



**Mitsumi v Q-Sourcing Limited & another (Cause E1004 of 2024)
[2025] KEELRC 2400 (KLR) (29 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2400 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1004 OF 2024
SC RUTTO, J
AUGUST 29, 2025**

BETWEEN

HAMISI NEKE MITSUMI CLAIMANT

AND

Q-SOURCING LIMITED 1ST RESPONDENT

PAE-URS-SERVICES-AMENTUM 2ND RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 6th November 2024, the Claimant avers that on or about 1st September 2023, he unequivocally entered into an employment agreement with the 1st Respondent wherein he was employed as an Operations Manager for a fixed period of two years. The Claimant avers that he was designated to render services to the 2nd Respondent, with his pay slip being generated by the 1st Respondent.
2. The Claimant further states that on or about 13th March 2024, his contract of employment was terminated by way of redundancy. It is the Claimant's case that the termination of his employment contract was illegal, discriminatory and racially motivated.
3. On the basis of the foregoing, the Claimant seeks the following reliefs against the Respondents jointly and severally;
 - i. A sum of USD 136000 as unpaid salary.
 - ii. General damages for unlawful dismissal.
 - iii. General damages for breach of contract.
 - iv. Costs of this suit.
 - v. Interest at court rates.



- vi. Any other relief this Honourable Court may deem fit to grant.
4. In its Response to the Claim, the 1st Respondent has described itself as a certified talent acquisition and human capital management with a reputation as the leading recruitment firm and delivering top-tier human resource advisory services within the East Africa Market. According to the 1st Respondent, its relationship with the 2nd Respondent is the basis of its employment relationship with the Claimant.
5. According to the 1st Respondent, the Claimant's performance, professionalism and work dedication were never an issue and that the Claimant expertly delivered on the roles assigned to him.
6. With respect to the Claimant's termination from employment, the 1st Respondent avers that the same was not unlawful and was purely influenced by the operational requirements of the 2nd Respondent and was in accordance with the laid down procedures under the law. It is the 1st Respondent's further contention that the said termination was not in any way illegal, discriminatory, or racially motivated. Consequently, the 1st Respondent has asked the Court to dismiss the Claim with costs.
7. On its part, the 2nd Respondent has denied the existence of an employment relationship with the Claimant.
8. It is the 2nd Respondent's case that on or about May 2023, it submitted a proposal to the United States Defense Threat Reduction Agency (DTRA) for the provision of services in response to the DTRA's task order request for proposal 048 BTRP Africa Sustainment and Integrating Contract (BASIC). The 2nd Respondent further avers that following the approval of its proposal, it was engaged by DTRA as the project's Integrating Contractor.
9. That subsequently, the 2nd Respondent engaged the 1st Respondent as a sub-contractor to furnish all materials, equipment and labour (human resources, payroll and employment services) required for the performance of its contract. The 2nd Respondent further avers that under the contract, the 1st Respondent was expected to indemnify it against any employment claims.
10. Putting the Claimant to strict proof, the 2nd Respondent denies that it prompted the termination of his employment contract on racial and or other discriminatory grounds.
11. It is the 2nd Respondent's further contention that this court has no jurisdiction to determine the claim between it and the Claimant, as no employer-employee relationship subsisted between the parties. As such, the 2nd Respondent prays that the Claim be dismissed with costs.
12. The matter proceeded for hearing on 24th July 2025, during which all parties called oral evidence.

Claimant's Case

13. The Claimant testified in support of his case and to start with, he sought to adopt his witness statement together with the list and bundle of documents filed alongside the Memorandum of Claim to constitute his evidence in chief.
14. It was the Claimant's testimony that on or on 4th October, 2023, he was formally notified by the 1st Respondent that he had been given additional responsibilities and he would be reporting to the Project Manager and serving both PAE Government services and Amentum (URS Federal Services) with a confirmation that the terms of employment engrossed in the employment contract of 1st September, 2023 remained unchanged.
15. The Claimant contended that the termination of his contract of employment on redundancy fell short of satisfying the full provisions of the law.



16. It was the Claimant's further testimony that the nexus between the 1st and 2nd Respondent in terms of their recruitment process is well known to them and he holds them liable jointly and severally.

1st Respondent's Case

17. The 1st Respondent called oral evidence through Mr. Timothy Kuyiki who testified as RW1. Mr. Kuyiki identified himself as the 1st Respondent's Human Resource Business Partner. Equally, he adopted his witness statement and the list and bundle of documents filed on behalf of the 1st Respondent to constitute his evidence in chief.
18. It was RW1's evidence that the Claimant's employer remained the 1st Respondent even though he was stationed at the 2nd Respondent's offices to perform his duties, as this was the nature of the service agreement between the two Respondents. That the 1st Respondent was responsible for the Claimant's salary, terms of employment and all matters which related to the Claimant's human resources and management.
19. RW1 further stated that the decision to terminate the Claimant's employment was a direct consequence of the 2nd Respondent's decision to restructure their operations, which had a direct impact on the Claimant's role.
20. RW1 added that the 2nd Respondent informed the 1st Respondent of the restructuring on 13th March 2024, and the 1st Respondent received a letter from the 2nd Respondent on 14th March 2024 to that effect. That upon receiving notification of the intended restructuring from the 2nd Respondent, the 1st Respondent initiated the redundancy process in accordance with the Kenyan law.
21. RW1 further stated that on 13th March 2024, a consultative engagement session with the Claimant was held and during this meeting, he was informed of the restructuring by the 2nd Respondent and the impact that the restructuring had on his position. It was further explained that the Claimant's role was identified as redundant due to these operational changes.
22. Thereafter, the 1st Respondent issued the Claimant with a 30 day notice of termination on account of redundancy and a copy of the letter sent to the Nairobi County Labour Office.
23. According to RW1, the 1st Respondent opted to pay the Claimant one month's wages in lieu of notice and therefore, on 2nd April 2024, the 1st Respondent processed and paid the Claimant his final dues, totalling a net amount of USD 10,300. The amount included his salary for the days worked in the month of March, one month's wages in lieu of notice, and payment for accrued annual leave, less statutory deductions.
24. RW1 further averred that as the Claimant had not completed one full year of continuous service with the 1st respondent at the time of termination, he was not entitled to severance pay.
25. RW1 further testified that the 1st Respondent followed the legally mandated procedures for redundancy and there were no ulterior motives behind the decision to declare the Claimant redundant.
26. RW1 was categorical that the Claimant's termination was valid and there are no salary arrears pending and /or due to him.

2nd Respondent's Case

27. The 2nd Respondent called oral evidence through Mr. Eric Graham who testified as RW2. Mr. Graham identified himself as the 2nd Respondent's Former Project Manager for BASIC. Equally, RW2 adopted



his witness statement and the list and bundle of documents filed on behalf of the 2nd Respondent to constitute his evidence in chief.

28. It was RW2's evidence that the 2nd Respondent never entered into an agreement with the Claimant for the provision of consultancy services between March and May 2023, as alleged or at all.
29. According to RW2, the only reason the Claimant was mentioned in the 2nd Respondent's proposal information for the TORP 048 BASIC Procurement was to satisfy DTRA's requirement to add information on all foreign personnel that would be working on the project to the proposal documents.
30. RW2 further stated that the Claimant's additional responsibilities and/or change of role as allegedly communicated by the 1st Respondent did not create an employment relationship between him and the 2nd Respondent.
31. RW2 further denied that the 2nd Respondent prompted the termination of the Claimant's employment contract on racial and/or any other discriminatory grounds. In his view, the allegations made by the Claimant in this regard are without factual basis.
32. It was RW2's further evidence that the Claimant is not entitled to general damages for breach of contract, general damages for unlawful dismissal, special damages and/or alleged pay for consultancy services as alleged in the Statement of Claim.
33. RW2 further averred that the 2nd Respondent's agent and/or employees did not confront or insult the Claimant as alleged or at all.
34. According to RW2, the suit raises no reasonable cause of action against the 2nd Respondent and should be dismissed in its entirety with costs.

Submissions

35. It was submitted on behalf of the Claimant that his employment was wrongfully terminated by the 1st Respondent, as the letter declaring him redundant was served on him on the very day he was terminated from employment. It was further submitted that no fair procedure was followed and no valid reason was provided and the statutory requirements, including issuing a certificate of service, were ignored by the Respondents. In support of the Claimant's case, reference was made to the cases of Wangari v Simba Fresh Produce Limited (2024) KEELRC 2074 (KLR), National Bank of Kenya v Samuel Nguru Mutonya (2019) KECA 4040 (KLR) and Wekesa v Mount Kenya University (2024) KEELRC 538 (KLR).
36. It was further submitted on behalf of the Claimant that the 1st Respondent acted as the 2nd Respondent's agent and both are jointly liable for the wrongful termination.
37. On the part of the 1st Respondent, it was submitted that its relationship with the Claimant constituted an employer-employee relationship as per the definition of a contract of service under the [Employment Act](#). In support of this argument, the case of Stanley Mungai Muchai v National Oil Corporation of Kenya (2012) eKLR was cited.
38. The 1st Respondent further submitted that the contract between the Respondents herein was terminated by the 2nd Respondent, therefore rendering the services of the Claimant redundant. Therefore, the requirements of the 1st Respondent for the Claimant to carry out the work of Operations Manager ceased and the 1st Respondent thus had no choice but to terminate the Claimant's employment.



39. Referencing the case of *Cargill Kenya Limited v Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR) (22 October 2021) (Judgment), the 1st Respondent further submitted that it followed the due procedure envisaged under Section 40 of the *Employment Act*.
40. It was submitted by the 2nd Respondent that the Claimant had failed to produce any contract of service or consultancy agreement he executed with the 2nd Respondent. In support of this position, the 2nd Respondent placed reliance on the cases of *Everret Aviation Ltd v Kenya Revenue Authority* [2013] eKLR and *Elizabeth Washeke & Others v Airtel Networks (K) Ltd & Another* [2013] eKLR.
41. Citing the case of *Eldotec Consultancy Services Ltd v Adhiambo & 5 others* [2025], the 2nd Respondent further posited that in the event it had any consultancy agreement with the Claimant, this Court lacks jurisdiction over such a claim as the alleged consultant is not, in substance, an ‘employee’ as defined under the *Employment Act*.

Analysis and Determination

42. Having considered the issues arising from the pleadings by all parties herein, the evidentiary material as well as the rival submissions, it is evident that this Court is being called to resolve the following questions: -
 - a. Who was the Claimant’s employer?
 - b. Depending on (a), whether the Claimant was unfairly and unlawfully terminated from employment;
 - c. Is the Claimant entitled to the reliefs sought?

Who was the Claimant’s employer?

43. Despite the Claimant pleading at paragraph 5 of the Statement of Claim that he unequivocally entered into a contract of employment with the 1st Respondent on 1st September 2023, it is his case that the two Respondents are liable jointly and severally for the termination of his employment.
44. It is worth pointing out at the outset that the 1st Respondent has admitted to the existence of an employment relationship with the Claimant, while the 2nd Respondent has denied employing the Claimant and, to this end, has put him to strict proof.
45. Indeed, RW1 testified that the 1st Respondent was responsible for the Claimant’s salary and terms of employment.
46. Worthy to note is that both the Claimant and the 1st Respondent exhibited a copy of a contract of employment dated 1st September 2023. It is evident from the said contract of employment that the Claimant was an employee of the 1st Respondent, having been engaged to serve in the position of Operations Manager. Notably, in terms of Clause 6 of the said contract of employment, the Claimant’s place of work was to be at the 2nd Respondent.
47. What manifests from the foregoing is that the Claimant and the 1st Respondent had a subsisting employment relationship, and in this regard, the Claimant was rendering his services to the 2nd Respondent at the behest of the 1st Respondent.
48. In support of its position that the Claimant was not its employee, the 2nd Respondent exhibited a copy of a Sub-Contract Agreement it executed with the 1st Respondent on 2nd October 2023. As



can be discerned from the said Subcontract Agreement, the 1st Respondent was engaged by the 2nd Respondent to provide human resources, payroll and employment services.

49. It is apparent that the arrangement existing between the 1st and 2nd Respondents is what is commonly referred to as labour outsourcing, which is now an accepted business strategy. In such an arrangement, one company contracts out the supply of services to another company, which then carries out the work using its own employees.
50. In such instances, the company providing the labour services takes on the responsibility of recruiting, employing, remunerating and managing the workers deployed to the company receiving the labour services. The reasons for labour outsourcing are varied and include reduced labour costs, flexibility where the work is project-based, access to specialized skills, reduced administrative burden and attendant costs, risk management, and the need for strategic focus on the core business of the enterprise.
51. Therefore, it would not be out of the ordinary for the 1st Respondent to be contracted by the 2nd Respondent under a similar arrangement.
52. It thus follows that in as much as the Claimant herein was engaged by the 1st Respondent to render his services to the 2nd Respondent, this did not change his employment relationship with the 1st Respondent. He remained an employee of the 1st Respondent for all intents and purposes.
53. Indeed, this position is further confirmed by the fact that the Claimant's contract of employment was terminated by the 1st Respondent as opposed to the 2nd Respondent.
54. Further to the foregoing, the Claimant's terminal benefits were paid by the 1st Respondent following the termination of his employment.
55. In light of the foregoing overwhelming evidence, the Court arrives at the irresistible conclusion that the Claimant was an employee of the 1st Respondent and not the 2nd Respondent.
56. Having determined that the Claimant was an employee of the 1st Respondent, the Claimant's case against the 2nd Respondent collapses at this point.

Unfair and unlawful termination?

57. It is the Claimant's case that his termination from employment was illegal and racially motivated.
58. As per the Claimant's letter of termination from employment, it is clear that the employment relationship came to an end on account of redundancy.
59. Section 2 of the *Employment Act* defines "redundancy" to mean "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".
60. It is now settled that termination of employment on grounds of redundancy ought to be both substantially justified and procedurally fair. Such was the holding by the Court of Appeal in the case of *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR.
61. In this regard, substantive justification refers to the reasons leading to the redundancy, while procedural fairness has to do with the procedure applied in effecting the redundancy.



62. On the aspect of substantive justification, an employer is required to prove that the reason for the termination is valid, fair and based on its operational requirements. In default, the termination is unfair in light of the provisions of Section 45(2) (b) (ii) of the *Employment Act*.
63. In the present case, the reason assigned for the termination of the Claimant's employment on account of redundancy was the 1st Respondent's client's internal restructuring, which had resulted in the cancellation of the Claimant's role.
64. In support of its case, the 1st Respondent exhibited a copy of an undated letter from the 2nd Respondent, referenced "Partial Termination Notice for Subcontract Order S4865T0001-KEN-23001 for Human Resources, Payroll and Employment Services in support of BTRP Africa Project."
65. In the said letter, the 2nd Respondent indicated its termination of all work related to the position of the Operations Manager under the subcontract in question.
66. From the record, the Claimant was holding the position of Operations Manager and his place of work was the 2nd Respondent. Therefore, his position was significantly impacted by the partial termination of the subcontract by the 2nd Respondent. Consequently, this had a ripple effect on the Claimant's continued engagement with the 1st Respondent.
67. It can thus be said that the Claimant's contract employment was terminated based on the 1st Respondent's operational requirements.
68. In light of the foregoing, I am led to conclude that the 1st Respondent had a valid and fair reason to terminate the employment of the Claimant based on its operational requirements. This is bearing in mind that the Court has not discerned any other reasons for the termination of the Claimant's employment besides those expressed in the 2nd Respondent's undated letter.
69. To this end, the Court is persuaded that there was substantive justification for the termination of the Claimant's contract of employment on the basis of redundancy.
70. With that being said, I now turn to consider whether the 1st Respondent complied with the procedural requirements in terminating the Claimant's employment.
71. The procedure to be applied in the termination of employment on grounds of redundancy is stipulated under Section 40(1) of the *Employment Act*. Under the said statutory provision, the following conditions must precede a redundancy: -
 - 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 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.
72. In the instant case, the Claimant was notified of his termination from employment on 13th March 2024, the same day the termination was to take effect. It is thus evident that the 1st Respondent did not comply with the requirement for notice under Section 40(1) (a) and (b) aforementioned. Here is why.
73. There was no notice issued by the 1st Respondent to the Claimant communicating its intention to declare his position redundant prior to the termination on 13th March 2024. As can be discerned from Section 40(1) (a) and (b), the prescribed notice period of the intention to declare a redundancy is not less than a month and must be made prior to the actual termination on account of redundancy.
74. What was issued to the Claimant in this case was a notice informing him that his employment had been terminated. It was final in nature as opposed to an "intention" to declare a redundancy as contemplated under Section 40 (1) (a) and (b) of the *Employment Act*.
75. In *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others* (supra) Maraga JA, (as he then was) addressed this issue as follows: -
- “My understanding of this provision is that when an employer contemplates redundancy, he should first give a general notice of that intention to the employees likely to be affected or their union. It is that notice that will elicit consultation between the parties,”
76. I must also add that in as much as the 1st Respondent opted to pay the Claimant one month's salary in lieu of notice, this did not supplant the requirement of issuance of a notice of intention to declare a redundancy under Section 40 (1) (a) and (b) of the *Employment Act*.
77. It should also be appreciated that compliance with Section 40(1)(f) is with respect to payment of one month's salary as opposed to issuance of the actual notice. Such was the determination by the Court of Appeal in *Cargill Kenya Limited vs Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR), thus:
- “In this respect, it is notable that a plain and contextual reading of subsection 1(f) shows that its express objective and purpose is the payment required to be made to employees affected by redundancy, and not the issuance of a notice. It is also notable that the legislative intention from the arrangement and content of the enactments in section 40 subsection (1) (d) to (g) was the provision of payments to be made to affected employees in a redundancy, and section 1(f) can only thus be construed within this context...” Underlined for emphasis
78. Granted, the 1st Respondent engaged the Claimant in a consultative meeting upon receiving the notification of the partial termination of the subcontract. It was therefore expected that it would issue the Claimant with a notice of its intention to declare his position redundant prior to proceeding with the termination. As the 1st Respondent failed to do so, it is at fault.



79. In light of the foregoing, the Court finds that the 1st Respondent did not substantially comply with the statutory requirement under Section 40 (1) (a) and (b) of the [Employment Act](#) with respect to the requirement for Notice and to that extent, it acted in error.
80. With respect to the requirement for statutory payments under Section 40(1) (e) (f) and (g) of the [Employment Act](#), it is notable that the Claimant was paid salary for the days worked, notice pay and accrued leave days. In the same vein, it is not in dispute that the Claimant had worked for the Respondent for a period of 6 months hence had not completed one year of service. Therefore, payment of severance pay under Clause (g) of Section 40(1) does not arise.
81. Testifying during cross-examination, the Claimant confirmed that he received the sum of USD 10,400 being his final dues as per the pay slip exhibited by the 1st Respondent. Accordingly, the Court has no reason to doubt that the 1st Respondent made the statutory payments due to the Claimant under Section 40(1) (e) and (f) of the [Employment Act](#).
82. All in all, the Court returns that the termination of the Claimant on the basis of redundancy was procedurally flawed, in that the 1st Respondent did not comply with the notice requirement under Section 40(1) (a) and (b) of the [Employment Act](#).
83. On this score, the Court concurs with the holding in the case of Hesbon Ngaruiya Waigi v Equitorial Commercial Bank Limited (2013) eKLR, that where redundancy is declared by an employer, the procedure to follow is as set out under the provisions of Section 40 of the [Employment Act](#) and where not followed, any termination, as a result, will be deemed unprocedural and unfair.
84. That said, I now turn to consider whether the Claimant is entitled to the reliefs sought.

Reliefs

85. As the Court has found that the 1st Respondent did not comply with the procedural requirements under Section 40(1) (a) and (b) of the [Employment Act](#), the Claimant is awarded compensatory damages equivalent to one (1) month of his gross salary. In issuing this award, the Court has considered the length of the employment relationship, which was relatively short, as well as the finding by the Court that the termination of the Claimant's employment was valid, fair and related to the 1st Respondent's operational requirements, thus, the damages awarded are nominal.
86. The claims for the balance of the contract period and general damages for breach of contract are declined as the Court has found that the 1st Respondent had a valid and fair reason to terminate the Claimant's contract of employment on account of redundancy.
87. Similarly, the claim for Kshs 12,288,000/- for consultancy services is disallowed as the Claimant has not laid down a basis for the same. Besides, this relief being in the nature of special damages, it follows that the Claimant was bound to prove the same to the required standard. Nevertheless, the Claimant failed to do so.

Orders

88. In the final analysis, the Court enters judgment against the 1st Respondent and awards the Claimant compensatory damages in the sum of USD 8,000.00 being equivalent to one (1) month of his gross salary. Interest shall apply to the award at court rates from the date of Judgment until payment in full.
89. The 1st Respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF AUGUST 2025.



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STELLA RUTTO

JUDGE

In the presence of

For the Claimant Mr. Maosa

For the 1st Respondent Ms. Nyambura

For the 2nd Respondent Mr. Omenta

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

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