



**Lumumba v Keitt Exporters Limited (Cause E201 of 2022)
[2025] KEELRC 2277 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2277 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E201 OF 2022**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

BRENDA LUMUMBA CLAIMANT

AND

KEITT EXPORTERS LIMITED RESPONDENT

JUDGMENT

Introduction

1. This dispute arises from the termination of the Claimant's employment, communicated by letter issued to her on 2nd February 2022.
2. The Claimant states her claim in a Statement of Claim dated 28th March 2022 and the Respondent defends itself by a Statement of Response dated 6th May 2022. The Claimant responded to the Statement of Response on 21st March 2025.
3. The matter proceeded to full hearing where the Claimant testified on her own behalf, with the Respondent calling its Human Resource Manager, Cedric Lumidi.

The Claimant's Case

4. By a contract of employment dated 30th October 2020, the Claimant was employed by the Respondent in the position of Digital Transformation Assistant Manager, effective 2nd November 2020. She earned a consolidated monthly salary of Kshs. 150,000. She claims to have been entitled to an additional Kshs. 25,000 as monthly bonus plus airtime of Kshs. 1,500.
5. The Claimant worked for the Respondent until 2nd February 2022, when her employment was terminated, on account of redundancy. She terms the termination as malicious, unlawful and unfair, citing the following particulars:



- a. The decision was non-collegial, ill advised, improper, misconceived and based on a premeditated plan;
 - b. The Claimant was not given notice of the intention to terminate her employment nor was she given any notice of redundancy;
 - c. The Claimant was not afforded a report of any disciplinary proceedings or inquiry of her conduct that would warrant imposition of a disciplinary penalty such as a dismissal;
 - d. No reasons as would found a basis for dismissal were proved against the Claimant;
 - e. Failing to grant the Claimant an opportunity to be heard before termination;
 - f. Failing to issue the Claimant with a certificate of service.
6. The Claimant seeks the following reliefs:
- a. Kshs. 150,000 being 1 month's salary in lieu of notice;
 - b. Salary for 2 days worked in February 2022;
 - c. Severance pay @ 15 days' salary for every completed year of service;
 - d. 12 months' salary in compensation;
 - e. Certificate of service;
 - f. Costs plus interest.

The Respondent's Case

7. In its Statement of Response dated 6th May 2022, the Respondent admits having employed the Claimant in the position of Digital Transformation Assistant Manager, at a gross monthly salary of Kshs. 150,000 effective 2nd November 2020.
8. The Respondent however denies the averment that the termination of the Claimant's employment was unlawful and unfair. The Respondent states that the Claimant's position was declared redundant in accordance with the provisions of Section 40 of the *Employment Act*.
9. The Respondent avers that the Labour Office and the Claimant were duly notified of the intention to declare redundancy, by notice dated 28th December 2021. According to the Respondent, the redundancy was occasioned by uncontrollable factors that became a hurdle in the implementation of the digital transformation project.
10. The Respondent claims that from a review of the project, the investment injected therein appeared unfruitful. Management had therefore decided that the transactional operations of the project be shut down, with the data in the software being preserved.
11. The Respondent further claims to have had consultations with the Claimant, prior to the termination of her employment on account of redundancy.
12. The Respondent denies the Claimant's entire claim and asks the Court to dismiss it.

Findings and Determination

13. There are two (2) issues for determination in this case:



- a. Whether the termination of the Claimant's employment was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

The Termination

14. The letter communicating the termination of the Claimant's employment states as follows:

“Subject: Termination Letter

Dear Brenda Lumumba,

Further to our meeting of 27TH of January 2022, I am sorry to inform you that your employment with us is terminated immediately. From Feb 03, 2022, you won't be able to claim any compensation or benefits associated with your position. Please return laptop and any other company property you have with you. You will be paid one month salary. Unfortunately, your position was made redundant. Please note that this is no way a reflection of your performance in your job.

You are entitled with (sic) a position of Digital Transformation Assistant Manager on Nov 02, 2020, which main job description is to maintain the software: Datagreen Sourcetrace Software and to implement Farm Management Information System. As discussed in the meeting of 27TH Jan 2022 we concede that Avocado production field staff are unable to use that software. As such, we can no longer use that software and must shut down the entire system.

I would like to thank you for all the contributions to our company and I wish you all the best for your future.

Sincerely,

Uzair Ul Hassan

(signed 2/2/22)

Assistant General Manager,

Keitt Exporters Limited

Approved By

Mr. Asif Amin

(signed)

Managing Director

Keitt Exporters Limited”

15. According to this letter, the Claimant's employment was terminated on the ground of redundancy.
16. Section 2 of the [Employment Act](#) and the corresponding provision in the [Labour Relations Act](#), define redundancy as:

“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.”

17. While our law recognises redundancy as a legitimate separation mode, it sets stringent conditions to be met by every employer considering redundancy. These conditions are codified in Section 40 of the [Employment Act](#) as follows:

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 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 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.

18. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee(s), their union (where applicable) and the local Labour Officer. By definition, this notice, should set out the reasons for and the extent of the intended redundancy.

19. It is now settled that the redundancy notice contemplated by Section 40(1) (a) and (b) is separate and distinct from the termination notice required under Section 40(1)(f) (see *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR and *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR).

20. It is also settled that consultation with the parties to be affected by the intended redundancy, is a critical ingredient of the redundancy notice.



21. In the Kenya Airways Case (supra)Maraga JA (as he then was) stated the following:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...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 to minimize 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 to 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.”
22. The requirement for consultation was reiterated by the Court of Appeal in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) in the following terms:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”
23. Further, Article 13 of ILO Convention No. 158-Termination of Employment Convention, 1982 provides as follows:
 1. When the employer contemplates termination for reasons of an economic or 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 termination 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 minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.
24. The Claimant told the Court that she learnt of the termination of her employment when she received the termination letter. Although the Respondent alleged that the Claimant had prior notice of the redundancy, no evidence was adduced to support this proposition.
25. Such evidence would have been crucial in view of the admitted fact that the Respondent’s witness, Cedric Lumidi was not privy to the events preceding the termination. In light of paucity of evidence in this regard, I have reached the conclusion that the Claimant was not served with a redundancy notice nor was she consulted as required by law.
26. Additionally, the Respondent did not establish a clear selection criterion as required by Section 40(1) (c) of the *Employment Act*.
27. More significantly, the Respondent did not make any of the statutory payments due to the Claimant.
28. Overall, I find and hold that the termination of the Claimant’s employment was substantively and procedurally unfair.



Remedies

- 29. I therefore award the Claimant six (6) months’ salary in compensation. In making this award, I have taken into account the Claimant’s length of service and the fact that she did not in any way contribute to the termination.
- 30. I have also considered the Respondent’s conduct in the termination transaction, with particular focus on the unexplained withholding of the Claimant’s terminal dues and certificate of service.
- 31. The claims for one month’s salary in lieu of notice, salary for two days in February 2022 and severance pay were admitted and are payable.
- 32. Ultimately, I enter judgment in favour of the Claimant as follows:
 - a. 6 months’ salary in compensation.....Kshs. 900,000
 - b. 1 month’s salary in lieu of notice.....150,000
 - c. Salary for 2 days in February 2022.....10,000
 - d. Severance pay for 1 complete year.....75,000
 - Total.....1,135,000
- 33. This amount will attract interest at court rates from the date of judgment until payment in full.
- 34. The Claimant is further entitled to a certificate of service plus costs of the case.
- 35. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

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JUDGE

Appearance:

Mr. Okeyo for the Claimant

Mr. Omondi Were h/b for Mr. Ondego for the Respondent

