



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutua v Wanderjoy Party World Limited (Employment and Labour Relations Cause E661 of 2022) [2025] KEELRC 1463 (KLR) (21 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1463 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E661 OF 2022**

**HS WASILWA, J  
MAY 21, 2025**

**BETWEEN**

**JUSTUS MUTUA ..... CLAIMANT**

**AND**

**WANDERJOY PARTY WORLD LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Statement of Claim dated 15<sup>th</sup> September 2022 on grounds that he was wrongfully and unfairly terminated. He prays for judgment against the Respondent for: -
  - a. A declaration that the Claimant's termination was wrongful, unlawful and unfair.
  - b. General damages for unlawful termination.
  - c. One month's salary in lieu of notice.
  - d. Unpaid leave days.
  - e. Unpaid salary.
  - f. Certificate of service.
  - g. Costs of this claim.
  - h. Interest on (b) and (g) at court rates on the above.
  - i. Any other or further relief that this Honourable Court may deem just and fit to grant.



### **Claimant's Case**

2. The Claimant avers that vide a letter dated 11<sup>th</sup> February 2021, he was offered by the Respondent the position of Finance & Administration Manager effective from 1<sup>st</sup> April 2021. His initial gross monthly salary inclusive house allowance was Kshs. 220,000 with a monthly allowance of Kshs. 50,000.
3. The Claimant avers that on 30<sup>th</sup> November 2021, the Respondent unlawfully and without justifiable cause terminated his services on account of redundancy on grounds that the Respondent was conducting an internal reorganization of roles.
4. The Claimant avers that his termination on account of redundancy was unlawful and unfair and contrary to the general principles on redundancy set under Section 40 of the *Employment Act*.
5. The Claimant avers that the Respondent tried severally to coerce him into writing undated resignation letters; when he raised this with the management, the Respondent decided to terminate his services.

### **Respondent's Case**

6. In opposition to the Claim, the Respondent filed a Statement of Response dated 2<sup>nd</sup> November 2022.
7. The Respondent avers that it employed the Claimant effective 1<sup>st</sup> April 2021 with a probationary period of 3 months vide an offer letter of appointment dated 11<sup>th</sup> February 2021 as a Finance & Administration Manager.
8. The Respondent avers that the Claimant was involved in a series of gross misconduct and on 9<sup>th</sup> October 2021, he was served with a notice to show cause letter on failure to discharge his contractual duties resulting in the Respondent company being penalized and putting its image at risk.
9. The Respondent avers that the Claimant including other employees had been duly informed of the company restructuring and aligning its new business lines to meet the new objectives which was necessary in eliminating his position.
10. The Respondent avers that at the time of the Claimant's exit, he had utilised all leave days and any unutilised leave days were duly paid and his dues were tabulated and paid to the Claimant.

### **Evidence in Court**

11. The Claimant (CW1) adopted his witness statement dated 15<sup>th</sup> September 2022 as his evidence in chief and produced his list of documents dated 15<sup>th</sup> September 2023 as his exhibits marked 1-5.
12. Upon cross-examination, CW1 testified that he was paid all his dues in accordance with the termination letter.
13. During re-examination, CW1 testified that he signed the disclaimer form but indicated 'without prejudice' because he was told he was to sign in order to receive his payment.
14. The Respondent's witness (RW1) James Chomba stated that he works as the Respondent's Human Resource Manager. He adopted the witness statement and list of documents dated 14<sup>th</sup> September 2023 as his evidence in chief.
15. During cross examination, RW1 testified that he joined the Respondent Company in September 2024 and was not working for the Respondent when the Claimant's employment was terminated on account of redundancy.



16. RW1 testified that he does not have any list of employees declared redundant and that the letter dated 28<sup>th</sup> October 2021 to the labour office did not refer to a declaration of redundancy of employees as it only mentions one employee.
17. RW1 testified that the Respondent has not produced any audited report to show that the company was not doing well and neither does it have any evidence that the Company ceased to exist.

### **Claimant's Submissions**

18. The Claimant submitted that the Respondent did not adhere to the provision of Section 40 of the Employment Act as he was not given any redundancy notice contrary to Section 40 (1) (b) of the Act.
19. The Claimant submitted that the Respondent's letter dated 28<sup>th</sup> October 2021 addressed to the provincial labour officer, did not meet the requirements of the notice contemplated under Section 40 (1) (b) of the Employment Act as: it did not stipulate the extent of the redundancy; and the contents thereof conveys a final position taken by the company and the same cannot amount to a proper notice of intention to declare redundancy.
20. The Claimant submitted that the reasons provided in the Respondent's reason for the alleged declaration of redundancy was indicated as 'due to low demand of catering services'; this reason was not proved. No audited accounts or other documents was tendered in evidence to prove the allegation.
21. The Claimant submitted that the Respondent did not tender any evidence to demonstrate that any other employee other than the Claimant were affected by the redundancy. The Respondent's notice to the labour office only referred to only one employee, the Claimant herein.
22. The Claimant submitted that it well settled that consultations are an integral part of the redundancy procedure as held in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR). From the evidence on record, the Respondent never engaged the Claimant in consultation to ease the burden of redundancy.
23. The Claimant submitted that the Respondent did not tender any proof in evidence to demonstrate the selection criteria to determine the employees to be laid off as provided under Section 40 (1) (c) of the Employment Act. Section 40 (1) (c) provides that the employer in the selection of employees to be declared redundant must have 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.
24. The Respondent produced a disclaimer form executed by him on a 'without prejudice' basis; it is the Claimant's submission that having executed the documents on a without prejudice basis, it cannot be used against the Claimant. The Claimant executed the same and reserved his right to take further action as he deems fit.
25. The Claimant submitted that the it is settled in law that a discharge executed on a without prejudice basis does not preclude a party from seeking legal recourse on issues requiring adjudication such as the claim herein. This was settled in Republic v Attorney General & another ex-parte Macharia Waiguru [2017] KEHC 5201 (KLR) where the Court held: "Upon signing the applicant did not declare that he was signing it conditionally that any further interest that accrued be paid before the matter is put to rest; nor was the discharge voucher signed on a "without prejudice basis"; This court reiterates that the applicant is a fully-fledged advocate and is not illiterate so as to claim that he had no benefit of legal advice."



26. The Claimant submitted that the Respondent's conduct of coercing him to sign undated resignation letter informed his decision to sign the disclaimer form on a without prejudice basis and further because this termination was unfair and un-procedural.

### **Respondent's Submissions**

27. The Respondent submitted on two issues: whether the redundancy was lawful or it amounted to unfair termination; and whether the claimant is entitled to the reliefs sought
28. On the first issue, the Respondent submitted that pursuant to Section 40 of the *Employment Act*, it informed the Claimant among other employees of the intended redundancies vide notices and also notified the Labour Office on 28<sup>th</sup> October 2021 of the declaration of redundancy of the Claimant herein. This evidence was not controverted by the Claimant.
29. It was submitted for the Respondent that the redundancy was both procedurally and substantively fair and justified, as the Respondent were within its right to organize and restructure its functions to ensure efficacy and viability both functionally and financially as stipulated in the redundancy notices to the affected employees and labour office and totally in line with the labour laws.
30. The Respondent submitted that followed the selection criteria under the *Employment Act* considering the operational requirements of the Company. The Respondent satisfied the requirements of the Act with regards to ability, skill, diligence, honesty and reliability in the selection of the Claimant who had worked for the Respondent for less than a year.
31. On the second issue, the Respondent submitted that the Claimant cannot claim under redundancy and then claim unfair termination. Additionally, the Claimant was paid his terminal dues for lawful termination on account of redundancy, therefore, a claim for compensation which is not particularized in the claim should be declined.
32. The Respondent submitted that the prayer for notice pay is not merited as it is not in dispute that the Claimant was paid notice pay.
33. The Respondent submitted that there is neither a breakdown of amount due for leave days earned but not taken nor proof that he never proceeded for any leave or never paid his leave balance for the period worked. Further, the Claimant worked for the Respondent company for less than 12 consecutive months as provided for under Section 28 of the *Employment Act*.
34. The Respondent submitted that the Claimant has not adduced proof of any salary arrears and there is no tabulation of the same in his pleadings. The only tabulation is in the Respondent's list of documents which shows the Claimant dues and what was paid and acknowledged.
35. The Respondent submitted that a certificate of service prepared and issued to the claimant in compliance with Section 51 of the *Employment Act*.
36. It is the Respondent's submission that it was never served with any demand letter before the filing of this suit, therefore, the Claimant is not entitled to the costs of the claim or interest thereof.
37. I have examined all evidence and submissions of the parties herein. From the evidence adduced by the Claimant, the Claimant was terminated vide a letter dated 27<sup>th</sup> November 2021 which indicated that he was being separated from the Respondent with effect from 30<sup>th</sup> November 2021 due to internal re-organization of roles within the company.



38. He was informed that he was being given 1 month salary in lieu of notice as at 30<sup>th</sup> November 2021. Section 40 of [Employment Act](#) 2007 states as follows:

40.

- (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 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.
- (2) Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part IX in which case that Part shall be applicable.
- (3) The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.

39. The law is clear on the process that is to be followed in case of a redundancy. The Respondents never issued the Claimant with any notice. They failed to give him an opportunity to consult with them as was held in *Aviation and Allied Workers Union vs. Kenya Airways Ltd & 3 others* (2015) eKLR which held that consultation is necessary before any redundancy process.

40. In the case of the Claimant the Respondent failed to follow the law and therefore the redundancy process was unfair and unjustified. I therefore find for the Claimant and award him compensation equivalent to 10 months salary due to the illegality meted against him without any leeway of an expense = 10 x 270,000 = 2,700,000/=.



Less statutory deduction.

41. The Respondent will pay cost of this suit plus interest at court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> OF MAY, 2025.**

**HELLEN WASILWA**

**JUDGE**

