



**Okeyo v Ministry of Works Sports Club (Cause E118 of 2023)
[2024] KEELRC 865 (KLR) (5 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 865 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E118 OF 2023**

SC RUTTO, J

APRIL 5, 2024

BETWEEN

JOSEPH OKEYO CLAIMANT

AND

MINISTRY OF WORKS SPORTS CLUB RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondent as a security guard with effect from 24th March 2017. He avers that in March 2020, following the outbreak of the COVID-19 global pandemic, the Respondent sent its employees to await new instructions on the way forward.
2. That when everyone was sent home, the employees in the security department, him included, were retained for one more month and the certainty of his job was guaranteed because his role as a security guard was paramount. He avers that the COVID-19 regulations identified his duties as constituting essential services.
3. That there was no uncertainty as to how long they would be home. The Respondent kept the hope alive that once things returned to normal, they would resume work. After a month, they were informed that their role would be taken over by Administration Police Officers but he was surprised to realize that the club had employed new security guards. He further contends that the Union did not raise the issue with the management and instead, informed them to wait at home for further details. However, they (Union) didn't contact him at any time nor did they advocate for the resumption of their duties. They also recruited the new guards into the Union.
4. That sometime in August 2021, 18 months down the line, he received a call from his employer to report to his place of work the following day. When he reported to the club early in the morning, he realized that the same guards who relieved him from his duties 18 months before, were still guarding the club despite the Respondent keeping them waiting at home hoping to resume his duties.



5. After being kept for a while together with his colleagues, they were called and informed of their redundancy. They did not have a chance to query the decision of the Respondent. Further, the letter did not indicate when the redundancy was to take effect.
6. According to the Claimant, the Respondent and the Union concealed the matter that they replaced him 18 months before and the declaration of redundancy was just a gimmick to sack him.
7. He further contends that his Union shop steward didn't defend him and he was sacked without them raising a voice.
8. The Claimant's claim against the Respondent is for the sum of Kshs 386,200/= being outstanding salary, leave pay and severance pay. He has further sought to be paid his deductions to MOW welfare and to Shirika SACCO as well as penalties incurred during 18 months. He further seeks punitive damages against the Respondent for withholding his Pay As You Earn (PAYE) remittances to the Kenya Revenue Authority (KRA) and failure to submit his deductions to the MOW Welfare Group and Shirika SACCO.
9. The Respondent did not enter appearance despite being served with the Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service sworn by James Ngang'a on 8th March 2023, confirming service.
10. The Court being satisfied with the return of service, set the matter down for formal proof hearing on 19th December 2023.
11. During the hearing, the Claimant adopted his witness statement and the documents filed alongside his Memorandum of Claim to constitute his evidence in chief.
12. Upon close of the hearing, the Claimant filed written submissions which I have considered.

Analysis and Determination

13. It is worth pointing out that the Claimant has not sought to declare his redundancy unfair and unlawful. Equally, he has not sought the reliefs attendant to a finding that the redundancy was unfair and unlawful. As such, the Claimant's submission to that extent is immaterial as it is trite that parties are bound by their pleadings.
14. Accordingly, it is my considered view that, the singular issue that stands out for determination is whether the Claimant is entitled to the reliefs sought.
15. From the record, the Claimant was declared redundant through a letter dated 26th August 2021 on grounds that the COVID-19 pandemic had occasioned a downturn in the Respondent's patronage and business which had lasted for a very long time.
16. The Claimant was further advised that he would be paid as follows:
 1. Salary upto and including 31st March 2020 if not already paid;
 2. -2 days salary in lieu of accrued leave/off days/accrued public holidays valued at Kshs -1,315.00.
 3. 2 months salary in lieu of notice valued at Kshs 40,000.00.
 4. 3 years severance pay @ 20 days for every completed year of service valued at Kshs 39,452.00.
17. The Claimant did not state whether or not he had received his final dues as aforesaid hence the Court presumes that he was paid accordingly.



18. That said, I will proceed to consider the reliefs sought by the Claimant.

Salary from March 2020 to September 2021

19. The Claimant has sought the sum of Kshs 270,000/= being salary from March 2020 to September 2021. Notably, the Claimant acknowledged in his witness statement and Statement of Claim that they were sent home following the outbreak of the COVID-19 global pandemic.
20. As the Court found in ELRC Cause No. E119 of 2023; *Jane Kathure v Ministry of Works Sports Club*, it is a matter of public notoriety that the outbreak of the COVID-19 global pandemic caused massive disruptions in business operations. The Court further determined in the aforementioned case that it is common knowledge that in Kenya, the Government adopted drastic response measures to contain the spread of the pandemic. Such measures included restriction of movement and social distancing.
21. The Court further observed that the COVID-19 global pandemic and the attendant measures imposed by the Government resulted in decreased business operations.
22. As a matter of fact, the Claimant herein has acknowledged that the Respondent was not spared by the effects of the COVID-19 pandemic hence the reason they were sent home indefinitely in March 2020 following the outbreak of the pandemic.
23. From the foregoing, it is evident that at the onset of the pandemic and in the period that followed, the Respondent was not undertaking its normal operations.
24. To this end, the Court returns as it did in ELRC Cause No. E119 of 2023; *Jane Kathure v Ministry of Works Sports Club*, that it would not be conscionable to order the Respondent to pay the Claimant salary for 18 months from March 2020 up to September 2021. This is further noting that the Claimant did not render any service to the Respondent during the period in question.

Unpaid Leave

25. Turning to the claim for leave pay, it is clear from the record that the Claimant was notified through the letter dated 26th August 2021, declaring him redundant, that his outstanding leave pay was in the negative. Further, he did not specify the period for which he was claiming the 21 leave days. For the foregoing reason, the claim for leave pay is declined.

Deductions to MOW Welfare Group and Shirika SACCO

26. The claim for deductions to the MOW welfare is similarly declined as the Claimant failed to specifically plead and prove the same despite being a specific claim in nature. In as much as the Claimant exhibited his statement in respect of Shirika SACCO, he did not state how much he was claiming against the Respondent. As such, I cannot help but question how the Court is supposed to ascertain what should be paid to the Claimant and the basis thereof.

Punitive Damages

27. The Claimant has further sought punitive damages against the Respondent on the basis of withholding his PAYE remittances to KRA and his deductions to the MOW Welfare Group and Shirika SACCO. This relief is similarly denied for want of proof. In so finding, the Court observes that there is no evidence in the form of a demand to confirm that the remittances to KRA were not made. On the same note, there was no evidence that the Claimant's deductions to the Welfare Group were effected from his salary but not remitted as appropriate.



Severance Pay

28. The only claim that succeeds is with regards to severance pay as the Claimant was still in the service of the Respondent up to and including 26th August 2021, when he was declared redundant. Therefore, the Court returns that the period falling between March 2020 and August 2021 is a relevant period for purposes of computing severance pay in terms of Section 40(1) (g) of the [Employment Act](#).

Orders

29. In the final analysis, the Court allows the Claim to the extent that the Claimant is entitled to the sum of Kshs 13,333.33 being severance pay for one completed year of service at the rate of 20 days.
30. The Claimant is further entitled to a Certificate of Service in accordance with Section 51(1) of the [Employment Act](#).
31. As the Claimant was self-representing, the Respondent shall bear the costs of the Claim limited to the actual expenses incurred by the Claimant in terms of filing.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF APRIL 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant In person

For the Respondent No appearance

Court Assistant Millicent Kibet

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

