



**Gachoki v Church World Service, RSC Africa (Employment and Labour Relations
Petition E111 of 2024) [2025] KEELRC 2061 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2061 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E111 OF 2024**

**MN NDUMA, J
JULY 10, 2025**

BETWEEN

PATRICIAL WAWIRA GACHOKI PETITIONER

AND

CHURCH WORLD SERVICE, RSC AFRICA RESPONDENT

JUDGMENT

1. The Petitioner, was employed by the Respondent as a case worker by a letter of appointment dated 11/5/2018.
2. A case worker's job description was to assist eligible refugee applicants to prepare the best possible case file for an interview with an officer of USCIS for final adjudication under the direction of a field processing supervisor.
3. The contract of the Petitioner was to end on 30th September 2018 subject to renewal by consent of the party. The Petitioner earned Kshs. 67,607.00 per month.
4. The contract was renewed on 1st October 2018 for a period of three (3) years to end on 30th September 2021.
5. Sometime in June 2021, the Respondent advertised and declared that the senior case worker positions were vacant.
6. The Petitioner applied for the position and was scheduled for an interview on 22/6/2021 at 2 p.m.
7. The Petitioner underwent a four (4) stage competitive interview and the Petitioner was by a letter dated 1st October 2021 appointed as a senior case worker. In this position, the Petitioner was tasked with promoting, developing and extending businesses and interests of the Respondent across Africa and was paid a monthly salary of Kshs. 167,560.00. The Petitioner was entitled to 21 working days leave. The



- Claimant worked well and continuously, and on 1/10/2023, received a salary raise to Kshs. 210,000.00 per month upon performance reviews which were good.
8. By emails dated 4th June 2024 and 20th June 2024, the Respondent informed the Petitioner that they were working towards downsizing staff complement titled, “RSC Africa Staff Right sizing Approach.”
 9. Following the exercise, the Petitioner’s position as the Respondent’s Service Case worker was likely to be declared redundant, abolished or reduced. That the ongoing rightsizing process is illegal and will highly prejudice the Petitioner who is at risk of being subjected to compulsory redundancy. That the process commenced on 23/6/2024 and is to end on 31/7/2024.
 10. The Petitioner alleges violation of section 40, 45 and 46 of the Employment Act, 2 and Article 27, 41 and 43 of the Constitution of Kenya 2010.
 11. The Petitioner prays for the following reliefs:-
 - a. A declaration be and is hereby issued that the ongoing rightsizing process targeting Petitioner’s role as a Senior Case Worker that commenced on 23rd June 2024 unconstitutional, unfair and illegal contrary to section 40, 45 and 46 of the Employment Act, Section 4 of the Fair Administrative Action Act as read with Article 47 of the Constitution.
 - b. A declaration be and is hereby issued that the ongoing rightsizing process targeting the Petitioner’s role as a Senior Case Worker that commenced on 23rd June 2024 is illegal and highly prejudicial to the Petitioner who is at risk of being subjected to a compulsory redundancy. An utter violation of Article 41 of our Constitution.
 - c. An order be and is hereby issued directing that the Petitioner continue to hold his position as a Senior Case Worker pursuant to the terms and conditions of her employment contract which is effective to date.
 - d. An injunction be and is hereby issued prohibiting or restraining the Respondent, their servants, officials, representatives and or agents from advertising or having so advertised from acting thereupon, interviewing, recruiting, filling or otherwise in an any manner replacing the Petitioner in her position as a Senior Case Worker.
 - e. An injunction be and is hereby issued prohibiting or restraining the Respondent, their servants, officials, representatives and or agents from declaring the Petitioner’s position redundant.
 - f. A conservatory order does issue restraining the Respondent whether by themselves their agents and or servants from recruiting and or employing any person in the position of a Senior Case Worker or removing the name of the Petitioner from the payroll or denying her any allowance benefits or privilege, which she enjoys by virtue of her employment.
 - g. General damages for violation of the Petitioner’s Constitutional rights
 - h. Compensation for loss of income, medical insurance schemes and for salary due to the unjustified and premature redundancy of the Petitioner.
 - i. Any other order and/or relief that this honourable court may deem just and fit to grant and/ or may be necessary to meet the ends of justice.
 12. The contract for employment as Senior Case Worker dated 19/11/2021 commencing 1/10/2021 was for an indefinite term until terminated pursuant to clause 3 off the contract which provided various



modes of termination. The contract in particular provided a one month written notice of termination or payment in lieu thereof.

13. As at the time of filing the petition, the Petitioner was still serving the Respondent.

Replying Affidavit

14. The Respondent filed a replying affidavit dated 21/1/2025 sworn to by Scholastica Ndegwa, the Respondent's SCK HR Director, in which the Respondent informed court that the Petitioner was issued with a notice of intended redundancy dated 31/7/2024 and the notice was issued to the labour office. The notice was for one month. The Respondent deposed that the notice followed an extensive consultation process from April 2024 to determine the selection criteria of persons to be declared redundant including invitation to apply for the available positions after the rightsizing process had identified those positions that were to remain. That the Petitioner was invited with others to apply for a position of senior case worker but he declined to participate in the process. That the Petitioner was informed of all terminal dues payable to him upon being declared redundant, as per annex CS-9 to the replying affidavit which included:-
 - a. Salary upto 31st August 2024
 - b. One month salary in lieu of contractual notice
 - c. Payment for unutilized leave days
 - d. Payment of severance pay calculated at the rate of 15 days for every contract year worked and apportioned as appropriate for any partial year worked ; and
 - e. Medical cover up to 30th November 2024.
15. The deponent has annexed proof of payment of the said terminal benefits to the Petitioner and the discharge voucher marked "CS-10"
16. The Respondent states that the petition lacks merit and it be dismissed accordingly.

Supplementary Affidavit

17. The Petitioner filed replying affidavit dated 21/1/2025, traversed the contents of the replying affidavit, restated the contents of the petition and put the Respondent to strict proof thereof. In the meantime, Petitioner disputes that there was any valid reason for the Respondent to downsize and declare the position held by the Petitioner redundant. The Petitioner denied that she had engaged in any consultation with the Respondent in the selection process as she had travelled to Bujumbura, Burundi at the time between 30th April 2024 to 31st June 2024, for a work assignment on behalf of the Respondent.
18. That the action by the Respondent amounted to unfair labour practice. The Petitioner admits that in the June 2024 general notice. The Respondent alleged that it faced financial challenge and states that the general notice does not meet the requirement of section 40(1)(a) and (b) of the Employment Act, 2007 and violates ILO Convention No. 158 on termination of employment, 1980.
19. In short the Petitioner cites case law including Kenya Union of Commercial Food and Allied Workers v Nepriy Pharma Ltd ELRC Cause No. Ef32 of 2021 and Jane I Khalechi v Oxford University Press E.A. Ltd (2013), eKLR to emphasize that the Respondent did not issue a proper notice and failed to respect section 40 (1) (c) which provides that in selecting employees for redundancy the employee shall



have regard to seniority in time, skill, ability and reliability of each employee of the particular claim of employees affected by the redundancy.

That the petition has merit and it be granted as prayed.

Determination

20. The parties filed written submissions which the court has carefully considered together with the evidence adduced by the parties and list of authority submitted. The issues for determination are:-
 - a. Whether the Petitioner has violated the principle of constitutional avoidance.
 - b. Whether the Petition discloses any cause of action against the Respondent.
 - c. Whether the Petitioner is entitled to the reliefs sought.
21. A plain reading of the petition and the reliefs sought clearly demonstrate that the Petitioner was aggrieved by ongoing redundancy exercise and filed suit to injunct the process and have the court declare the same unlawful and in violation of sections 40, 45 and 46 of the *Employment Act*, 2007. These are provisions that govern termination of employment by an employer for operational reasons.
22. Section 40(1)(a), (b) and (c) in particular regulates the conduct of a redundancy exercise by an employer that may lead to employees losing their jobs or retaining their positions by providing the requirement for a months' notice to the employee and the labour office during which period consultation, exercise is conducted to determine the selection process in an open and fair manner and to ensure that the employees declared redundant are paid appropriate terminal dues.
23. These are matters that are ordinarily and appropriately dealt with by a normal claim in terms of the *Employment Act*; the *Employment and Labour Relations Court Act* and the *Employment and Labour Relations (Procedure) Rules* 2016 (now 2024).
24. At the time of filing this petition that process of redundancy was underway.
25. From the replying affidavit of the Respondent and the supplementary affidavit of the Petitioner, that process was concluded during the tenancy of this case and the Petitioner was selected for termination on grounds of redundancy and his employment was duly terminated and the Petitioner received his due terminal benefits upon separation.
26. Firstly, this petition was filed prematurely to pre-empt a process that is lawful in terms of section 40 as read with section 2 of the *Employment Act*. At the time the petition was filed this petition did not disclose any cause of action at all against the Respondent since it was early in the day to determine whether the Respondent was in compliance with the provisions of section 40 of the *Employment Act* with regard to notice, selection criteria and payment of terminal benefits.
27. The Petitioner did not amend the petition after his employment was declared redundant. Instead, the Petitioner received the terminal benefits paid to him in terms of section 40 of the *Employment Act* and signed a discharge voucher in that respect.
28. This petition ought not to have been filed in the first place and more importantly should have been amended to capture the new reality upon termination of the employment of the Petitioner on grounds of redundancy.
29. The petition in that regard is moot and the remedies sought ineffective to remedy any grievance that may arise from the termination of the employment of the Petitioner.



30. Furthermore, the Petitioner has not disclosed and or proved on a balance of probability that the redundancy exercise conducted by the Respondent violated Articles 41 and 47 of the Constitution in the manner it commenced and finalized the redundancy exercise. Again, the petition was filed prematurely for any reasonable court to arrive at the conclusion.
33. Accordingly, the prayers sought in prayer (a) of the petition to declare violation of section 40, 45 and 46 of the Employment Act, 2007 are inappropriately sought in a constitutional petition instead of a normal memorandum of claim.
34. The prayers for injunction, prohibiting replacement of the Petitioner by the Respondent are not supported by the averments set out in the petition or any tangible evidence adduced by the Petitioner.
35. Accordingly, the petition lacks merit and is dismissed with no order as to costs upon considering that the petitioner lost her job for no fault of her own but for operational reasons and had served the Respondent well for a considerable period of time.

It is so ordered.

DATED AT NAIROBI THIS 10TH DAY OF JULY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Koech for the Petitioner

Mr. Iseme Kamau & Maema Advocates for the Respondent

Mr. Kemboi – Court Assistant

