



**Sserwanga & another v Sendwave Limited (ZEPZ) (Cause E705 of 2023) [2024] KEELRC 905 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 905 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E705 OF 2023  
L NDOLO, J  
APRIL 25, 2024**

**BETWEEN**

**PEACE NAKATO SSERWANGA ..... 1<sup>ST</sup> CLAIMANT**

**PURITY WAMBURA GAKURU ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**SENDWAVE LIMITED (ZEPZ) ..... RESPONDENT**

**JUDGMENT**

1. This claim, which was filed alongside an interlocutory application under certificate of urgency, was initially allocated to Rutto J. At the first court appearance on 21<sup>st</sup> September 2023, it emerged that the claim was similar to Cause No E532 of 2023 which was then pending before me and which I have since determined.
2. In the circumstances, the parties consented, and Rutto J directed that the matter be placed before me. The Judge further directed that the interlocutory application be sidestepped in favour of the main claim.
3. The claim is contained in a Memorandum of Claim dated 30<sup>th</sup> August 2023. The Respondent filed a Response dated 7<sup>th</sup> November 2023.
4. The claim was urged by way of pleadings, supporting documents and final submissions.

**The Claimants' Case**

5. The 1<sup>st</sup> Claimant and 2<sup>nd</sup> Claimants state that they were employed by the Respondent on 11<sup>th</sup> June 2021 and 16<sup>th</sup> June 2021 respectively, in the position of Compliance Specialist (AML). They add that they were employed within a remote working arrangement where they would work from home.



6. The Claimants aver that after working for a few months, they learnt that the Respondent Company had been acquired by another company known as WorldRemit.
7. The Claimants further aver that they were invited to town hall meetings by the Respondent's senior officials, where they were assured that there was nothing to worry about, as the Respondent was simply undertaking a restructuring process to integrate the new company.
8. The Claimants claim that subsequently, 95% of the Respondent's managers and many Kenyan employees were dismissed from employment.
9. They further claim that after the merger between Sendwave and WorlRemit to create ZEPZ, the work environment became hostile and eventually, the Respondent announced a redundancy.
10. On 16<sup>th</sup> May 2023, the Respondent called for a virtual town hall meeting, whose agenda was not disclosed. Upon joining the meeting, the Claimants learnt that all those on the call would be affected by an impending redundancy. On 17<sup>th</sup> May 2023, the Claimants received a letter addressed to the Ministry of Labour under reference 'Notification of end of Employment by reason of Redundancy'.
11. The Claimants state that after the town hall meeting, they and other members of the compliance team, were approached by the Respondent, with a proposal for extension of their employment for three months. They claim that the aim was to make them train their counterparts in the Philippines, who would eventually replace them.
12. On 19<sup>th</sup> June 2023, the Claimants received letters via DocuSign titled 'RE: Confirmation of End of Employment by reason of Redundancy' indicating that their employment would be terminated effective 31<sup>st</sup> August 2023.
13. The Claimants accuse the Respondent of targeting the Kenyan team on account of stringent labour laws and an informed workforce. They state that the Respondent did not involve them in the redundancy process. They claim that after the termination of their employment, the Respondent conducted massive recruitment.
14. The Claimants' case is that there was no genuine case of redundancy and that the Respondent mismanaged the process to the Claimants' detriment. They assert that the entire process of redundancy was marred with lack of procedural fairness and consultation, high handedness, discrimination and unfair labour practices. They point out that the tabulation of their terminal dues was erroneous.
15. The Claimants therefore seek the following remedies:
  - a. A declaration that the decision to terminate the Claimants' employment on account of redundancy was unlawful and unfair;
  - b. A declaration that the redundancy was discriminatory as against the 2<sup>nd</sup> Claimant on account of her pregnancy;
  - c. House allowance for 9 months (December 2022 to August 2023);
  - d. 3 months' pay in lieu of notice;
  - e. 12 months' salary in compensation for unfair redundancy;
  - f. Severance pay @ 15 days' pay for each completed year of service;
  - g. Bonus pay;
  - h. Kshs. 5,000,000 as compensation for termination of employment on the ground of pregnancy;



- i. Payment for any outstanding leave days and holiday allowance.

### **The Respondent's Case**

16. In its Response dated 7<sup>th</sup> November 2023, the Respondent admits having employed the Claimants as TM Analysts-Compliance Specialists on diverse dates in 2021.
17. The Respondent avers that an integration took place between Sendwave and WorldRemit in 2022 and into 2023. The Respondent states that the acquisition of Sendwave by WorldRemit was completed on 12<sup>th</sup> February 2021.
18. The Respondent denies the Claimants' allegation that their terms and conditions of employment were downgraded and points out that the Claimants did not raise any such complaint prior to the subject redundancy.
19. Regarding the redundancy, the Respondent states that it was obligated to relook its business operation and to conduct a rigorous restructuring process, and was consequently forced to declare some positions redundant. The Respondent states that the restructuring was meant to increase efficiency in line with market changes and to optimise the use of technology.
20. The Respondent adds that the restructuring was also meant to increase its efficiency in line with market changes. This, the Respondent states, forced reallocation, redirection and refocus of workforce in other jurisdictions, hence the recruitment in other jurisdictions alluded to by the Claimants.
21. The Respondent claims to have employed a fair selection process for the redundancy. The Respondent adds that the Claimants were duly notified of the impending redundancy both orally and through written communication. In this regard, the Respondent states that it issued a redundancy notice dated 16<sup>th</sup> May 2023, to the Claimants and to the Ministry of Labour, whose aim was to allow for consultation with all relevant stakeholders.
22. The Respondent admits that the Claimants' employment period was extended for three months in line with the integration of the Respondent with WorldRemit. The Respondent however denies that the Claimants were made to train their counterparts in the Philippines.
23. The Respondent states that the redundancy could not be avoided and asserts that it was executed in line with Section 40 of the [Employment Act](#).
24. The Respondent denies the allegations of discrimination of the Kenyan workforce and states that the redundancy was on a global scale, with the aim of increasing efficiency, optimising technology and placing the right people in the right places.
25. The Respondent avers that each Claimant was paid the following:
  - a. Redundancy payment/severance pay;
  - b. One month's salary in lieu of notice; and
  - c. Outstanding accrued holidays until termination.

### **Findings and Determination**

26. From the evidence on record, the Claimants left the Respondent's employment on account of redundancy.



27. Section 2 of the *Employment Act* and the corresponding Section in the *Labour Relations Act* define redundancy as:

“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.”

28. While the law recognises redundancy as a legitimate mode of termination of employment, Section 40 of the *Employment Act* sets the following mandatory conditions to be met by every employer declaring 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 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 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.

29. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee, their union (where applicable) and the local Labour Officer. By definition, this notice should set out the reasons for and the extent of the intended redundancy.

30. It is now settled in case law that the redundancy notice under (a) and (b) above is separate and distinct from the termination notice provided under (f), which may be paid off in cash.

31. In *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR the Court of Appeal stated as follows:

“It is quite clear to us that sections 40 (a) and 40 (b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a union, the notification is to the union and the local labour officer at least one month before the effective redundancy date. Where the employee is not a member of the union, the notification must be in writing and to the



employee and the local labour officer. Section 40 (b) does not stipulate the notice period as is the case in 40 (a), but in our view, a purposive reading and interpretation of the statute would mean the same notice period is required in both situations. We do not see any rational reason why the employee who is not a member of a union should be entitled to a shorter notice.”

32. In the subsequent decision in *Kenya Airways Limited v Aviation & Allied Workers Union of Kenya & 3 others* [2014] eKLR Maraga JA (as he then was) stated thus:

“The notices under this provision are not merely for information. The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...*ILO Convention No. 158-Termination of Employment Convention, 1982*, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable.”

33. In the more recent decision in *The German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018 (Consolidated)) [2023] KECA 894 (24 July 2023) (Judgment) the Court of Appeal held that the requirement for consultation is implied in Section 40 of the *Employment Act* and stated that:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”

34. In their written submissions dated 11<sup>th</sup> December 2023, the Claimants referred to the decision in *Bernard Misawo Obora v Coca Cola Juices Kenya Limited* [2015] eKLR where it was held that the notices under Section 40 of the *Employment Act* are not to be issued mechanically for the sake of ticking the boxes.
35. According to the Respondent’s own narration of the events leading to the termination of the Claimants’ employment, a town hall meeting was held on 16<sup>th</sup> May 2023 after which redundancy notices were dispatched to the Claimants and the respective Labour Officers. Termination notices were subsequently issued on 19<sup>th</sup> June 2023. There was no evidence of any consultations held with the affected employees.
36. I therefore find and hold that the communication to the Claimants regarding the impending redundancy, did not qualify as a redundancy notice as defined in law.
37. Regarding the condition on selection criteria as required under Section 40(1)(c) of the *Employment Act*, the Respondent states that the subject redundancy affected the entire class of employees. This being a mass redundancy, the Court found no reason to fault the Respondent on this score.
38. There is evidence that the Claimants were paid their terminal dues and the claim for underpayment under this head was not proved.
39. Similarly, the claim for discrimination against the 2<sup>nd</sup> Claimant on account of pregnancy was not proved.



40. Ultimately, the only finding I make in favour of the Claimants is that they were not issued with a proper redundancy notice and for this reason, I award each Claimant the equivalent of one (1) month's salary in compensation.
41. The amount payable to each Claimant will be tabulated jointly by Counsel for the parties and paid to the Claimants within the next thirty (30) days from the date of this judgment.
42. The Claimants will have the costs of the case.

Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF APRIL, 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Wangila for the Claimants

Mr. Wesonga for the Respondent

