



Mwindi alias Anne Mwindi v Leonard Cheshire Disability (Cause E6558 of 2020) [2025] KEELRC 1489 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1489 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6558 OF 2020**

L NDOLO, J

MAY 22, 2025

BETWEEN

ANNAH GATUNE MWINDI ALIAS ANNE MWINDI CLAIMANT

AND

LEONARD CHESHIRE DISABILITY RESPONDENT

JUDGMENT

1. The Claimant, Annah Gatune Mwindi alias Anne Mwindi, was an employee of the Respondent, Leonard Cheshire Disability, having been employed on 25th June 2018, in the position of Regional Finance and Administration Manager. Mwindi worked for the Respondent until 6th December 2020, when her employment was terminated on the ground of redundancy. It is this termination that triggered the present dispute between the parties.
2. The Claimant lays out her claim in a Memorandum of Claim dated 15th December 2020 and the Respondent defends itself by a Memorandum of Defence dated 21st May 2021.
3. At the trial, the Claimant testified on her own behalf and thereafter called Ann Lomole. On its part, the Respondent called two witnesses; Alison Bishop and Gavin Salmon. Thereafter, the parties filed written submissions.

The Claimant's Case

4. The Claimant states that she was employed by the Respondent on 25th June 2018, in the position of Regional Finance and Administration Manager, earning a monthly salary of Kshs. 425,000. She claims to have been relegated to the position of Finance Manager, Kenya effective January 2020. In this regard, the Claimant accuses the Respondent of unilaterally reviewing her terms of employment.



5. The Claimant avers that soon thereafter, the Respondent engaged her in interviews and consultative meetings, seeking to terminate her employment. On 6th November 2020, the Claimant was issued with a termination letter citing the ground of redundancy.
6. The Claimant's case is that the termination of her employment was unlawful and unfair. She claims to have received information from her previous supervisor that there was a plan to edge her out of employment.
7. The Claimant accuses her supervisor of deliberately withholding her appraisal report, by refusing to comment on it, despite having discussed it with the Claimant.
8. The Claimant claims to have been deliberately excluded from trainings relating to finance, despite her handling the finance docket, while the Operations Manager was allowed to attend.
9. The Claimant further complains that the Respondent's management failed to share the organogram, containing her docket and that of the Operations Manager, with her and instead indicated that the newly proposed position was in existence as early as March 2020.
10. According to the Claimant, the Respondent failed to take into consideration her experience, expertise and effectiveness. She complains that the Respondent invited outsiders to compete with her in an interview for the new position of Consortium Finance Manager, thus casting doubt as to the genuineness of the redundancy.
11. The Claimant's claim against the Respondent is as follows:
 - a. 12 months' salary in compensation.....Kshs. 5,100,000
 - b. 3 months' salary in lieu of notice.....1,275,000
 - c. Unpaid house allowance.....1,848,750
 - d. Loss of expected income.....25,500,000
 - e. Certificate of service
 - f. Costs plus interest

The Respondent's Case

12. In its Memorandum of Defence dated 21st May 2021, the Respondent denies the Claimant's claim that her employment was unlawfully terminated.
13. The Respondent admits having employed the Claimant in the position of Regional Finance and Administration Manager, with effect from 25th June 2018. The Respondent states that the Claimant's employment was terminated on 6th December 2020, on the ground of redundancy.
14. The Respondent avers that the change of the Claimant's role from Regional Finance and Administration to Finance Manager, Kenya in November 2019, followed various consultations, including sessions with the Claimant, at which feedback on the proposed changes to the Respondent's Kenya Team Structure, was sought.
15. The Respondent further avers that the job description for the new role was shared with the Claimant, following consultations with her and her verbal confirmation. The Claimant was issued with a letter dated 15th November 2019 and redundancy was then avoided.



16. The Respondent denies the Claimant's claim that there was an ulterior motive to push her out, or that she was relegated unilaterally. The Respondent points out that the Claimant did not raise any concerns, despite working in the new role for over a year.
17. The Respondent denies the allegation that the Claimant's new role was a downgrade, stating that the duties did not change substantially and her salary and job grade remained constant. The Respondent takes issue with the statement by the Claimant's witness, Ann Lomole, which it terms as false.
18. The Respondent defends the redundancy process, asserting that at the time, the Claimant held the position of Kenya Finance Manager, which was merged with that of Kenya Operations Manager to form the new position of Kenya Finance and Operations Manager.
19. The Respondent states that the redundancy was informed by funding challenges arising from DFID budget cuts and reduction in foreign aid spending, in addition to technical capacity requirements in economic inclusion and inclusive education, to improve the Respondent's fundraising and programme management capability. The Respondent points out that eight (8) roles, six (6) of which were occupied were proposed to be removed from the structure.
20. With respect to the Claimant's role, the Respondent states that consultations were held with her and other affected employees. The allegation that the consultations were aimed at forcing the Claimant to resign is denied.
21. The Respondent maintains that the process was open and transparent, pointing out that 3 consultative meetings were held on 11th August 2020, 20th August 2020 and 8th September 2020.
22. The Respondent asserts that all the concerns raised by the Claimant regarding the redundancy process were fully addressed. She was given an opportunity to candidate for the new role of Kenya Finance and Operations Manager but she was not successful. Upon her request, the Claimant was provided with information on the scoring for the selection.
23. Subsequently, the Claimant applied for the position of Consortium Finance Manager, a role that was below her previous one of Kenya Finance Manager. She did not succeed in the selection process, which the Respondent maintains was transparent and objective.

Findings and Determination

24. From the parties' pleadings, evidence and final submissions, I have drawn two (2) broad issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

25. The termination of the Claimant's employment was formalised by letter dated 6th November 2020, stating as follows:

“Dear Anne,

Notice of Redundancy

I write further to the individual consultation meetings with you which started in August where you were notified of the proposed changes to the role of Kenya Finance Manager which resulted in your role being at risk of redundancy.



During the consultation period we have met to discuss any questions you had and to consider any alternative suggestions you wished to put forward. The initial consultation period closed on 11th September 2020 and there were no outstanding queries. Further to this, we undertook a selection process involving you and the other staff member at risk of redundancy. Unfortunately, as communicated to you on 30 October 2020, you were not selected for the role of Kenya Finance & Operations Manager. Following your unsuccessful application for the role of Consortium Finance Manager, there are also no potential suitable alternative roles for you to consider as redeployment options currently.

Therefore, it is with regret that I must now inform you that your employment with Leonard Cheshire is terminated on grounds of redundancy. You will receive a redundancy severance payment of 588,462 KES.

You are entitled to 3 months' notice and, with the exception of you providing a handover of work, we do not require you to work this notice period. We propose that your effective end date of employment is 6th December 2020 and you then be paid the remaining two months' notice in lieu. This will mean that you will be paid as normal up until 6th December and continue to receive all benefits up to this date. Within the December payroll you will receive payment of your salary up to 6th December and be paid for all outstanding annual leave. In addition within your December payroll you will receive a payment of 2 month pay in lieu of notice which equates to a payment of 425,000 KES. Your payment in lieu of notice and annual leave will be subject to the usual tax and social security deductions. Your redundancy severance payment will be paid in addition.

You have confirmed that you do not wish to take up any outplacement support offered by Leonard Cheshire.

I would like to thank you for your valued contribution to Leonard Cheshire.

I'd like to remind you that during your notice period you have continued access to support through the Employee Assistance Programme. This is part of the Leonard Cheshire employee assistance programme and provides professional counselling for debt, legal or financial stress or mental health and any other issues. The counselling can be either face-to-face, by telephone or online via e-counselling. Further information can be found on in (sic) the attached contact sheet or to contact them via telephone, call on 0800 733 245 or +254 20 760 2494.

You have the right of appeal against the decision to terminate your employment. If you wish to do so you must submit your appeal in writing to Gavin Salmon, Director of International Delivery, within 5 working days of receiving this letter.

I would like to wish you all the best for the future.

Yours sincerely,

(signed)

Alison Bishop

Head of International HR”

26. It is not in contest that the reason advanced for the Claimant's exit from the Respondent's employment was redundancy.



27. Section 2 of the *Employment Act* and the corresponding provision in 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 initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

28. Redundancy is recognised as a legitimate separation mode, subject to the following conditions codified by Section 40 of the *Employment Act*:

1. 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 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 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.
29. The Claimant’s case is that there was no genuine case of redundancy at the Respondent. In its decision in *Fredrick Mulwa Mutiso v Kenya Commercial Bank Limited* [2017] KEELRC 1664 (KLR) this Court held that the procedural requirements set out in Section 40(1) of the *Employment Act* are aimed at guarding against unlawful and unfair termination of employment, clothed in redundancy language.
30. The Claimant accuses the Respondent of hatching a scheme to push her out of employment, by choreographing a redundancy. The Claimant’s second witness, Ann Lomole testified that the then Global Head of Programs, by the name Sunanda had tried to use her to end the Claimant’s employment.
31. Apart from Lomole’s word however, there was no independent evidence to support this damning allegation against a senior member of staff of the Respondent. This evidence would have been crucial



given the uncontested disclosure that Lomole had herself left the Respondent's employment under a cloud.

32. That said, I will now consider the redundancy process against the requirements of Section 40 of the *Employment Act*.
33. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee, their union (where applicable) and the local Labour Officer. By definition, this notice, should set out the reasons for and the extent of the intended redundancy.
34. It is now settled that the redundancy notice contemplated by Section 40(1) (a) and (b) is separate and distinct from the termination notice required under Section 40(1)(f) (see *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR and *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR).
35. It is also settled that the consultation with the parties to be affected by the intended redundancy, is a critical ingredient of the redundancy notice.
36. In the *Kenya Airways Case* (supra) Maraga JA (as he then was) stated the following:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...ILO Convention No. 158-Termination of Employment Convention, 1982, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable.”
37. The requirement for consultation was reiterated by the Court of Appeal in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) in the following terms:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”
38. Article 13 of ILO Convention No. 158-Termination of Employment Convention, 1982 provides as follows:
 1. When the employer contemplates termination for reasons of an economic or technological, structural or similar nature, the employer shall
 - a. Provide the workers' representatives concerned in good time with relevant information including the reasons for the termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
 - b. Give, in accordance with national law and practice, the workers' representatives concerned, as early as possible an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.



39. Prior to the redundancy notice issued to the Claimant on 6th November 2020, the Respondent had sent the following email to her on 11th September 2020:

“...As a result of this review, your role of Kenya Finance Manager will no longer exist within the new structure. This means that you are at the risk of redundancy and we would like to explore potential alternative employment options, in particular through the selection process for the role of Kenya Finance and Operations Manager. Next week we will be launching the internal recruitment of the new proposed roles and providing more information about the details of the selection process. During the consultation process which began on 4th August, the business rationale and reasons behind why your role is being made redundant have been discussed and you have had an opportunity to respond to this and ask questions.”

40. Following back and forth communication between the Claimant and the Respondent, the Claimant submitted her application for the role of Kenya Finance and Operations Manager on 30th September 2020. She went through the interview process but was not successful.

41. The Claimant was further interviewed for the lower position of Consortium Finance Manager for which she was also unsuccessful. Additionally, the Claimant was offered outplacement services, which she declined.

42. In view of the foregoing, the Court is satisfied that the Respondent issued the requisite redundancy notices, accompanied by several opportunities for consultations, with a final meeting being held on 6th November 2020. The Claimant’s inquiries during the redundancy process were fully addressed.

43. From the evidence on record, the redundancy process affected several positions. The Claimant’s claim that she was unfairly targeted for redundancy was therefore not supported by any evidence. Moreover, the Claimant was paid all her terminal dues.

44. Overall, I find and hold that the termination of the Claimant’s employment was substantively and procedurally fair. The claims for compensation and notice pay are therefore without basis and are dismissed.

45. The Claimant also claims house allowance. However, according to the Claimant’s terms and conditions of employment, the Claimant was paid a gross salary that would ordinarily be inclusive of house allowance. Consequently, the claim for house allowance fails and is disallowed.

46. No basis was established for the claim for loss of expected income which also fails and is dismissed.

47. Finally, the Claimant’s entire claim fails and is dismissed with costs to the Respondent.

48. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF MAY 2025

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JUDGE

Appearance:

Mr. Wangalwa for the Claimant

Mrs. Wetende for the Respondent

