



REPUBLIC OF KENYA



KENYA LAW
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Muthee v Suraya Property Group Limited (Employment and Labour Relations Cause 264 of 2019) [2025] KEELRC 1437 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1437 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 264 OF 2019**

MN NDUMA, J

MAY 15, 2025

BETWEEN

KEVIN KARANJA MUTHEE CLAIMANT

AND

SURAYA PROPERTY GROUP LIMITED RESPONDENT

JUDGMENT

1.
 - i. Payment of salary arrears for the period April to 20th July 2017 in the sum of Kshs. 417,853.33.
 - ii. One month salary in lieu of notice Kshs. 113,960.00
 - iii. Unutilized leave pay Kshs. 18,993.33
 - iv. Service pay Kshs. 121,557.33 and
 - v. Damages for unlawful termination equivalent to twelve-month salary Kshs. 1,367,520.00
2. The Respondent had filed a statement of defence to the claim dated 24th June 2019 in which it denied the particulars of claim including that the Claimant was employed by the Respondent and earned Kshs. 113,960.00 per month.
3. The Respondent pleaded that it had paid the Claimant his full salary for the period worked between April and July 2017 and denied owing the Claimant any arrears salary.
4. The Respondent further in the statement of defence denied owing the Claimant any terminal benefits. In the original statement of claim filed on 18/4/2019 to which the Respondent had responded to, the Claimant had not alleged that his employment was unlawfully terminated and had therefore not sought compensation for unlawful dismissal which prayer was added in the amended statement of claim.



5. The Claimant (CW1) testified before court and adopted witness statement dated 26/7/2019 as his evidence in chief. The Claimant stated that he was employed by the Respondent as an Assistant Electrical Engineer on 1st July 2015. That he worked for the Respondent until 20th July 2017. That he earned Kshs. 113,960.00 per month.
6. That on 5th July 2017, the Claimant received a letter from the Chief Executive Officer of the Respondent in which he informed the Claimant that his contract of employment had been terminated on grounds of redundancy. CW1 said he was not given prior notice of intended termination nor was he given a specific and personal reason that led to the decision. CW1 said this was simply a summary dismissal without a hearing.
7. CW1 stated that at the time he received the notice of termination he had not been paid three (3) months' salary of April, May and June 2017.
8. The Claimant produced the letter of termination in which the Respondent offered to pay the Claimant salary for days worked up to and including 5th July 2017, leave accrued and not taken as at 5th July 2017, one month salary in lieu of notice and severance pay calculated at 16 days salary for every completed year of service.
9. The Claimant prays for the reliefs set out.
10. Under cross-examination, the Claimant admitted that he worked up to 5th July 2017 but not 20th July 2017 as pleaded in the amended statement of claim. The Claimant reiterated that he earned Kshs. 113,960.00 per month. The Claimant confirmed that his final dues were tabulated by the Respondent in the notice of termination. The Claimant said he was notified of the termination upon reporting to work in the morning without any notice.
11. The Respondent did not call any witness to contest the evidence adduced by the Claimant. The case presented by the Claimant is therefore uncontested and the court finds that the Claimant has proved his case as set out in the amended statement of claim except that the date of termination was 5th July 2017 and not 20th July 2017.
12. The court finds accordingly, that the Claimant was declared redundant without notice in terms of section 40(1) of the Employment Act, 2007. The termination was unprocedural and unfair to this extent.
13. The court notes that the Respondent had intended to comply with other provisions of section 40(1) of the Employment Act, by offering the Claimant terminal benefits set out in the notice of termination. However, the Respondent did not honour the promise to pay the terminal benefits set out in the said letter.
14. Accordingly, the termination was unlawful and unfair and the Claimant is entitled to compensation in addition to payment of the terminal benefits claimed.
15. The court awards the Claimant the following terminal benefits as against the Respondent: -
 - i. Salary arrears for April up to 20th July 2017 in the sum of Kshs. 360,870.00.
 - ii. One month salary in lieu of notice Kshs. 113,960.00.
 - iii. Payment in lieu of leave days not taken Kshs. 18,993.33.
 - iv. Service pay for the completed years of service Kshs. 121,557.33



Compensation

16. The court has considered that the Claimant had his employment terminated without notice and for no fault attributed. The Respondent did not pay the Claimant any terminal benefits upon abrupt termination. The Claimant suffered loss and damage due to the failure by the Respondent to provide notice to the Claimant to prepare himself. The court notes that the Respondent had been unable to pay the Claimant salary for 3 months prior to the termination. The court further notes that the Respondent explained in the letter of termination that the Respondent was experiencing financial difficulties and there was need to restructure the company and reduce the workforce of the company. This was a valid reason for the termination however the intended action should have been notified to the Claimant and the labour office responsible for the area at least one month before the termination.
17. The Respondent acted unfairly by that omission. The court, having considered the submissions by both parties and has relied on the case of Daniel Mburu Muriu versus Hyprotech East Africa Ltd [2021] KEELRC 316 (KLR) which has similar elements to the present one and award the Claimant two (2) months' salary in compensation for the unprocedural and unfair termination of employment in the sum of Kshs. 227,960.00.
 - a. In the final analysis the court awards a sum of Kshs. 843,340.66 in favour of the Claimant against the Respondent as set out in the judgment above.
 - b. Interest at court rates from date of judgment till payment in full
 - c. Costs of the suit.

DATED AT NAIROBI THIS 15TH DAY OF MAY 2025

MATHEWS NDUMA

JUDGE

