



**Transport Workers Union v Lufthansa German Airlines (Cause
308 of 2019) [2024] KEELRC 933 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 933 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 308 OF 2019
B ONGAYA, J
APRIL 8, 2024**

BETWEEN

TRANSPORT WORKERS UNION CLAIMANT

AND

LUFTHANSA GERMAN AIRLINES RESPONDENT

JUDGMENT

1. The claimant union filed the memorandum of claim dated 14.05.2019 signed by one Dan Mihadi. The claimant alleged wrongful redundancy of two respondent's employees namely Gabriel Waithumbi and Joseph Mwangi (the grievants). The parties had concluded a recognition and collective agreement and grievants were the respondent's unionisable employees and members of the claimant union. The claimant prayed for judgment against the respondent for:
 - a. A declaration the redundancy process was unfair, un-procedural and wrongful.
 - b. An order restraining the respondent from unlawfully declaring redundancy of the two grievants.
 - c. In alternative the grievants be adequately compensated with 12-months' gross salaries for unfair wrongful redundancy.
 - d. The Court may grant any other relief to meet ends of justice.
 - e. The respondent to pay costs.
2. The claimant's case is as follows:
 - a. On 25.03.2019, without prior notification the claimant received a letter dated 19.03.2019 being a notice under the [Employment Act](#) that there was intention to render the grievants



redundant upon restructuring of the Airline. The claimant replied requesting for a joint meeting.

- b. The meeting took place on 04.04.2019 and no agreement was recorded on the issue. The claimant's case was that the respondent recalls the letters delivered to the grievants and restart the process afresh with a view of making it inclusive.
 - c. On 23.04.2019 the claimant wrote to the respondent that the law and CBA be complied with. Thereafter, the respondent did not respond.
 - d. It the claimant's case that the redundancy was calculated to do away with the Kenyan grievants to be replaced by foreigners in an outsourced respondent's arrangements. The redundancy was unnecessary because in any event the respondent was operating the enterprise profitably.
 - e. Under section 40 of the *Employment Act*, the redundancy process must be participatory. The respondent was abusing the process and the CBA had been registered on 13.03.2019 without an indication of plans to reduce staff.
3. The respondent filed the statement of response on 01.08.2019 through Hamilton Harrison & Mathews Advocates. the respondent pleaded as follows:
- a. The respondent had undertaken a study with a view of restructuring its operations and optimising its efficiency. It was a worldwide initiative directed by the respondent's head office. Kenya had not been solely targeted.
 - b. The study showed it was necessary to restructure.
 - c. On 19.03.2019 the Senior Manager Corporate & Business Functions convened a meeting with the two grievants and informed them about the restructuring resulting in their positions being rendered redundant. After the meeting, a letter issued informing the grievants that they would be terminated on redundancy effective 30.04.2019 – the letters erroneously referring to a meeting on 22.03.2019 instead of the one on 19.03.2019. it was copied to Labour Officer Industrial Area.
 - d. The respondent's letter of 19.03.2019 also notified the claimant union about the impending redundancy of the two grievants. The letter explained the reasons and extent of the redundancy and effective date of the redundancy.
 - e. The notice period lapsed and by the letter dated 02.05.2019; the grievants' employment was terminated on account of redundancy. Their final dues were processed and remitted to their respective bank accounts.
 - f. The respondent declined to recall the redundancy as requested by the claimant, as the redundancy notices were mandatory in law. Nobody was hired in place of the grievants. While outsourcing is accepted enterprise model, it was not the reason for the redundancy. The redundancy was not based on financial considerations or constraints. The redundancy was necessary to streamline respondent's functions to avoid duplication of roles and inefficiencies. The respondent was entitled to determine the best ways of running its enterprise. The union needed not be consulted or involved in that determination. The respondent fully complied with the CBA provisions on redundancy. It was fair process per CBA.
4. The parties' respective witnesses testified and final submissions were filed for parties. The Court has considered the material on record and returns as follows:



- a. CW testified that he had no evidence that the redundancy was aimed at removing Kenyans from respondent's employment. He confirmed that a foreign staff never took his job. In view of that testimony, the Court answers the 1st issue for determination and returns that the reason for the redundancy was genuine and it was the respondent's worldwide restructuring for better efficiency. Needless to state, it is not mandatory that every redundancy be occasioned by financial difficulties of the employer's enterprise and as was urged for the claimant union. While RW testified the services rendered by the grievants could have been outsourced, it would be the respondent's prerogative to make such business determination. On a balance of things, the restructuring was a genuine reason especially that the union had not disputed the reason but only wanted the notices recalled and process recommenced. It was not that the union disputed the reason for if so, it would have objected to the entire process rather than suggesting a restart.
 - b. To answer the 2nd issue, the Court returns that the respondent complied with the redundancy procedures in the CBA and section 40 of the Act by notifying the claimant, the grievants, and the local area labour officer. While alleging unfair selection, it was not pleaded and shown by the grievants that they held positions with an establishment of similar positions with in-post staff against whom the selection criteria in section 40 of the Act would fall to be applied. In absence of any material evidence in that regard, the Court returns that there were no other respondents' employees holding same positions as those held by the grievants to justify allegations of unfair selection during the redundancy process.
 - c. To answer the 3rd issue, CW confirmed that he was paid all his terminal redundancy dues at the bank account.
 - d. In the circumstances, the submissions made for the respondent are upheld that the redundancy was not unfair and suit liable to dismissal. The Court has considered all circumstances of the case including prevailing recognition and collective agreements between the parties and no orders on costs.
5. In conclusion, judgment is entered for the respondent against the claimant for dismissal of the suit with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 8TH APRIL 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

