



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Copycat Limited (Cause E759 of 2021)
[2025] KEELRC 2330 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2330 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E759 OF 2021**

**MN NDUMA, J
JULY 31, 2025**

BETWEEN

ROSSLYNE NJOKI KAMAU CLAIMANT

AND

THE COPYCAT LIMITED RESPONDENT

JUDGMENT

1. The Claimant was employed by the Respondent as an Accountant Manager (BTSL, serving Banking and Financial Institutions) effective 16/7/2018 vide a letter of appointment of the same date.
2. The Claimant earned a monthly gross salary of Kshs. 142,000.00 comprising a basic salary of Kshs. 120,000.00, Kshs. 2,000.00 airtime and Kshs. 20,000.00 transport allowance and an incentive of one month basic salary of Kshs. 120,000.00 per quarter. The Claimant was also entitled to 21 working days leave.
3. The Claimant filed suit vide a memorandum of claim dated 2nd September 2021 seeking the following reliefs:-
 - a. Kshs. 138,000.00 withheld salary and allowances for April, May and June 2020.
 - b. Kshs. 426,000.00 salaries and allowances for 3 months unlawful unpaid leave (July, August September 2020).
 - c. Kshs. 1,704,000.00 an award of 12 months' salary as damages for unfair termination
 - d. Kshs. 142,000.00 one month's salary in lieu of notice
 - e. Kshs. 142,000.00 severance pay @17 days for each year (for 2 years).
 - f. Kshs. 7,200.00 Copycat staff welfare deduction for 2 years



- g. Kshs. 142,000.00 twenty-one days annual leave for the year 2020
 - h. Interest on (a) to (g) above at court rates
 - i. Certificate of service
 - j. Signed and stamped payslips for the duration of employment
 - k. Cost of the suit
4. The Claimant testified under oath and adopted a witness statement dated 15/9/2021 as her evidence in chief.
 5. Claimant told the court that on 14/4/2020, the Respondent unlawfully without any consultation issued a memo informing all employees that the basic salary would be reduced by 20-50% for a period of three months citing that the Respondent needed to be financially responsible and proactive due to the Covid-19 pandemic. That the Claimant implemented that decision vide a letter dated 14/4/2020 by reducing the Claimant's basic salary from Kshs. 120,000.00 to Kshs. 96,000.00 effective 1/4/2020. That the 20% reduction of salary would be for 3 months period but could be extended for a further 3 months period. That the salary reduction was not based on performance but was unilateral decision of the company without consultation.
 6. The Claimant states that the action was unlawful variation of contract of service.
 7. On 15/6/2020, the Respondent without consultation sent the Claimant on unpaid leave with effect from 1/7/2020 for a period of three months.
 8. That the Respondent intimidated the Claimant to sign a letter vide the Human Resource Office by 19/6/2020 accepting the unpaid leave. The Claimant declined to sign because this had not been mutually agreed upon. The Claimant proceeded on unpaid leave but continued to work for the Respondent diligently.
 9. On 31/8/2020, the Respondent sent an internal memo stating that it would conduct a restructuring of the company. That no consultation was done during the said exercise.
 10. That on 4/9/2020, the Claimant received a letter from the Respondent informing her that the employment of the Claimant had been terminated with immediate effect.
 11. That the Respondent did not inform the Labour officer of the reasons for and the extent of the intended redundancy one month before the termination on account of redundancy.
 12. That the four (4) days' notice of termination was grossly insufficient and a violation of section 40 of the *Employment Act*, 2007.
 13. The Claimant states that the company had not suffered financially from the effects of COVID-19. That from 1/1/2020 to 30/6/2020, the company received orders from customers totaling Kshs. 363,801,908.07 per document before court.
 14. That the reduction of salary and eventual termination on grounds of redundancy was not a genuine exercise. That the Respondent recruited new employees replacing all the ones who had been terminated on account of redundancy including the Claimant.
 15. That the Respondent did not pay the Claimant one month salary in lieu of notice. The Respondent also failed to pay the Claimant any service pay for each completed year of service. That the termination was unlawful and unfair. That the Claimant had failed to secure alternative employment. That this



- was unfair labour practice that robbed the Claimant of her dignity and means of livelihood. That the Claimant was unable to feed her children and had to relocate to the village to stay with her parents.
16. That the Claimant's right to equality before the law was violated by the failure by the Respondent to follow a fair procedure in terminating the employment of the Claimant on grounds of redundancy.
 17. Mr. Anyola, Advocate for the Respondent cross-examined the Claimant. The Claimant largely and consistently repeated her evidence in chief stating that this salary reduction and retrenchment was not genuine. It was without notice, consultation and was unlawful and unfair.
 18. RW1 Kelvin Miruri testified for the Respondent in defence of the case. RW1 adopted a witness statement dated 16/2/2022 as his evidence in chief. He said he was the Head of Human Resources in the Respondent company and had served the Respondent for a period of 10 years. That the company started experiencing financial difficulties due to COVID-19 pandemic in the year 2020.
 19. That on 14/4/2020, the company Group Managing Director announced to all employees that there would be an organization restructuring and rationalization process. Subsequently, all employees including the Claimant were required to take a pay cut of between, 20%-50%.
 20. That the financial crisis got worse and the company sent employees on unpaid leave except those providing essential services.
 21. That on 31/8/2020 the company decided to reduce the number of staff. That the affected employees were notified that their positions would be affected and had been declared redundant.
 22. That none of the staff were union members and so the Respondent gave one (1) month notice to the Ministry of Labour by a letter dated 27/8/2020 of the intended restructuring.
 23. That the Claimant vide a letter dated 4/9/2020 was also notified that her position had been declared redundant.
 24. That the redundancy process was concluded in terms of section 40 of the Employment Act 2007 and same was necessitated by the bad financial situation.
 25. That the Claimant was entitled to one month salary in lieu of notice; service pay calculated at 17 days salary for each completed year of service and certificate of service. That the Claimant was appointed on 16/7/2018 and had served more than two years by the time of termination. That the Claimant would be paid upon clearing with the company.
 26. That the suit is without basis is malicious and it be dismissed with costs.
 27. Under cross-examination by Ms. Akinyi, Advocate for the Claimant RW1 said the salary cuts decision was made by management and communicated to the staff on the same day. That the Claimant was not part of the management. That the cut was back dated to 2/4/2020. That the Claimant and others were on 15/6/2020 sent on unpaid, compulsory leave due to COVID-19 Pandemic effect.
 28. That the Claimant attended the business review meeting held with all staff. RW1 said he had no minutes of the meeting. RW1 said sales department were not affected and worked from home. That business continued but not fully. That Claimant worked in the Sales department. RW1 said notice of redundancy was sent to labour office on 27/8/2020 and redundancy was effected on 4/9/2020. The letter referred to notice issued on 31/8/2020. That the letter of termination was sent by registered mail as the Respondent could not reach the Claimant. RW1 said memos before court indicate financial distress but there are no financial statements before court to show that.
 29. RW1 said the company was affected but did not close.



30. That Claimant was not available to clear and so was not paid the terminal benefits yet. RW1 had no letter requesting the Claimant to clear as stated. RW1 said he was not sure if Claimant received the letter of termination dated 4/9/2020.
31. In re-exam, RW1 said all departments held meetings to discuss pay cut, compulsory leave and declaration of redundancy.
32. That the suit be dismissed.

Determination

33. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are:-
 - a. Whether the salary cut was lawful.
 - b. Whether the declaration of redundancy was for a valid reason and followed a fair procedure.
 - c. What reliefs if any is the Claimant entitled to?
34. The court is satisfied that the Respondent like many other businesses at the time was adversely affected by COVID-19 pandemic however, the Respondent needed to prove the financial difficulties it faced during this time, by an internal memo to all staff dated 14/4/2020 referenced “just concluded Business Review staff meetings” announced that with effect from 1st April 2020, all employees would be subject to 20% to 50% reduction of the basic salary.
35. Following that general memo the Respondent issued each employee including the Claimant with a letter dated 14/4/2020 informing them what percentage of their salary would be reduced. The letter sent to the Claimant informed her that her basic salary would be reduced from Kshs. 120,000.00 to Kshs. 96,000.00 effective 1st April 2020.
36. The letter was produced before court and was signed by the Claimant herself and Mr. Vishual Patel, the Managing Director.
37. The letter has a certificate below the signatures also signed by the Claimant to the effect that “I acknowledge I have received, read and understood the contents of the letter and accept the same.”
38. In the *Employment Act* 2007, part (iv) on “protection of wages” section 19(1) provides:-

“91 Deduction of wages

 1. Notwithstanding section 17(1) an employer may deduct from wages of his employee...
 - (g) any amount in which the employer has no direct or indirect beneficial interest and which the employee has requested the employer in writing to deduct from his wages.”
39. This is the closest provision in the *Employment Act*, that allows a consensual deduction by an employer from the wages of an employee provided the employer has no direct or indirect interest in the matter.
40. The letter signed by the parties dated 14/4/2020, does not state that the Claimant requested for the deduction. The deduction is also being made in the interest of sustainability of the business.



41. The court therefore finds that this deduction could have been lawful only if it was requested for by the Claimant and not for the benefit of the employer.
42. It is unlawful to appropriate a portion of the wages of an employee because salary is paid for work done by the employee.
43. The court finds that the Claimant is entitled to a refund of the 20% deducted from her at the behest of the employer. The Claimant testified that she found herself with no alternative but to sign the letter to avoid being terminated from employment. The court therefore directs refund of the amount as set out in the claim.
44. With regard to the lawfulness of the redundancy declaration the provisions of section 40(1) to (g) on the substantive and procedural requirement on the part of the employer who intends to terminate employment of an employee(s) on grounds of redundancy reads:-
 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 46 The *Employment Act*, 2007 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.
45. In this matter the Respondent by a letter dated 15/6/2020, placed the Claimant and others on unpaid compulsory leave with effect from July 2020 for a period of 3 months. The Claimant was only allowed access to the group medical cover during that period. Again, that Claimant was required to sign the letter though she had no alternative in the matter.
46. By a letter dated 27/8/2020, 3 months later, the Respondent sent a notice to the Ministry for Labour notifying the labour commissioner of the intention of the company for restructure the company due to the effects of Covid-19. The Respondent said the company was faced with a "flat economy and poor financial performance"



47. The restructuring was said to be important to ensure survival of the company in the market. The restructuring was said to be commenced in the month of September 2020 and that a number of positions shall be declared redundant.
48. This was a legitimate notice in terms of section 40(1)(a) of the Employment Act but ought to be issued at least one month before the redundancy was effected.
49. The Respondent went ahead and issued a notice to all staff dated 31st August 2020, informing them of the intended restructuring which may result in declaration of some positions redundant due to decrease in sales and collections and reduction of business activities as a result of the Covid-19 impact.
50. The Respondent stated that “The selection process will be done objectively and quantifiably and we will adhere to the legal requirement in line with the principles and values.”
51. However, four (4) days later the Claimant received a letter terminating her employment on grounds of redundancy dated 4th September 2020.
52. The letter referred to the memo dated 31st August 2020 where “the company gave you notice of its intention to carry out an organizational restructuring.”
53. The termination was to take effect immediately and the last working day of Claimant was the 4th September 2020. The Respondent failed to demonstrate that it had engaged in an objective selection process involving the Claimant in terms of section 40(1)(c). The Respondent also clearly breached section 40(1) (a) by failing to give the Claimant a notice of at least one month informing her of the termination of her employment. This requirement was mandatory regardless of the offer by the Respondent to pay the Claimant in lieu of one month notice. The Respondent also offered to pay the Claimant severance pay calculated at 17 days salary for each completed year of service.
54. In the case of Thoma Dela Rue (IC)Ltd versus David Opondo Omutelema, Nairobi Civil Appeal No. 65 of 2012 [2013] eKLR, the court affirmed that an employee is entitled to a written notification about an impending redundancy along with its reasons and expect at least one month prior to its implementation.
55. This court emphasizes the one month notice of the intention to declare the employee redundant cannot be cured by an offer of payment in lieu of one month notice by the employer. The initial one month notice is a procedural requirement to prepare the employee for the unfortunate eventuality to happen for no fault of his/her own. It is to give the employee psychological comfort and preparedness and this cannot be exchanged with a monetary payment.
56. The payment in lieu of at least one month notice is a separate and mandatory requirement beside the one-month notification in which period the selection process is conducted objectively with the involvement of the employee in terms of section 40(1)(c) of the Act.
57. The Respondent failed in this procedural respect and the intended redundancy which had substantive justification became unlawful for failure to follow a fair and lawful procedural requirement.
58. Accordingly, the termination of the employment of the Claimant on grounds of redundancy was unlawful and unfair and in violation of sections 36, 40, 41 and 45 of the Act.
59. The Claimant is entitled to compensation in terms of section 49(1)(c) of the Act.



60. The Court of Appeal decision in *Kenya Airways Limited versus Aviation Allied Workers Union Kenya and 3 others* [2014] KLR underlines this position clearly.

"The purpose of the notice under section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in the said ILO Convention No. 158 – Termination of Employment Convention, 1982, is to give the parties an opportunity to consider "measures to be taken to avert or minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment. The consultations are therefore meant of cause the parties to discuss and negotiate a way out of the intended redundancy , if possible, or the best way of implementing it if it is unavoidable. This means that if parties put their heads together, chances are that they could avert or at least minimize the terminations resulting from the employer's proposed redundance. If redundancy is inevitable, measures should to be taken to ensure that as little hardship as possible is caused to the affected employees. In the circumstances, I agree with counsel for the 1st Respondent that consultation is an imperative requirement under our law.

Article 13 of *Recommendation No. 166 of the ILO Convention No, 158 – Termination of Employment Convention, 1982* – states:

- "1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:
- a. Provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
 - b. give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment."

Reliefs

- i. Notice pay
The Claimant's gross pay was Kshs. 142,000.00 made up of Kshs. 120,000 basic pay; Kshs. 2,000.00 airtime allowance and Kshs. 20,000.00 transport allowance. Notice pay is based on the gross salary. The court awards the Claimant Kshs. 142,000.00 in lieu of one-month notice.
- ii. The Claimant was placed on unpaid compulsory leave without his consent. The Respondent did not produce any financial statements or any other evidence before court to demonstrate that such measures were warranted against the Claimant. In *SYTV TA*[2019] eKLR the Court of Appeal found

"It is established that where a party fails to call evidence in support of his case that the party's pleadings remain mere unsubstantiated statements of fact and conversely the evidence adduced by the other side therefore remains uncontroverted."



Accordingly, the Claimant has proved that the compulsory unpaid leave for three (3) months was unwarranted. That the Respondent proceeded to replace the Claimant with other employees upon cutting her salary, placing her on unpaid leave and eventually terminating her employment.

The court therefore awards the Claimant salaries and allowances for 3 months when Claimant was placed on unpaid leave in July, August and September 2020 in the sum of Kshs. 426,000.00.

iii. Severance pay

The Respondent offered and did not pay the Claimant severance pay in terms of section 40 of the *Employment Act* 2007 for the period of 2 years completed service.

The court awards the Claimant Kshs. 142,000.00 being severance pay payable to the Claimant upon being terminated on grounds of redundancy.

iv. Leave pay

The Claimant was placed on unpaid leave for a period of three months and so all the Respondent needed to do was to pay him while he was placed on compulsory leave.

The court having awarded payment in respect of the period the Claimant was on compulsory leave cannot award the Claimant in lieu of untaken annual leave for 21 days as claimed. This prayer is dismissed accordingly for lack of merit.

v. Certificate of service

The Respondent is mandated by law to grant the Claimant certificate of service upon termination. The court directs the Respondent to do so.

vi. Welfare deduction was not proved and the claim is dismissed.

vii. Compensation

The Claimant had served the respondent for a period of two years. The Claimant did not contribute to the termination. The Claimant was not paid terminal benefits upon termination. The Claimant suffered loss and damage for being retrenched and then replaced by new employees. The Claimant was not compensated for the loss. The Claimant had not obtained alternative employment at the time of the hearing.

The court has considered the case of *Kenya Airways Limited versus Aviation and Allied Workers Union* (Supra) on the issue of compensation and awards the Claimant the equivalent of three (3) months' salary in lieu of notice in the sum of Kshs. 142,000 x 3 = Kshs. 426,000.00.

61. In the final analysis judgment is entered in favour of the Claimant against the Respondent as follows:-

- a. Salary cut for the month of April, May and June 2020 in the sum of Kshs. 138,000.00.
- b. Kshs. 426,000.00 for unpaid salary during compulsory leave period in July, August and September.
- c. Kshs. 142,000.00 in lieu of one-month notice
- d. Kshs. 142,000.00 being service pay



- e. Kshs. 426,000.00 being compensation equivalent to 3 months' salary for the unlawful and unfair termination.

Total sum Kshs. 1,132,000.00

- f. Interest at court rates from date of judgment till payment in full.
- g. Costs of the suit
- h. Grant of certificate of service within 30 days of the judgment.

DATED AT NAIROBI THIS 31ST DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Wakaba for Claimant

Mr. Anyoka for the Respondent

Mr. Kemboi – Court Assistant

