



Odhiambo v Prinias Enterprises Ltd t/a Prinias Hotel (Cause E031 of 2024) [2025] KEELRC 1774 (KLR) (19 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1774 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E031 OF 2024
NZIOKI WA MAKAU, J
JUNE 19, 2025**

BETWEEN

FREDRICK ODHIAMBO CLAIMANT

AND

PRINIAS ENTERPRISES LTD T/A PRINIAS HOTEL RESPONDENT

JUDGMENT

1. The Claimant was employed by the Respondent through an employment letter dated 31st July 2018 at a monthly salary of Kshs. 100,000/-. He served the Respondent diligently until 30th September 2023 when his employment was terminated on account of redundancy. It was the Claimant's case that the termination was unlawful. He asserted that prior to his termination, the Respondent unilaterally reduced his salary from May 2020 for a cumulative period of 45 months, contrary to its promise to implement the reduction for only two months. The Claimant further contended that the Respondent acknowledged owing him Kshs. 550,000/- in terminal dues. However, through a settlement agreement dated 12th February 2024, the Respondent allegedly coerced him into accepting a sum of Kshs. 150,000/-, threatening that he would otherwise receive nothing. The Claimant also alleged that after the termination, the Respondent fabricated rent arrears amounting to Kshs. 930,000/- in an attempt to deprive him of his rightful dues. Arising from the foregoing, the Claimant sought the following reliefs:
 - i. A declaration that his termination of employment was unfair and unlawful;
 - ii. Kshs. 1,200,000/- in 12 months' salary as compensation for unlawful and unfair termination of employment;
 - iii. A declaration that the Respondent violated his constitutional rights under Article 41 of the Constitution, and damages for the violation;
 - iv. A declaration that he was subjected to unfair labour practices and damages for the same;



- v. A declaration that the demand for rent arrears of Kshs. 930,000/- is illegal null and void;
 - vi. A declaration that the settlement agreement dated 12th February 2024 and particularly paragraphs (i), (ii), (iii), (v) and (vi) thereof is invalid and unenforceable;
 - vii. A refund of Kshs. 1,240,000/- in unpaid or underpaid or withheld salaries;
 - viii. Kshs. 211,666.66 for untaken leave spanning two years and two months under section 40 of the *Employment Act*;
 - ix. Kshs. 250,000/- being severance pay (15 days' salary for 5 years);
 - x. Kshs. 250,000/- being acknowledged gratuity;
 - xi. Kshs. 100,000/- salary in lieu of notice;
 - xii. Interest on (ii), (iii), (iv), (vi), (vii), (viii), (ix) and (xi);
 - xiii. Costs of the suit
2. The Respondent filed a response dated 17th May 2024. It averred that the salary reduction was implemented with notice and was necessitated by the economic challenges brought about by the Covid-19 pandemic. The Respondent maintained that the Claimant, by virtue of his role, was directly involved in the preparation and proposal of the salary review affecting all employees and should therefore not be heard to complain.
3. With regard to the termination, the Respondent contended that it complied with section 40(1)(a) of the *Employment Act* by issuing one month's notice of redundancy during a meeting held on 8th August 2023, which was attended by the County Labour Officer. The Respondent further averred that the Claimant collected and signed for a redundancy package amounting to Kshs. 456,715/-. The Respondent asserted that the Claimant owed rent arrears amounting to Kshs. 915,000/- and that an agreement dated 12th February 2024 was entered into, whereby the Claimant agreed to offset the redundancy package against the said arrears. The Respondent prayed that the claim be dismissed with costs.

Testimony.

4. In support of his case, the Claimant testified that the salary reduction was unilaterally imposed by the Respondent's directors. He narrated that from May 2020 to December 2020, he was paid Kshs. 50,000/-; from January 2021 to April 2021, Kshs. 80,000/-; and thereafter, it reverted to Kshs. 50,000/-. He stated that he merely complied with the directors' instructions to prepare revised salaries based on their email directives. The Claimant further testified that on 30th September 2023, he was summoned by the Director at 6.00p.m. and informed that his services were terminated effective 1st October 2023. He denied that the meeting of 8th August 2023 was a notification of redundancy, terming it a routine staff meeting. He disputed the rent arrears claim, maintaining that he was not paid house allowance and that the demand was never mentioned in the termination letter. He averred that he only became aware of the rent arrears after his termination of employment. In cross-examination, the Claimant acknowledged attending a meeting on restructuring but stated no final decision was made to close the hotel. He asserted that by 2022 the Respondent's business had recovered from the effects of the Covid-19 pandemic.
5. The Respondent called Mr. Johannes Gwada, its Administration Manager, who testified that the Respondent was severely affected by Covid-19, necessitating 50% salary cuts. He stated that it was



the Claimant who suggested the pay cut in his email dated 15th May 2020. In cross-examination, Mr. Gwada conceded that the Claimant was terminated in 2023, long after the pandemic had subsided, and that the hotel was still operational. He also acknowledged there was no tenancy agreement to support the claim for rent arrears. He insisted that the Claimant's salary was inclusive of house allowance, though not itemized in the payslip. At the close of evidence, the parties filed their respective written submissions.

Claimant's submissions.

6. The Claimant submitted that the termination of his employment on grounds of redundancy was both procedurally and substantively unfair. He asserted that he was the sole employee holding his position and the Respondent failed to produce any Human Resource Job Evaluation report to justify the redundancy. To bolster this position, the Claimant relied on the case of *Mulyanga v Zitron Ltd* (Cause 876 of 2018) [2023] KEELRC 2400 (KLR) (9 October 2023) (Judgment), where the court held that redundancy must be justified, failing which the termination would be deemed unfair. The Claimant further submitted that the alleged economic difficulties caused by Covid-19 could not justify the redundancy effected on 30th September 2023, as by then the economic impact of the pandemic had subsided and the Respondent's business had resumed normal operations.
7. On the issue of redundancy selection criteria, the Claimant submitted that the Respondent failed to apply any objective selection criteria as required by law. He cited *Cargill Ltd v Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR), where the Court underscored the necessity of applying a reasonable selection criterion when declaring redundancy.
8. With respect to procedure, the Claimant submitted that the Respondent failed to comply with the mandatory procedural safeguards under section 40(1) of the *Employment Act*. He asserted that there was no personal service of the redundancy notice, no notification to the Labour Officer as required, and no consultation was undertaken. As he was not a union member, the Claimant contended that the circular issued on 27th July 2023 did not suffice under section 40(1)(b). He relied on the case of *Opemi v Holy Ghost Fathers Technical Training Institute* (Cause E076 of 2021) [2023] KEELRC 269 (KLR), where the court held that redundancy notice must be personally served to non-union employees.
9. The Claimant maintained that the meeting of 8th August 2023 was a routine staff meeting and not a consultative forum regarding redundancy. He emphasized that consultation served a critical role in affording affected employees an opportunity to explore alternatives or mitigation measures. He relied on *Kenya Airways v Aviation & Allied Workers Union of Kenya & 3 others* [2014] KECA 404 (KLR) in support of this position.
10. On severance pay, the Claimant submitted that payment was mandatory under section 40(1)(g) of the *Employment Act*. He cited the case of *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] KECA 492 (KLR), where the Court of Appeal held that employers must pay severance at the rate of not less than 15 days' salary for each completed year of service in case of redundancy. Regarding salary reduction, the Claimant submitted that the Respondent's actions constituted an unfair labour practice. He invoked section 10(5) of the *Employment Act* which mandates consultation, revision of the contract, and written notification in case of a change in terms. He relied on the case of *Mulwa v Kenya Film Commission* (Cause E528 of 2021) [2023] KEELRC 3102 (KLR), where the court emphasized that salary reductions must be preceded by proper consultation. The Claimant further invoked Article 41 of the Constitution and section 5 of the *Employment Act*, asserting that he was denied equal pay for equal work.



11. On the reliefs sought the Claimant submitted that he is entitled to 12 months' salary compensation in light of the obvious procedural and substantive unfairness. Additionally, he pointed to his long duration of service citing the case of *Alfred Muthomi & 2 others v National Bank Ltd* [2018] eKLR, in which the court acknowledged the Claimants' long service in awarding them 12 months' salary compensation. In respect of the alleged rent arrears, the Claimant submitted that the claim was fraudulent and lacked legal foundation. He asserted that there was no tenancy agreement, the purported memo authorizing rent deductions was backdated, and the rent demand letter was only issued post-termination. He urged the Court to declare the rent claim null and void.
12. The Claimant further submitted that the settlement agreement dated 12th February 2024 was procured through duress and threats, and was founded on fictitious arrears. He prayed that the said agreement be declared invalid. Concerning, unpaid, underpaid and withheld salaries he asserted that he was entitled to Kshs. 1,240,000/- for the cumulative period of 45 months. He cited the decision in the case of *Geoffrey Muriithi Muthee v XPLICO Insurance Co. Ltd* [2022] KEELRC 595 (KLR), in which the court underscored the importance of presenting evidence of financial constraints necessitating salary reduction.
13. With respect to leave, the Claimant submitted that he had not taken leave for four years and the Respondent did not rebut this claim. He relied on *Mombasa Coffee Limited v Shuke* (Appeal E075 of 2022) [2024] KEELRC 444 (KLR), where the court in taking cognisance that the Respondent had not taken leave for 15 years held that he was entitled to 21 days' pay for each of the 15 years. On severance pay the Claimant urged the court to grant him Kshs. 250,000/- as prayed in line with section 40 of the *Employment Act*. As for gratuity the Claimant submitted that the Respondent should be forced to pay the acknowledged amount of Kshs. 250,000/-. Finally, on salary in lieu of notice, he submitted that the same was a contractual obligation. He cited the case of *Pius Kimaiyo Lagat v Co-operative Bank Limited* [2017] KECA 152 (KLR) in support of the proposition that courts should enforce contract terms as agreed.

Respondent's submissions.

14. In opposition to the suit the Respondent identified three key issues for determination:
 - i. Whether the Claimant's termination was unfair and unlawful;
 - ii. Whether the Claimant was subjected to unfair labour practices;
 - iii. Whether the Claimant is entitled to other reliefs.
15. On the first issue the Respondent submitted that redundancy was justified by the harsh prevailing economic conditions at the time. It asserted that the Claimant was duly informed of the decision to declare his position redundant through the letter dated 30th September 2020. Regarding selection criteria, the Respondent submitted that the office of General Manager was abolished due to a reduction in business volume, and the Claimant's position was rendered redundant. On procedural compliance, the Respondent submitted that proper notice and consultation were undertaken in accordance with section 40(1) of the *Employment Act*. It further asserted that the Claimant was paid his redundancy dues, which he acknowledged by signing the settlement agreement.
16. On the second issue, the Respondent denied subjecting the Claimant to unfair labour practices. It submitted that salary cuts were implemented as a necessary survival measure due to the Covid-19 pandemic. The Respondent relied on the Claimant's email dated 15th May 2020 which, it alleged, initiated the salary reduction proposal. It also drew attention to the tri-partite memorandum of



understanding dated 20th April 2020 between the Ministry of Labour, FKE and COTU allowing labour industry players to review salaries to enable them deal with the global economic crisis.

17. In respect of whether the Claimant was entitled to the other reliefs sought, the Respondent submitted he was not. It highlighted the agreement dated 12th February 2024 deducting rent arrears of Kshs. 930,000/-. Consequently, it urged this court to dismiss the claim with costs.

Disposition.

18. The issue of redundancy is covered under section 40 of the *Employment Act*. The section provides in parre materia as follows:

40. Termination on account of redundancy
- (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) ...;
 - (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.

19. The Claimant was terminated in 2023 ostensibly on account of Covid 19 pandemic. The Covid 19 pandemic began with an outbreak of COVID-19 in Wuhan, China, in December 2019. It subsequently spread to other areas of Asia and then worldwide in early 2020. In May 2023, Covid 19 was no longer considered a pandemic and WHO indicated as much. Termination of an employee in October 2023 on account of covid 19 is disingenuous. The Claimant was notified of the redundancy on 30th September 2023 which was a day prior to the date of exit. He was not paid his dues in cash and was actually coerced into signing an illegal 'lease' agreement after termination. The demand for alleged rent arrears of Kshs. 930,000/- was illegal and reversed. It was unconscionable for the Claimant



to be subjected to an illegal contract after termination. The Respondent clearly had no intention to follow the law on redundancy as the Claimant was entitled to payment of severance pay as well as leave dues in cash.

20. The Court finds that the termination of the Claimant was grossly unfair and exceedingly unlawful and awards the Claimant the following reliefs:-
- i. Kshs. 1,200,000/- in 12 months' salary as compensation for unlawful and unfair termination of employment;
 - ii. Refund of Kshs. 930,000/- which was illegally deducted;
 - iii. A refund of Kshs. 1,240,000/- in unpaid salaries;
 - iv. Kshs. 211,666.66 for leave not taken;
 - v. Kshs. 250,000/- as severance pay;
 - vi. Kshs. 500,000/- as damages for violation of his Article 41 rights;
 - vii. Costs of the suit;
 - viii. Interest at court rates on the sums in (i), (ii), (iii), (iv), (v) and (vi) above from the date of judgment till payment in full.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIArB.

JUDGE

