



Mbuthia v Standard Chartered Bank Kenya Limited (Cause E421 of 2020) [2024] KEELRC 577 (KLR) (15 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 577 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E421 OF 2020
B ONGAYA, J
MARCH 15, 2024**

**BETWEEN
CHARLES JOHN MACHARIA MBUTHIA CLAIMANT
AND
STANDARD CHARTERED BANK KENYA LIMITED RESPONDENT**

JUDGMENT

1. The claimant filed the amended statement of claim dated 04.05.2023 through OMK Advocates, LLP. The claimant prayed for judgment against the respondent for:
 - i. A declaration that the termination of the claimant's employment vide the Notice of Redundancy dated 31st October 2020 was unfair, unlawful and illegal.
 - ii. General damages for unlawful termination.
 - iii. A declaration that the Respondent pays to the Claimant an annual bonus pay of Kshs. 2,331,000/= that was payable on 25th March 2020 with interest from that date to the date of payment.
 - iv. A declaration the Respondent pays to the Claimant telephone allowance of Kshs. 10,000/= for the months of January and February 2020 which was not paid.
 - v. Expectation Damages of Kshs. 700,000/= Golf Club membership fees.
 - vi. A declaration for annual increment of the claimant's salary at 2% effective 1st April 2019 and increment of 5% effective 1st April 2020 until 31st October 2020 as given to the other employees of the Respondent.



- vii. Special damages for loss of insurance cover for retrenchment equivalent to twelve (12) months taxable income after adjustment for the annual increments of 2% and 5% for the years 2019 and 2020 respectively.
 - viii. Compensation for the financial turmoil experienced by the claimant during the two months period that is January and February 2020, period during which he did not receive his monthly salary on time as a direct consequence of the decision of the Respondent to withhold his salary.
 - ix. A declaration that section 3.1 of the Group Disciplinary Procedure is unlawful insofar as it denies employees the right to be represented by an external lawyer at both disciplinary and appeal hearings, yet it permitted the bank to be represented by an employee who is a practicing advocate and who chaired the disciplinary meeting and signed the resultant letter of termination.
 - x. Exemplary damages for malfeasance by the Respondent.
 - xi. Costs and interest.
2. The respondent filed the amended memorandum of response dated July 4, 2023 through Obura Mbeche & Company Advocates. The respondent prayed that the claim be dismissed with costs.
 3. The claimant's case was that he was employed by the respondent herein as a Relationship Manager with effect from 15th May 2015 and confirmed in appointment on 5th October 2015.
 4. That in 2016 he was ranked the top Relationship Manager among all Relationship Managers nationally via a survey conducted by IPSOS a leading international market research firm.
 5. That his issues began in April 2018 when there was a departmental re-organization resulting to him having a new line manager.
 6. That vide a letter dated 11.12.19, the claimant was invited to a disciplinary meeting for having failed to achieve the objectives of his performance improvement plan.
 7. The claimant pleaded that his line manager had been imposing unrealistic targets on him.
 8. That after the disciplinary meeting, the claimant was then issued with a notice of termination of employment dated December 19, 2019.
 9. That he then made an appeal on the termination to the Head of Human Resources which was held on January 17, 2020 and on 19.02.2020 he received a letter dated 17.02.20 reinstating his employment.
 10. That the reinstatement letter also served as a warning letter which the claimant pleaded that it did not disclose the reasons of the warning and did not meet the requirements of a warning letter as per section 8.1 (b) and (e) the Respondent's Group Disciplinary procedure.
 11. That the said warning had an impact of him not being entitled to any bonuses as is the policy of the company.
 12. That upon returning to work following the reinstatement on 09.03.2020, he was issued with a new laptop since his previous laptop had been reformatted which caused him to lose all his previous documents, which in turn affected his work and customer portfolio.
 13. The claimant pleaded that his line manager had never completed any of his appraisal processes, which also affected the performance of the claimant and his salary increment and bonus.



14. That on September 1, 2020 all employees of Global Banking and Commercial Banking were invited for a virtual meeting in which they were informed for the first time about an impending redundancy and retrenchment exercise by the respondent.
15. That the Head of Corporate, Commercial and Institutional banking (CCIB) also informed the employees those interviews will be conducted to determine employees that will be retained.
16. The claimant pleaded that he was invited for the said interview and he states that the job description was similar as his, he however, was not successful and was issued with a notice of risk of redundancy on September 29, 2020.
17. That on October 31, 2020 the claimant was declared redundant through a notice, which also served as a severance pay letter.
18. That the respondent had an insurance policy against retrenchment which the claimant states that he joined late due to the earlier termination and blames the respondent terming the termination as unfair in the first place.
19. The claimant pleaded that the respondent's redundancy exercise was irregular and unlawful since it failed to factor the Last in-last out selection process since some employees that had come after him were retained.
20. The claimant pleaded that he is entitled to the prayers sought in his amended memorandum of claim and prayed that the claim be allowed as prayed.
21. The respondent in the response confirmed that the respondent employed the claimant.
22. The respondent denied the allegations by the claimant and pleaded that the claimant was bound by the respondent's Group Code of Conduct and that the claimant had failed to meet his 2019 performance targets and objectives.
23. That it was due to the failure to perform that the claimant was called to a disciplinary hearing where he was accompanied by a colleague and given opportunity to duly defend himself.
24. That on December 19, 2019 the claimant's employment was terminated for poor performance.
25. That upon appeal that partially succeeded, the respondent decided to reduce the claimant's sanction from termination to a final warning letter on basis of poor performance and reinstated him to his position.
26. The respondent pleaded that it had not breached any laws or company policies in how it handled the affairs of the claimant and that his grievances are farfetched.
27. The respondent pleaded that in rendering the claimant redundant it followed due process including notifying the concerned labour office and as well-paid heed to the relevant statutory considerations including trying to place the claimant in an alternative role to no avail.
28. The respondent concluded by pleading that the claimant's redundancy was lawful, just and fair and that the general damages for unlawful and unfair termination are not justifiable.
29. The respondent prayed that the claimant's suit be dismissed with costs.
30. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:



- a. The respondent has by his own submissions at paragraph 47 confirmed that the respondent was undertaking a retrenchment exercise for which the respondent instituted a Vantage Insurance Policy against Retrenchment. By that assertion and the alternatives offered through the interviews at which the claimant was not successful, there is no doubt that the respondent was engaged in a genuine redundancy. RW1 and RW2 confirmed a restructuring in 2020 affected Relationship Managers. The selection of staff to be affected was done by interviews where all relationship Managers reapplied for the job. The claimant replied and submitted to the process but was unsuccessful at the interviews. The Court finds that as at termination there existed genuine redundancy situation as envisaged in section 43 of the *Employment Act* as constituting a genuine reason for termination.
- b. The claimant was given a thirty days' notice per section 40 of the *Act*. The notice to the union was dated September 1, 2020. On 06.07.2020 the claimant alongside other employees were notified of the looming strike. A similar notice was issued to Ministry of Labour. The claimant's concern is that it was not issued to the area labour officer. However, in the instant case, the claimant was consulted and he participated in the interviews for alternative employment. The Court finds for the respondent that due and fair procedure was invoked as contemplated in section 40 and 45 of the *Act*. It cannot be said that the respondent adopted an unfair procedure. The failure to apply for the insurance cover against the retrenchment has not been shown to be rooted in the contract of service. The respondent is found to have substantially accorded the claimant a fair process.
- c. There being no unfair termination the claim must fail. The claimant made no submissions to justify the reliefs enumerated in the amended statement of claim and they are deemed abandoned for want of justification. The respondent's submissions that the remedies are not available are upheld. In consideration of the claimant's inability to apply and benefit from the insurance cover against the retrenchment, each party to bear own costs.

31. In conclusion the suit is dismissed with orders each party to bear own costs of the proceedings.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 15TH MARCH 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

