



**Chohan v XML Technologies & another (Cause E409 of 2024)
[2025] KEELRC 1891 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1891 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E409 OF 2024**

**SC RUTTO, J
JUNE 27, 2025**

BETWEEN

SHEZAN MUNIR CHOHAN CLAIMANT

AND

XML TECHNOLOGIES 1ST RESPONDENT

ZEBRA TECHNOLOGIES 2ND RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondents as a Senior Channel Account Manager vide a contract of employment entered into on 13th April 2020. He avers that he was subsequently confirmed to the said position after undergoing a probationary period of six (6) months. It is the Claimant’s assertion that on 1st April 2023, subject to his exemplary performance, the 1st Respondent increased his salary by 30%.
2. The Claimant further states that on 30th November 2023, the 1st Respondent’s Human Resource Manager informed him that that was his last working day. That on the same day, he was issued with a letter of termination citing several unsubstantiated reasons for the said termination.
3. It is the Claimant’s case that the Respondents acted unfairly in terminating his contract of employment. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondents:
 - a. A declaration to issue that the termination of Claimant's employment without according him a fair hearing and lacking proper, fair administrative procedure was unfair consequently void and unlawful.
 - b. 12 month's compensation for unfair termination as per Section 49(c) of *Employment Act*, 2007- Ksh 6,177,600/-



- c. Service pay- Ksh 1,000,000/-
 - d. Gratuity for 1.5 years at 30% of the gross salary- Ksh 1,853,298
 - e. Reinstatement of service
 - f. Issue certificate of service
 - g. Cost of the claim
 - h. Interest at Court rates on (b), (c), (d), and (e) above from the date of termination of employment.
4. The 1st Respondent countered the Claim through its Response dated 5th July 2024, in which it avers that the 2nd Respondent is its client. The 1st Respondent further avers that it was engaged by the 2nd Respondent to provide outsourcing services which included the need for employment of a Senior Channel Account Manager in Kenya.
 5. The 1st Respondent further asserts that it engaged the Claimant as a Senior Channel Account Manager to provide services to the 2nd Respondent.
 6. The 1st Respondent avers that sometime in November 2023, it was informed by the 2nd Respondent that it would be proceeding to terminate their service agreement effective 30th November 2023. This was communicated to the Claimant who agreed on a mutual separation compensation package proposed by the 1st Respondent after extensive discussions on the same.
 7. It is the 1st Respondent's contention that there was no breach of contract on its part and the Claimant is not entitled to damages on grounds of unlawful and unfair termination. Consequently, the 1st Respondent has asked the Court to dismiss the Claimant's suit with costs.
 8. The 2nd Respondent failed to enter appearance and file a Response to the Claim, hence did not participate in these proceedings.
 9. The matter proceeded for hearing on 19th March 2025, during which the Claimant and the 1st Respondent called oral evidence in support of their respective cases.

Claimant's Case

10. The Claimant who testified in support of his case, sought to adopt his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed alongside the Memorandum of Claim as his exhibits before Court.
11. The Claimant stated that his stint of service at the 2nd Respondent was blemish-free and he worked diligently with no disciplinary issue or misconduct.
12. He further averred that during the course of his employment, he was never subjected to any warning due to his non-performance or any other matter as pertains to disciplinary procedures or misconduct.
13. That throughout his employment, he consistently met and exceeded performance expectations and on 1st April 2023, he received a 30% salary increase in recognition of his exemplary performance.
14. It was the Claimant's evidence that on 30th November 2023, he received a phone call from Karolina Witkowska, the Respondent's Human Resource Manager, informing him that the said date was his last day of employment. Later that day, he received a termination letter citing various reasons for his dismissal.



15. According to the Claimant, the reasons stated in the termination letter were unsubstantiated and had never been discussed with him prior to his termination.
16. The Claimant avers that on the same day, 30th November 2023, he emailed the Respondent requesting an explanation for his termination. He also requested financial assistance due to the urgent need for funds, as his wife was giving birth to their third child that day.
17. The Claimant further averred that the Respondent failed to provide any explanation or evidence to support his termination.
18. That he was not given a fair hearing or an opportunity to respond to the allegations against him.
19. According to the Claimant, he has suffered financial and emotional distress as a result of his unfair termination.

1st Respondent's Case

20. The 1st Respondent called oral evidence through its Human Resource Officer, Ms. Karolina Witkowska, who equally adopted her witness statement to constitute her evidence in chief. RW1 further produced the list and bundle of documents filed on behalf of the 1st Respondent as exhibits before Court.
21. It was RW1's testimony that in her position, she manages the day-to-day Human Resource operations of the 1st Respondent's staff.
22. She is aware that the Claimant's contract of employment was renewable at the discretion of the 1st Respondent upon his satisfactory performance.
23. It was RW1's evidence that sometime in November 2023, the 2nd Respondent informed the 1st Respondent that they would be proceeding to terminate the service agreement with the 1st Respondent effective 30th November 2023.
24. Consequently, on 30th November 2023, she communicated the same to the Claimant via a standard telephone call and explained the impact it would have on his employment as there would no longer be any work for him to do.
25. RW1 averred that she sent the Claimant a termination letter dated 30th November 2023 detailing the reasons for the termination.
26. According to RW1, the termination letter indicated that the reason for termination was due to the termination of the service agreement between the 1st and the 2nd Respondent.
27. It was RW1's testimony that by an email dated 1st December 2023, the Claimant agreed to the mutual separation compensation package proposed by the 1st Respondent after extensive discussions via email on the same. In RW1's view, the Claimant therefore voluntarily agreed to the mutual separation compensation package offered by the 1st Respondent.
28. RW1 further stated that the Claimant was paid all his terminal dues, totaling Kshs. 1,324,895. That in addition to the separation package, the Claimant also received a goodwill gesture and additional commission payment of Kshs. 53,552.87 in January 2024 and was issued with a certificate of service which was forwarded to him vide his Advocates on record.



Submissions

29. On his part, the Claimant submitted that the lack of documented performance issues throughout his tenure and the unsubstantiated nature of the alleged misconduct prove that his termination cannot stand.
30. According to the Claimant, the mere act of receiving a termination letter devoid of discussions surrounding performance disputes is inadequate to validate termination.
31. It was the Claimant's further submission that the Respondent's actions represent a notorious denial of procedural fairness and a violation of Section 41 of the *Employment Act*.
32. The Claimant further argued that the timing of the termination represents a blatant act of discrimination, given that it occurred on the day his wife was giving birth to their third child. In the Claimant's view, the pattern of conduct displayed by the Respondent clearly demonstrates discriminatory intent.
33. On the other hand, the 1st Respondent submitted that the Claimant's employment contract was contingent upon the continued existence of the Service Level Agreement between the 1st and 2nd Respondents.
34. In the same vein, the 1st Respondent argued that the termination of that Service Level Agreement constituted a legitimate event which, by agreement, resulted in the automatic termination of the Claimant's Employment Contract. In support of the 1st Respondent's submission, reliance was placed on the cases of *Sindane v Prestige Cleaning Services (JS594/07) [2009] ZALC 156; (2010) 31 ILJ 733 (LC) (28 August 2009)* and *Transport and Allied Workers Union on behalf of Dube and Others v Fidelity Supercare Cleaning Services Group (Pty) (2015) 36 ILJ 1923 (LC)*.
35. Referencing the case of *Eastern Produce (K) Ltd V. John Lumumba Mukosero, Eldoret Civil Appeal No.25 of 1998*, the 1st Respondent submitted that the Claimant has not proved any particulars of unfairness or unlawfulness as pleaded and has not discharged the burden of proof envisaged under Section 47(5) of the Act.
36. It was the 1st Respondent's position that termination of the Service Level Agreement between itself and the 2nd Respondent was justified and constituted a fair and valid reason for the Claimant's termination from employment.
37. Citing the case of *Coastal Bottlers Limited v Kimathi Mithika [2018] KECA 523 (KLR2)* and *Mwenda v Afri Business LLP & another [2024] KEELRC 2346 (KLR)*, the 1st Respondent was of the view that there was a mutual agreement with the Claimant to terminate the employment relationship.
38. The 1st Respondent further posited that the Claimant having negotiated and agreed to a mutual separation and compensation package amounting to a total of Kes. 1,378,447.87, cannot now claim that he was unfairly and unlawfully terminated. According to the 1st Respondent, the principles of justice and equity dictate that the Claimant is estopped from denying the binding effect of entry into this mutual agreement. In support of this position, the 1st Respondent sought to rely on the case of *Plain Rajasthan State Industrial Development and Investment Corporation and Another v Diamond and Gem Development Limited and Another AIR 2013 SC 1241*.

Analysis and Determination

39. Flowing from the record, the Court has isolated the following issues for determination:



- a. Whether there was a mutual separation between the Claimant and the 1st Respondent;
- b. Depending on (a) whether the Claimant was unfairly and unlawfully terminated from employment;
- c. Is the Claimant entitled to the reliefs sought?

Mutual Separation?

40. It is the 1st Respondent's case that following the Claimant's termination from employment, the parties agreed to a mutual separation compensation package after extensive discussions.
41. In support of its position, the 1st Respondent has placed reliance on the email correspondence exchanged between the Claimant and RW1.
42. What can be discerned from the email correspondence is that the Claimant was following up on his final dues. In one of the emails, the Claimant requested RW1 to revise the compensation. In response, RW1 informed the Claimant that the client had declined to propose any additional pay and that they were covering what is required by the Kenyan legislation. She further informed the Claimant that there was nothing more she could offer other than what she had mentioned. In the end, the Claimant was paid the terminal dues as earlier indicated in RW1's email.
43. In light of the foregoing, it is evident that there was no mutuality in the separation between the Claimant and the 1st Respondent and more importantly, on the compensation package that was paid to the Claimant after the termination. Needless to say, the Claimant had no say in the terminal dues that were paid to him following the termination.
44. Therefore, it is incorrect for the 1st Respondent to assert that there was mutual separation between the parties and specifically, on the compensation package that was paid to the Claimant.

Unfair and unlawful termination?

45. The record bears that the Claimant's termination from employment was effected vide a letter dated 30th November 2023, which is partly couched as follows:

“Reason for termination

Unfortunately, we have been left with no choice but to terminate your employment with us due to termination of the service agreement between us and our client, Zebra Technologies Europe limited.”
46. What can be construed from the letter of termination is that the primary reason for the termination of the Claimant's employment was the 1st Respondent's operational requirements, hence falls within the ambit of Section 45 (2) (b) (ii) of the *Employment Act*.
47. In the case of *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 others* (2014) eKLR, the Court of Appeal determined that the phrase “based on operational requirements of the employer” must be construed in the context of the statutory definition of redundancy.
48. Section 2 of the *Employment Act* defines “redundancy” to mean “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”.



49. It is now settled that termination of employment on grounds of redundancy ought to be both substantially justified and procedurally fair. Such was the holding by the Court of Appeal in the case of *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* (supra).
50. In this regard, substantive justification refers to the reasons leading to the redundancy, while procedural fairness has to do with the procedure applied in effecting the redundancy.
51. With respect to substantive justification, it is imperative to note that an employer is required to prove that the reason for the termination is valid, fair and based on its operational requirements. In default, the termination is unfair in light of the provisions of Section 45(2) (b) (ii) of the *Employment Act*.
52. In the case herein, the 1st Respondent attributed the termination of the Claimant's employment to the termination of the service agreement it had with Zebra Technologies Europe Limited (2nd Respondent).
53. The termination clause in the Claimant's contract of employment dated 30th March 2020, provides in part: "you understand, acknowledge and accept that termination of the agreement between Employer and Client for your services is acceptable grounds for termination of this employment contract."
54. The same contract of employment expressly states that the term "Client" "shall be deemed to refer to Zebra Technologies Europe Limited and any other customer of Zebra or Zebra Group that you will be exposed to within the framework of this employment contract...."
55. The reason for termination of the Claimant's employment, when considered alongside the termination clause of the contract of employment, leads me to conclude that the 1st Respondent had a valid and fair reason to terminate the employment of the Claimant based on its operational requirements. This is primarily on the basis that the Claimant's contract of employment was tied to the service agreement between the 1st Respondent and Zebra Technologies Europe Limited (2nd Respondent).
56. Therefore, the Court is persuaded that there was substantive justification for the termination of the Claimant's contract of employment.
57. With that being said, I now turn to consider whether the 1st Respondent complied with the procedural requirements in terminating the Claimant's employment.
58. The procedure to be applied in the termination of employment on grounds of redundancy is stipulated under Section 40(1) of the *Employment Act*. Under the said statutory provision, the following conditions must precede a redundancy: -
 - 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.
59. It is apparent in the instant case that the Claimant was notified of his termination from employment on 30th November 2023, the same day the termination was to take effect. It is thus evident that the 1st Respondent did not comply with the requirement for notice under Section 40(1) (a) and (b) aforementioned. Here is why.
60. In this case, there was no notice issued by the 1st Respondent to the Claimant communicating its intention to declare a redundancy prior to the termination on 30th November 2023. As can be discerned from Section 40(1) (a) and (b), the prescribed notice period is not less than a month and must be made prior to the termination on account of redundancy.
61. What was issued to the Claimant in this case was a notice informing him that his employment had been terminated. It was final in nature as opposed to an "intention" to declare a redundancy as contemplated under Section 40 (1) (a) and (b) of the *Employment Act*.
62. It is also worth pointing out that payment of salary in lieu of notice does not supplant the requirement of issuance of a notice under Section 40 (1) (a) and (b) of the *Employment Act*. It should be appreciated that compliance with Section 40(1)(f) is in respect to payment of one month's salary as opposed to issuance of the actual notice. Such was the determination by the Court of Appeal in *Cargill Kenya Limited vs Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR), thus:
- “In this respect, it is notable that a plain and contextual reading of subsection 1(f) shows that its express objective and purpose is the payment required to be made to employees affected by redundancy, and not the issuance of a notice. It is also notable that the legislative intention from the arrangement and content of the enactments in section 40 subsection (1) (d) to (g) was the provision of payments to be made to affected employees in a redundancy, and section 1(f) can only thus be construed within this context, as was done by Maraga JA in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others Nairobi Civil Appeal No. 46 of 2013* (supra)...” Underlined for emphasis
63. The 1st Respondent further failed the test under the second part of Section 40(1) (b) as there was no evidence that the labour office was notified of the intention to terminate the Claimant on account of redundancy.
64. On this issue, the Court finds that the 1st Respondent did not substantially comply with the statutory requirement under Section 40 (1) (a) and (b) of the *Employment Act* with respect to the requirement for Notice and to that extent, is at fault.
65. The Court finds the requirement with respect to the selection criteria under Section 40(1) (c) to be inapplicable in this case as there is no indication or suggestion that there were other persons in the 1st Respondent's employment holding the position of Senior Channel Account Manager in Kenya, besides the Claimant.



66. With respect to the requirement for statutory payments under Section 40(1) (e) (f) and (g) of the Employment Act, it is notable that the Claimant was advised through the letter of termination dated 30th November 2023, that he would be paid severance pay at the rate of 15 days for every full year worked (or proportion of it).
67. Further, in an email dated 1st December 2023, RW1 gave the Claimant a breakdown of the compensation he was to receive. This encompassed monthly salary, notice pay and annual leave days.
68. Notably, the Claimant did not deny receiving the payment as indicated in RW1's email. Accordingly, the Court has no reason to doubt that the 1st Respondent made the statutory payments due to the Claimant under Section 40(1) (e) (f) and (g) of the Employment Act.
69. All in all, the Court returns that the termination of the Claimant on the basis of redundancy was procedurally flawed, in that the 1st Respondent did not comply with the notice requirement under Section 40(1) (a) and (b) of the Employment Act.

Reliefs

70. As the Court has found that the 1st Respondent did not comply with the procedural requirements under Section 40(1) (a) and (b) of the Employment Act, the Court will award the Claimant compensatory damages equivalent to two (2) months of his gross salary. This award is informed by the finding of the Court that the termination of the Claimant's employment was valid, fair and related to the 1st Respondent's operational requirements, thus the damages awarded are nominal.
71. The claim for service pay is declined as it is evident that the Claimant was contributing to the National Social Security Fund, hence placing him within the exclusions under Section 35(6) of the Employment Act.
72. The claim for gratuity is similarly declined as the Claimant has not laid down a basis for its award. In any event, the Claimant's contract of employment has not provided for payment of gratuity.

Orders

73. In the final analysis, the Court enters judgment against the 1st Respondent and awards the Claimant compensatory damages in the sum of Kshs 1,029,600.00 being equivalent to two (2) months of his gross salary. Interest shall apply to the award at court rates from the date of Judgment until payment in full.
74. The Claimant shall also have the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Anyega

For the 1st Respondent Ms. Wekesa instructed by Ms. Mugenyu

For the 2nd Respondent No appearance

Court Assistant Millicent



ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

