



**Kamau v Pawame Kenya Limited (Cause 087 of 2023)
[2025] KEELRC 1905 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1905 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 087 OF 2023
DKN MARETE, J
JUNE 25, 2025**

BETWEEN

ESTHER WAMBUI KAMAU CLAIMANT

AND

PAWAME KENYA LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of a statement of claim dated 7th February, 2023. The issue in dispute therein is cited as;

Unfair and Unlawful Termination of Esther Wambui Kamau on Account of Redundancy.
2. The Respondent in her Statement of Response dated 28th February, 2023 denies the claim and avers that the prayers sought have no merit and should not be granted.
3. The Claimant's case is that she was employed by the Respondent as an Aftercare Coordinator on 1st July 2020 and later promoted to Field Operations Manager on 20th April 2022. Her employment was terminated on 9th January 2023 via a letter citing redundancy due to restructuring. She earned Kshs.120,000.00 per month.
4. The Claimant's further case is that her termination from employment by the Respondent was unlawful for reasons that no notice was issued or reasons and justification offered for termination. This was also done in contravention of section 40 of the *Employment Act*, 2007. The letter of employment indicated that the Claimant's last day of work would be 9th January, 2023 and that she would be paid all outstanding terminal dues. These have not been paid to date.
5. The Claimant's other case is that she through the termination letter instructed to clear from office and exit the Respondent's premises immediately of which the Respondent's director acknowledges was unprocedural and poorly managed. The redundancy was effected maliciously and in contravention of



her constitutional right and also without regard to her welfare and other rights. She cites the following as particulars of malice by the Respondent;

- (a) Purporting to declare the Claimant redundant without following the requirement of the law and knowing very well that it was a normal termination which the Represent sought to send the law.
- (b) Maliciously, knowingly, and constantly lying to the claimant that the dues coved to her will be cleared.
 - © Failure to issue the claimant with a redundancy notice informing her of the redundancy notice.
- d) Failure to pay the claimant her terminal dues immediately upon completion of her service at the Respondent Company.
- (e) Officering the Claimant an option to waive her outstanding salary in exchange of acquisition of the Company's stock.
- (f) failure to hold consultation with the claimant before declaring her redundant.
- (g) Failing to issue the Labor office of an intended redundancy.
- (h) Failing to show and establish the criteria adopted in terminating the claimant from her employment on account of redundancy.
- (i) Failure to offer our client proposed employment offers and positions in Ignite Kenya Limited which was acquiring your company.

6. She further cites the following as particulars of special loss and damages;

- a) Damages for unlawful and unfair termination (12 months' salary compensation)Kshs.s1,440,000/=
- b) Salary in lieu of noticeKshs.120,000/-
- c) unpaid terminal dues/balance on severance dueKshs.180,000/-
- d) Days worked in January 2023 and outstanding unpaid leave days atKshs/86.794/=
- TotalKshs.1,910,521/=

7. She prays thus;

- a. A declaration that the Claimant suffered unfair and unlawful termination by the Respondent.
- b. Salary arrears for the entire period the Claimant has been out of employment.
- c. In the alternative, an order for payment of the Claimant's lawful terminal dues as set out above at paragraph 10.
- d. Maximum compensation of twelve months' salary.
- e. Costs of this suit with interest thereon.

8. The Respondent's case is the denial of the claim. It is her case that she terminated the Claimant's employment through a letter dated 9th January, 2023 but denies that this was without notice, reason, cause or justification. She further avers that she was in financial distress and this still persists and thus was compelled to declare some members of staff, including the Claimant redundant to remain afloat.



She denies chasing the Claimant away or even admitting that the process was unprocedural and poorly handled. Malice is also denied.

9. The Respondent's further case is that her financial distress was occasioned by the economic downturn arising out of the Covid-19 pandemic of March, 2020. This resulted in failed sales and revenue target and therefore the inability to fund its operation and meet its obligation to its stakeholders.
10. The Respondent's other case is that toward the close of 2022, it became impossible to sustain her operation at the normal scales and therefore the restructuring process leading to the termination of the employment of Claimant amongst other employees. This was based on valid grounds and procedure.
11. The issues for determination therefore are;
 1. Whether termination of employment of the Claimant by the Respondent met the criterion provided by 40 of the Employment Act, 2007.
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of the suit?
12. The 1st issue for determination is whether termination of employment of the Claimant by the Respondent met the criterion provided by 40 of the Employment Act, 2007. The Claimant in her written submission dated 1st March, 2024 submit a case of unprocedural redundancy and therefore unlawful termination of employment. It is her case that the termination process did not involve an issue of the requisite notice and consequence consultation in accordance with section 41(a) and (b) of the Employment Act, 2007 thereby rendering the redundancy unprocedural and unlawful. On this, she relied on authority of Kenya Airways Limited v. Aviation & Allied Workers Union [2014] eKLR where the Court of Appeal emphasis the requirement of notice and consultation in the Act.
13. It is the Claimant further submission that where an employer contemplates terminations for economic technological, structural or such like reasons, the employer shall inform the workers representative as early as possible with a view to creating an opportunity for consultation on measures to be taken to avert or minimize the terminations and mitigate the adverse effects to the workers concerned. The Respondent also failed to demonstrate the selection criteria for the Claimant's redundancy.
14. The Respondent in answer submits in reiteration of her case as pleaded. It is her case that the redundancy of the claimant was on valid and fair grounds based on the operation requirement of the employer and in accordance with fair procedure. She reiterates the case of the onset of Covid-19 at the work place occasioning a financial crisis and therefore the redundancy.
15. The Claimant's case overwhelms that of the Respondent. This is because there is no display of evidence in support of compliance with section 40(1) (a) and (b) of the Employment Act, 2007. In the absence of this, a case of unlawful redundancy ensues. I therefore find a case of unlawful and unprocedural redundancy and hold as such. This also amounts to unlawful and unfair termination of employment in terms of Section 45 Employment Act, 2007.
16. The second issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of unlawful redundancy, she become entitled to the relief sought.
17. I am therefore inclined to allow the claim and a ward relief as follows;
 - i. A declaration be and is hereby issued that the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful.
 - ii. One (1) month salary in lieu of noticeKshs.120,000.00



- iii. Two (2) month's salary as compensation for unlawful termination of employment.....Ksh.120,000x00x2.....Kshs240,000.00.
- iv. Nine (9) days salary in January, 2023Kshs.34,839.00
Total of claimKshs.394,839.00
- v. The costs of this claim shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Beyo instructed by Mugo Mugo and Company Advocate for the Claimant.

Mr Amukhale holding brief for Adede instructed by Adede & Company Advocate.

