



**Shikuku v Corporate Insurance Company Limited (Cause
1535 of 2018) [2024] KEELRC 1303 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1303 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1535 OF 2018**

B ONGAYA, J

MAY 29, 2024

BETWEEN

NANCY WATIRI SHIKUKU CLAIMANT

AND

CORPORATE INSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim dated 16.11.2018 through James T. Makori Advocate. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the letter dated 16th August 2018 is invalid ab initio and a permanent stay and withdrawal of the said letter seeking to terminate the claimant's services.
 - b. An order directing that the respondents do unconditionally allow the claimant to continue serving in her position in the respondent without any loss of benefits or rank and without conditionality.
 - c. An order barring the respondents from conducting or attempting to conduct any recruitment for the claimant's position.
 - d. Compensatory general damages for unfair, unlawful and wrongful termination of the employment services of the claimant with all their attendant benefits as listed below:
 - i. Violation of constitutional fundamental rights, freedoms and protections.
 - ii. Loss of office unfairly, illegally and without due process.
 - iii. Career compromise and stagnation after distinguished service at the highest levels.
 - iv. Injury to reputation.



- v. Loss of future income.
 - vi. Interest on the sums due.
 - vii. Costs of the suit.
2. The claimant's case was that she was employed by the respondent on or about 1st August 2001 in various capacities rising to the level of Chief Legal Officer where she created significant positive changes.
 3. That on or about the 17th August 2018 the respondent served the claimant with a letter of termination of employment due to redundancy without any explanation.
 4. That on or about the 30th July 2018 the respondent wrote to the claimant, the chief accountant and the chief executive officer complaining about the presence of auctioneers at the respondent's offices at Mombasa.
 5. That she responded to the said letter and stated the correct position regarding the reason why that was happening which was caused the respondent ignoring her legal opinions.
 6. That her legal opinions and efforts to ensure reduction of claims seemed to have rubbed some officials the wrong way leading to her being targeted to the extent of failing to pay her subscription charges to professional bodies.
 7. That her termination was pre meditated since the respondent sent her on leave in 2018 to ensure she did not have any outstanding leave days.
 8. That throughout her employment, she had never had any issues with the respondent, neither had she had any disciplinary issues, warnings or notice to show cause and hence the redundancy was an illegal termination masquerading as such.
 9. That the letter dated 17.08.2018 be declared null and void ab initio and be withdrawn in toto in all respects pending due process and that urged that the orders as prayed for in the memorandum of claim be granted.
 10. The Respondent filed its memorandum of response dated 27.11.2019 through Mumia & Njiru Advocates. The respondent prayed that the claim be dismissed with costs.
 11. The respondent in its response confirmed that the claimant was employed by the respondent.
 12. The respondent denied the allegations by the claimant and pleaded that there was a meeting held by the respondent's executive human resource board committee in the month of July 2018 which was a follow up to a task assigned to the said committee to look at the respondents' leadership structure to reflect on the current business needs and to achieve maximum efficiency which resulted to the need to reorganise the legal and claims departments.
 13. That it was found way back before the separation by the statutory requirement to create the legal and compliance position, which is regulated by IRA and reports to the board, dotted with dotted line to the CEO while looking at reducing duplication of roles.
 14. That this meant that the claimant's position had to inevitably fall of the structure as the new position that was a legal requirement was capable of handling both dockets.
 15. That there were discussions with the claimant in the form of notification of intention to declare her position redundant which preceded the actual termination.



16. That the respondent calculated the claimant's terminal dues as specified in section 40 of the *Employment Act* of 2007 together with its human resources manual, which the claimant confirmed to be correct, and fair, which the respondent paid.
17. That the respondent's policy on leave is that no employee is allowed to encash accrued leave except in very special circumstances, which applies to other employees.
18. That the respondent in a bid to cut on costs passed a policy in second quarter of 2017 that the company should no longer cater for professional fees and subscription for any of its employees among other expenses.
19. The respondent pleaded that, the claimant's redundancy was lawful, just and fair and that the general damages for unlawful and unfair termination are not justifiable.
20. The respondent prayed that the claimant's suit be dismissed with costs.
21. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:
 - a. There is no dispute that parties were in a contract of service.
 - b. The evidence is that the contract of service was terminated by the letter of redundancy dated 27.11.2019. The letter stated that the claimant's services as Chief Legal Officer were no longer required and her position was therefore redundant. Her terminal dues were as follows:
 - i. 15 days severance payment for each of 17 years' served.
 - ii. 3 months' gross payment in lieu of notice.
 - iii. 11-days accrued leave days.
 - iv. August salary for 16 days.
 - v. Leave allowance 50% of basic payment.
 - c. While the respondent states that the position was abolished to create one position of Legal and Compliance Officer per Insurance Regulatory Authority requirements, as submitted for the claimant the redundancy was not procedural per section 40 of the *Employment Act*, 2007. In particular it appears the claimant was not consulted and prepared for the redundancy through a month's notice to her and the area labour officer per section 40 of the Act. The Court has considered the long period of service; the desire of the claimant to continue in service; the claimant did not contribute to the termination; and the terminal package paid to the claimant and in terms of section 49 of the Act. The Court returns that 8 months' compensation at last gross monthly salary will meet ends of justice thus, $343,700 \times 8 = \text{Kshs } 2,749,600.00$. Per submissions, the claimant has abandoned the other reliefs. The respondent will pay the costs of the proceedings.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a. Payment of Kshs 2,749,600.00 by 01.08.2024 failing interest to be payable at Court rates from the date of this judgment until full payment.
- b. The respondent to pay costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29TH MAY 2024.



BYRAM ONGAYA
PRINCIPAL JUDGE

