



**Wamalwa v Sagemcom Kenya Limited (Cause 210 of 2020)
[2024] KEELRC 688 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 688 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 210 OF 2020
J RIKA, J
MARCH 28, 2024**

BETWEEN

GEOFFREY BARASA WAMALWA CLAIMANT

AND

SAGEMCOM KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 26th May 2020.
2. He states that he was employed by the Respondent as a Projects Manager, on 10th May 2010.
3. He received a letter from the Respondent dated 28th July 2017, terminating his contract with immediate effect.
4. It was alleged that the Respondent was restructuring, and positions would become redundant, as a result of the Respondent losing a client contract.
5. The Claimant states that he was not issued notice of redundancy, and the Labour Office was not notified.
6. He was not consulted. He was the only Employee affected. The selection criteria, was not explained. His position was filled by another person. No other Employee in Kenya or at the Respondent's Head Office in France, was affected by redundancy. Redundancy was discriminatory, illegal and unfair.
7. The Claimant earned a monthly net salary of Kshs. 222,489, as of the date of termination.
8. His prayers are: -
 - a. Declaration that redundancy was unfair and unlawful.
 - b. Damages for discrimination.



- c. Notice of 1 month at Kshs. 222,489.
 - d. Service pay for 7 years at Kshs 778,712.
 - e. 12 months' salary in compensation for unfair termination at Kshs. 2,669,869.
 - f. Costs.
 - g. Interest.
9. The Respondent filed its Statement of Response, dated 23rd December 2020. Its position, is that the Claimant was employed by a company called Sagem Communications Limited, from 10th May 2010, not by the Respondent.
 10. He was issued a letter dated 26th June 2017, discussing the operational plans of the Respondent. All due process was followed. A notice was issued to the Labour Office. The Claimant consulted with the Respondent's Head of Operations, Watson Kambo, and did not express any dissatisfaction with the exercise. He wrote an e-mail to the Respondent's Managing Director, Gregoire Durival on 31st July 2017, expressing his satisfaction with the process.
 11. Redundancy took place after evaluation, with the objective of financial and operational sustainability. The notice explained that there was dramatic downturn in site construction activity in Kenya, the Respondent's area of operation. It was explained that the Respondent had lost a contract with Safaricom Limited. He was issued the notice of intended redundancy and notice of termination.
 12. He was paid severance at the rate of 15 days' salary for each complete year of service. He was not targeted, or his position filled by another person. He was actively subscribed to N.S.S.F and not eligible for service pay. The Respondent urges the Court to find that termination was fair and lawful, and dismiss the Claim with costs.
 13. The preliminary objection was dealt with by the Court, through a Ruling delivered on 3rd December 2020. It was the view of the Court that Sagem Communications and Sagecom Kenya Limited, are part of the same business which employed the Claimant. This not an aspect of the dispute, that is due for review in this Judgment.
 14. Subsequently the Claimant gave evidence on 29th November 2022. His sole witness Watson Wanjohi Kambo, gave evidence on 22nd March 2023, closing the Claimant's evidence. Gregoire Durival gave evidence for the Respondent on 17th October 2023, closing the hearing. The Claim was last mentioned before the Court on 15th December 2023, when Parties confirmed filing and exchange of their closing submissions.
 15. The Claimant relied on his witness statement and documents exhibited as number 1-9, in his evidence-in-chief. He restated the contents of his Statement of Claim, on his employment history and the terms and conditions of service.
 16. He disputed that there was a genuine redundancy situation. There were about 30 – 40 active construction sites, at the time the Respondent terminated his contract. The Respondent had been contracted by Safaricom Plc as well as Telkom Kenya. The Respondent was constructing Telkom Kenya infrastructure. It had contracts with other entities in the industry.
 17. There was a quiet moment after the Claimant received notice. He continued to work, until he received termination letter dated 31st July 2017. It was effective 28th July 2017.



18. Colleagues in fibre installation and administration, who were in senior management with the Claimant, were not affected by redundancy.
19. The Respondent did not depend on projects to sustain its business. It had various branches outside Kenya. The branches supported one another, when business locally, was low.
20. The Claimant's role involved execution of GSM project, on site acquisition, budgeting, supervision of staff and contractors, and representing the Respondent. He was very busy. There was no diminished work, to justify redundancy.
21. The Claimant had been asked by the CEO to resign. If he did not, his terminal dues would be delayed. He needed the money and wrote back, accepting termination.
22. Cross-examined, he told the Court that he was aware it is in the discretion of an Employer, to declare redundancy. He headed projects department. Watson Kambo was Head of Operations. He was like the Deputy CEO.
23. The Claimant received the notice of redundancy. The reasons were explained in the notice. He did not know if it was copied to the Labour Office. The notice indicates it was copied to the Labour Office. Redundancy dues were computed. The Claimant belonged to a pension scheme. He accepted Respondent's decision, so that he is paid his dues. He was pressured to write a letter of resignation. He declined. He stated he was grateful to the Respondent, in accepting termination.
24. He did not have evidence that someone else, was employed in his place. He did not know if the Respondent lost its contract with Safaricom. He was subscribed to N.S.S.F. His years of service and seniority demanded that he is consulted before termination.
25. Redirected, he told the Court that there was change in the Respondent's structure, but he was the only one affected. Watson's contract was terminated on 17th April 2020, while the Claimant's was terminated on 28th July 2017. No alternatives to redundancy were put to him. He was not aware of loss of Safaricom contract, but normal highs and lows in a business were expected.
26. Watson Kambo adopted his witness statement on record, in his evidence-in-chief.
27. Cross-examined, he told the Court that he worked for the Respondent, alongside the Claimant. The Claimant was Projects Manager, GSM. He had about 4 Employees under him.
28. In Kambo's view, the Respondent was doing well. It had been contracted by various entities. It was beginning another project with KPLC. The project with Safaricom was ongoing.
29. There was bad blood between the Claimant and the Respondent. The Respondent's Management kept saying that the Claimant had to leave. Kambo could not document bad blood.
30. Kambo had just been employed. He came in, in May 2017, to start a new project. His salary, at Kshs. 450,000 monthly, was higher than the Claimant's. In 2017-2018, the Respondent made over 2 million USD in turnover. Nobody else was laid off.
31. Kambo was Head of Operations, but was not aware that the Respondent was restructuring. He joined the Respondent on the understanding that the Respondent's business was performing well.
32. Kambo had various Project Managers under him, who included the Claimant. He did not recommend restructuring. He did not recommend that the Claimant's contract is terminated on account of redundancy.



33. The Managing Director called the Claimant to his office, and in the presence of Kambo, pulled out a notice, informing the Claimant that his position had been declared redundant. Kambo had experienced redundancy exercises in other companies. Those exercises were smooth, marked with proper consultations and counselling.
34. Redirected, Kambo told the Court that the Claimant's letter of termination is dated 31st July 2017. It was effective immediately. Kambo had just joined the Respondent. He had been advised that the Respondent was doing well financially.
35. Gregoire Durival was the Managing Director of the Respondent, at the time the dispute arose. He was based at the Respondent's Head Office in France, at the time of giving evidence. He left Kenya in 2021, due to low business activity. He confirmed that the Claimant was employed by the Respondent. Durival adopted his witness statement and documents filed by the Respondent, exhibit 1-4, in his evidence-in-chief. The Claimant wrote to Durival, accepting the Respondent's decision. He was paid all his dues.
36. Cross-examined, he confirmed that the Claimant worked for the Respondent between 2010 and 2017. The Respondent had different construction contracts, but experienced reduced business activity, at the time the Claimant's contract was terminated. The Respondent hired, in accordance with the volume of work. It was still active in Kenya, but with limited activity.
37. The Claimant's contract was not fixed-term. It was not tied to any project. The contract with Safaricom ended in 2017. Kambo was headhunted by the Respondent, from Ericsson Cameroon, at around the same time the Claimant left.
38. The Respondent advertised for electrical engineers in 2021. It stated that business in the region was growing. This was in 2021. The Respondent issued notice of intention to declare redundancy, and another on termination. The second notice affected the Claimant alone. It was the same time the Respondent recruited Kambo. The Respondent had plans to grow. It did not exhibit its organogram, to show structural changes carried out. There were discussions involving the Claimant and his Manager. The Claimant thanked Durival for extending his contract by a month.
39. Redirected, Durival told the Court that Kambo was the Operations Manager, and supervised Project Managers, including the Claimant. The Respondent had contracts with Telkom, Safaricom and Airtel. The Claimant clearly understood that the contract with Safaricom was ended. He understood that there was no project, he could continue managing.
40. Kambo left in 2020. The Respondent did not have any more work for him after 2020. Others were laid off. The Respondent had only a small contract with Kenya Trust remaining, which could not sustain everyone. It opted to outsource some functions.
41. The issues are whether the Claimant's contract was terminated fairly and lawfully, on account of redundancy; and whether he merits the prayers sought.

The Court Finds

42. There is no dispute that the Claimant was employed by the Respondent as Project Manager, effective 10th May 2010. His contract was terminated by the Respondent through a letter referenced "Termination on the Grounds of Redundancy," dated 28th July 2017. The letter is signed by the Respondent's President, Patrick Sevan. Termination was effective on the date of the letter.



43. The Claimant received his final dues through a payment voucher dated 30th August 2017. The sum indicated on the voucher is Kshs. 1,056,826. The Respondent states that this comprised severance at the rate of 15 days' salary for each complete year of service; and pending annual leave days.
44. Procedure and validity of redundancy. Although the Claimant and his witness Watson Kambo, vehemently protested that redundancy did not meet the statutory standards of fairness under Section 40 of the *Employment Act*, the Claimant accepted both procedure and reason, in his e-mail to Managing Director, Gregoire Durival, dated 31st July 2017, the date of termination.
45. If there were any infringements of redundancy law under the *Employment Act*, the Claimant acquiesced, collected his redundancy cheque, and was ready to move on, until 26th May 2020, almost 3 years after termination, when he decided to file this Claim.

46. He writes in his e-mail under review that: -

“ ...I acknowledge receipt of the termination letter from Sagemcom President, Mr. Patrick Sevia via yourself.

I also confirm that the same is well-explained to me by Mr. Watson. I do appreciate the one-month contract extension, as explained by Mr. Watson and I hereby confirm acceptance. The termination letter will be signed, and a copy will be delivered to Mr. Watson.

Otherwise I would like to thank you and the entire Sagemcom fraternity for according me an opportunity to serve the entire 7 years. I wish Sagemcom the best of luck in its business endeavours. Am however available, in case of any future assignments that you may need my assistance.

Thank you.

Geoffrey B. Wamalwa.”

47. This e-mail does not have a hint of grievances the Claimant alleges he had, against redundancy. He states that the process was well-explained by his Manager Kambo. He understood the explanation. He did not complain about lack of consultations. He was consulted by the Respondent through Kambo, and was satisfied with the exercise.
48. He did not question the genuineness of redundancy. He accepted the reasons that were explained to him by the Respondent. He did not question notices, or the selection criteria. He did not protest that he was discriminated against. He confirmed that everything was well-explained and understood. He undertook to sign the letter of termination, signifying acceptance of the decision. He did not protest about anything on procedure or validity of reasons.
49. He thanked the Respondent, and offered himself for future service with the Respondent, should an opportunity arise. Employees who are aggrieved by their Employers' decisions do not normally offer to work for the same Employers in the future, should an opportunity arise. Termination appeared amicable, and executed through the consensus of the Parties. There was no grievance.
50. A month later, the Claimant collected his redundancy cheque and went silent. It was only three years later, that he filed this Claim in afterthought. He sought the aid of Kambo, his former Manager, who himself left the Respondent in the same year the Claimant filed his Claim, in 2020. Kambo was presented to the Court to give credence to the Claim, but offered no explanation for the e-mail written by the Claimant dated 31st July 2017, accepting termination. Kambo featured in this e-mail prominently, having been the Manager through whom the Respondent communicated with the



Claimant. He was the Claimant's immediate supervisor, and ought to have understood well, the effect of the Claimant's e-mail.

51. Remedies. The Court is satisfied that the Claimant accepted termination on account of redundancy, and accepted what was offered by the Respondent, in redundancy package. There was consensus about the Claimant's separation from the Respondent. His Claim was filed in afterthought, 3 years after he accepted the Respondent's decision, and after he collected his settlement cheque. He does not merit additional benefits. He does not merit compensation or damages as pleaded.

It Is Ordered:

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF MARCH 2024.

JAMES RIKA

JUDGE

