<sup>th</sup> November, 2024. The Claimant testified in support of her case, adopted her witness statement and produced her documents as exhibits in the matter. The Respondent presented one Anastacia Mwendwe, its Human Resources Manager, who testified in support of its case, and produced the Respondent's list and bundle of documents in support of their case.



4. Submissions were filed for both parties.

### **The Claimant's Case**

5. The Claimant's case is that she was an employee of the Respondent having joined the company on 4<sup>th</sup> January 2016 as the Head of Accounts until 4<sup>th</sup> October, 2022 when she was terminated on account of redundancy vide a letter dated 3<sup>rd</sup> October 2022.
6. It is her case that upon being handed the termination letter, she was required to immediately clear with all the departments as required and to physically vacate her office upon clearance, which she duly complied on the same date, the 4<sup>th</sup> October 2022. The Claimant avers that after the clearance, she was issued with a Certificate of Service on the same day, the 4<sup>th</sup> October 2022.
7. The Claimant states that she filled and submitted her claim for final dues.
8. It is her case that her termination on account of redundancy as stated in the termination letter was unfair, unprocedural and unlawful for reasons that she was not given notice as required by law, there was no regard for seniority in time, skill, ability and reliability, she was not paid for leave earned, notice pay and severance pay.
9. The Claimant avers that two months after termination, the Respondent was yet to settle her unpaid salary and final dues despite incessant reminders and demands culminating in the formal demand by her advocates vide the letter dated 8<sup>th</sup> December 2022 and received by the Respondent on 14<sup>th</sup> December 2022.
10. The Claimant states that In its response to the demand, the Respondent acknowledged to be indebted to her to the tune of Kshs. 468,870.81 in final dues, which in any event the Claimant avers is an erroneous computation.
11. It Is her case that in the same response, the Respondent alleged that the reason they had not paid the final dues is because the Claimant had refused to go pick her final dues at the Respondent's offices, despite having the Claimant's bank account details through which it previously remitted the monthly salary and further noting that the final dues included her unpaid salary for the month of September 2022.
12. The Claimant avers that she has both personally and through her Advocates engaged the Respondent with a view obtaining her final dues but the Respondent has failed, refused and/or neglected to consider such attempts and/ r make good her demands in respect of her legitimate terminal dues thereby subjecting her and her family to un told hardship, pain and suffering.
13. It is the Claimant's prayer that the Court awards her the reliefs listed in her claim.

### **The Respondent's Case**

14. It is the Respondent's case that indeed the Claimant was their employee employed on 4<sup>th</sup> January, 2016 until 4<sup>th</sup> October, 2022 when she was terminated on the ground of redundancy.
15. It states that the Claimant cleared with departments at the Respondent's on the 4<sup>th</sup> October 2022 and was issued with a Certificate of Service dated 4<sup>th</sup> October 2022.
16. It is the Respondent's case that the Claimant was procedurally declared redundant. It states further that it issued the Claimant an internal memo dated 2<sup>nd</sup> August 2022 amongst other heads of department concerning the intended redundancy.



17. It further states that it held a meeting with the Claimant and other concerned parties on 25<sup>th</sup> August 2022 wherein, the issue of redundancy was further discussed. It states that it equally notified the Labour office via a letter dated 29<sup>th</sup> August 2022 of the intended redundancy.
18. It is the Respondent's case that it issued a termination letter dated 3<sup>rd</sup> October 2022 to the Claimant listing her terminal dues entitlement. The Respondent further avers that the Claimant is to be paid including one month's notice pay, earned leave days not taken and severance pay.
19. It further avers that the Claimant's final dues were tabulated by the Respondent at Kshs,468,870.81/=. It states that it issued a cheque dated 30<sup>th</sup> January 2023, on the final dues payable to the Claimant, which cheque, she declined to collect and cash.
20. It is the Respondent's position that the Claimant outstanding September 2022 salary has also been included in the tabulation of final dues by the Respondent.
21. The Respondent states that on the 4<sup>th</sup> October 2022, all data from computer serial number W3THX9AZ was deleted and the user of the computer at the time of deletion was logged in via email address ckiema@brinkssecurity.co.ke that was in use and access by the Claimant. That the incident concerning the deletion of data is still under police investigation as at the date of the response herein.
22. The Respondent avers that it acted within the law in declaring the Claimant redundant, clearing and tabulating her final dues.
23. It is the Respondent's prayer that the Claimant's claim herein be dismissed with costs.

#### **The Claimant's submissions**

24. It is submitted for the Claimant that the Respondent's allegation that there was restructuring that happened resulting in the redundancy, did not satisfy the standards of substantive justification as set out in the *Employment Act*.
25. It is submitted further that the Respondent's notice did not satisfy the provisions of Section 40 (1) of the *Employment Act*, for reasons that the notice dated 3<sup>rd</sup> October 2022 was for a period of 24 hours contrary to the 30 days requirement, that the notice purported to have been pinned on the Notice Board was not issued to the employee personally in writing, and finally that the notice did not show that the employer had, 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.
26. The Claimant sought to rely in the case of Joseph Macharia Warutere & 3 others v Saab Kenya Ltd (2017) eKLR, where it was held that the selection criteria for those being terminated on account of redundancy must be objective and where questioned, the employer should be able to show that there was a criterion in place.
27. It is the Claimant's submission that her termination was unlawful and unfair and did not satisfy the requirements of termination on account of redundancy, and invites the court to find that she was unlawfully and unfairly terminated.
28. It is the claimant's further submission that she has proved her entitlement to the reliefs sought and therefore should be awarded the same.



## **The Respondent's Submissions**

29. The Respondent submits that the Claimant acknowledged during hearing that being an accountant at the Respondent's, she was privy to financial status of the Respondent's leading to the declaration of redundancies; but has not availed any evidence to show that the Respondent was financially sound thus no need for redundancies.
30. The Respondent submits that it notified the County Labour Office of the intended redundancies on 30<sup>th</sup> August 2022 prior to terminating the Claimant's employment.
31. It is the Respondent's submission that it offered the Claimant One month's salary pay in lieu of notice in the termination letter dated 3<sup>rd</sup> October 2022 produced in evidence herein, and further factored in the one month's notice pay in the tabulation of final dues.

## **Analysis and Determination**

32. I have carefully considered the pleadings, 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**

33. Parties are in agreement that the Claimant was terminated on the ground of redundancy. The Claimant's position is that she was not issued with any notice of the redundancy, but was instead, only issued with a termination letter dated 3<sup>rd</sup> October, 2022, and immediately after, required to clear and leave the Respondent's premises, which she did on 4<sup>th</sup> October, 2022.
34. The Respondent assertion is that the redundancy was occasioned by the organization's restructuring and the Claimant and the labour office were notified of the redundancy.
35. 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.

36. Generally, redundancy is a legitimate ground for terminating an employment relationship, for as long as the employer can show that actual redundancy was the reason for the termination.
37. The Claimant's position is that her termination on account of redundancy was unfair, unprocedural and unlawful for reasons that she was not given notice as required by law, there was no regard for seniority in time, skill, ability and reliability, she was not paid for leave earned, notice pay and severance pay.
38. On the issue of procedural fairness, the question is whether the Claimant was issued with redundancy notice and whether notice was also issued to the Labour office.
39. The Respondent produced in evidence notice of anticipated redundancy dated 22<sup>nd</sup> August, 2022 that was issued to all heads of departments of the Respondent. The notice indicates the reason for the intended redundancy as decrease in business that necessitated restructuring.
40. It is clear that as submitted by the Claimant, there was no specific notice issued to the Claimant notifying her of the termination on account of redundancy. Further, the notice said to have been sent to the labour office is not dated save for the date on the receiving stamp that shows the date as 30<sup>th</sup> August, 2022.
41. The Respondent's witness RW1 told court in her testimony that the Claimant was invited for a meeting to discuss her redundancy on 25<sup>th</sup> August, 2022, but further testified that she had no prove that the meeting took place.
42. The Respondent has also not attempted to explain the criteria applied in selecting the employees whose positions were declare redundant as required under Section 40(1)(c) of the *Employment Act*. Further, the Respondent did not provide any evidence on the other employees alleged to have been terminated on the ground of redundancy together with the Claimant, which leads to an assumption that the Claimant may have been singled out for termination on the guise of redundancy.
43. In the case of *Joseph Macharia Warutere & 3 Others v. Saab Kenya Ltd (2017) eKLR*, the court held thus:-
- “The selection criteria must be objective and where questioned; the employer should be able to show that there was a criterion in place.”
44. By the foregoing analysis, it is clear that the termination of the Claimant on the ground of redundancy, does not satisfy 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**

45. The Claimant's claims is for payment of September 2022 salary, days worked in the month of October, 2022, payment in lieu of notice for one month, compensation for unlawful termination (12 months), earned leave not taken (21 days) and Severance pay (7 years).
46. The Respondent admitted that it computed the Claimant's terminal dues and wrote her a cheque, which she did not pick from the Respondent's premises. RW1 further admitted that the Respondent had the Claimant's bank details and that during her time with the Respondent, she was paid salary through the bank, and could not therefore explain why the dues were not remitted to the Claimant's bank account. She further told court that the Respondent did not attempt to pay the Claimant through the bank or by mobile money.
47. In its pleadings, the Respondent confirmed that the Claimant is entitled to final dues including one month's notice pay, earned leave days not taken and severance pay.
48. Further, the Claimant's outstanding September 2022 salary, 4 days worked in October, 2022 and leave not taken, are captured in the computation done by the Respondent which confirms that the Claimant is owed on all these accounts.
49. Having been terminated on account of redundancy, the Claimant is entitled to severance pay in accordance with Section 40(1)(g) of the Act.
50. On the prayer for compensation for the unfair termination, it is not disputed that the Claimant was terminated on the ground of redundancy, which generally is a fair reason to terminate and all the employer needs to do is adhere to the procedure set under Section 40(1) of the Employment Act, 2007.
51. In the case of Elizabeth Wakanyi Kibe v Telkom Kenya Ltd [2014] eKLR the Court cited the case of D.K. Marete v Teachers Service Commission Cause No. 379 of 2009, for the holding that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees, but are meant to redress economic injuries in a proportionate way.
52. Guided by the foregoing pronouncement, I deem an award of 6 month's salary sufficient compensation for the unfair termination.
53. In whole, I find that the Claimant's claim merited, and grant orders as follows:-
  - i. A declaration that the Claimant was unfairly terminated
  - ii. An order that the Respondent pays the Claimant one month salary in lieu of notice at Kshs. 145,000/-
  - iii. Salary for September, 2022 at Kshs. 145,000
  - iv. Salary for 4 days in October, 2022 at Kshs. 19,333.32/-
  - v. Severance pay at Kshs. 284,999.40/-
  - vi. 7 days on account of leave earned and not taken at Kshs. 22,166.62
  - vii. That the Respondent pays the Claimant 6 month's salary as compensation for the unfair termination at Kshs. 870,000/-
  - viii. The awards herein are subject to statutory deductions.
  - ix. Costs shall be borne by the Respondent.



54. Judgment of the Court.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
4<sup>TH</sup> DAY OF APRIL, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Ms. Wambui h/b for Mr. Mburu for the Claimant

Ms. Okumu present for the Respondent

Ms. Esther S - CA

