



**Obobo v Marsyetu Limited (Cause 132 of 2024)
[2025] KEELRC 2104 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2104 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 132 OF 2024**

**M MBARŪ, J
JULY 17, 2025**

BETWEEN

PHICK OBOBO CLAIMANT

AND

MARSYETU LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Memorandum of Claim on 9 December 2024 and served the respondent with summons. No appearance of response was filed, so the matter proceeded in the respondent's absence.
2. The claim is that on 9 May 2022, the respondent employed the claimant as a sales representative at a gross monthly salary of Ksh. 119, 954. The claimant worked until April 2024, when the salary due was not paid. No reasons were given for the non-payment.
3. On 19 August 2024, the respondent sent an email to all employees, including the claimant, indicating that salary payment for August 2024 would be delayed and would instead be paid on 15 to 20 of the month. However, there was no payment.
4. The claim is that on 30 October 2024, the respondent issued a letter to the claimant terminating his employment on the grounds of redundancy. Withholding salary from April to September 2024 was a fundamental breach of the employment contract, which required the payment of the due salary at the end of the month.
5. The claim is that the respondent violated the claimant's right to fair remuneration under section 17 of the *Employment Act*. The purported termination of employment due to redundancy was unlawful because the respondent failed to issue notice to the Labour Officer, did not follow due process, and refused to pay terminal dues, including severance pay.
6. The claimant is seeking the following,



1. A declaration that the withholding of salaries from April to September 2024 was a violation of the claimant's rights,
2. A declaration that the termination of employment on account of redundancy was unlawful and unfair,
 - a. Unpaid salaries from April to September 2024 Ksh.719,724,
 - b. Notice pay Ksh.119,954,
 - c. 12 months' compensation Ksh. 1,439,448,
 - d. Certificate of service,
 - e. Costs of the suit.
7. The claimant attended and relied on his documents and statement. In the absence of the respondent and no response having been filed, the court is permitted to rely on the filed records under Rules 59 and 60 of the Employment and Labour Relations Court (Procedure) Rules.

Determination

8. Despite being served with summons, the respondent did not file an appearance or response. This denied the court crucial records and left the claim unchallenged.
9. Based on the claim, a notice dated 27 April 2024 was issued, advising all employees that their salaries would be delayed.

A similar notice was issued on 19 August 2024.
10. The final notice on 3 October 2024 indicated that the claimant's employment had been terminated due to redundancy. The reasons for the daily salary payment and redundancy were that the respondent was facing a decrease in business, which was occasioned by poor economic conditions and high inflation rates.
11. Indeed, the employer is permitted to terminate employment due to a decrease in business, leading to redundancy, under Section 40 of the *Employment Act*. However, the due process of the law must be observed in such circumstances, as established in *Cargill Kenya Limited v Mwaka & 3 others* [2021] KECA 115 (KLR) and the case of National Oil Corporation of Kenya v Cheruiyot & 37 others [2025] KECA 148 (KLR). The employer must inform the employees of the intention and extent of the redundancy and notify the Labour Officer responsible for the area.
12. Under section 40(1)(f) of the *Employment Act*, where the employer must close its business, the law allows the payment in lieu of notice and all pending terminal dues, including leave pay due in cash and severance pay.
13. In this case, the claimant seeks payment for notice, salary arrears, and severance pay. This means the respondent failed to adhere to the minimum standards in section 40 of the *Employment Act*. In this regard, section 45 (5)(b)(ii) of the *Employment Act* states that when an employer fails to follow the mandatory procedures when terminating employment for operational reasons, such action results in unfair termination of employment, as held in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] KECA 404 (KLR).



14. In this case, without any effort to address the position of section 40 of the Employment Act, even where the respondent had valid reasons to justify a redundancy, such a lapse resulted in unfair termination of employment.

Notice pay is due, and compensation.

15. The respondent employed the claimant from May 2022 to September 2024. Aside from the unfair termination of his employment due to redundancy, which lacked due process, he was willing to fulfil his contractual obligations. In this context, compensation equivalent to four (4) months' gross salary is considered appropriate. This situation is worsened by non-payment of salaries from April to September 2024, contravening the Employment Act.

At the wage of Ksh.119, 954 x 4 the due compensation is Ksh.479, 816.

Notice pay is due under section 40(1) (f) at Ksh.119, 954.

16. At the end of employment, whatever the reason for termination, the employee is entitled to pay for work done. The claim for unpaid salaries from April to September 2024 is justified at ksh.719, 724.

17. Equally, severance pay is due for the 2 complete years worked at Ksh 119. 954.

18. Under section 51 of the Employment Act, a certificate of service is due at the end of employment.

19. The respondent's failure to comply with due process necessitates these proceedings, and hence, the award of costs is justified.

20. Accordingly, judgment is entered for the claimant against the respondent in the following terms;

- a. Employment terminated unfairly,
- b. Compensation Ksh.479,816,
- c. Notice pay Ksh.119,954,
- d. Salary arrears ksh.719,724,
- e. Severance pay Ksh.119,954,
- f. Certificate of service,
- g. Costs of the suit.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 17 JULY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

