



**Were v Sanlam Life Insurance Limited (Formerly Pan Africa Life Assurance Limited) & 2 others (Cause 248 of 2020) [2024] KEELRC 13625 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13625 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 248 OF 2020**

**B ONGAYA, J  
JUNE 28, 2024**

**BETWEEN**

**LINDA WERE ..... CLAIMANT**

**AND**

**SANLAM LIFE INSURANCE LIMITED (FORMERLY PAN AFRICA LIFE ASSURANCE LIMITED) ..... 1<sup>ST</sup> RESPONDENT**

**SANLAM KENYA PLC ..... 2<sup>ND</sup> RESPONDENT**

**STANBIC BANK KENYA LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The claimant's case is based on the amended statement of claim dated 04.11.2020 filed through Munyao, Muthama & Kashindi Advocates and learned Counsel Irene Kashindi appeared in that behalf. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the termination of the claimant's employment on account of the purported redundancy was unfair, wrongful and unlawful.
  - b. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> respondents violated the claimant's rights to equality and freedom from discrimination, fair labour practices and fair administrative action guaranteed under Articles 27, 41 and 47 of *the Constitution*.
  - c. Reinstatement to employment without loss of remuneration, all benefits and rank or in the alternative;
    - i. Compensation equivalent to 12 months' remuneration, for unfair, wrongful and unlawful termination of employment on account of the purported redundancy equivalent to Kshs 9, 841, 632.



- ii. Balance of recomputed severance pay based on 2 months' pay for each completed year of service;
- d. The 1<sup>st</sup> and 2<sup>nd</sup> respondents be compelled to render a full and proper account of the entire Long Term Retention Scheme (LTRS) from 1st January 2007 to 12th November 2019, and the accounts to include without limitation, the annual allocated awards, the type and manner of investments of the allocated annual awards and the returns thereof, the annual payouts and a full statement of account of the vested amount payable to the Claimant within the meaning of clause 2.8 of the LTRS Terms and Conditions. For clarity and greater certainty, the accounts to be rendered pursuant to this order to include not only the Claimant's accounts, but accounts for the entire LTRS Scheme for purposes of comparison and verification.
- e. Upon the rendering of accounts as prayed in (d) above, the claimant be paid the vested amount payable to her pursuant to clause 2.8 of the LTRS Terms and Conditions plus interest thereon at court rates from 2<sup>nd</sup> December 2019 being the date when the amounts became payable to the Claimant, until payment in full.
- f. In the alternative to prayers (d) and (e) the event of the respondent's failure to render accounts or proper accounts, the court do make an appropriate award computed based on a comparison of previous pay-outs made to the claimant plus interest thereon at court rates from 2<sup>nd</sup> December 2019 being the date when the amounts became payable to the Claimant, until payment in full.
- g. A permanent injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents or their servants or agents or any other person acting in that behalf from reviewing, revising, converting, or changing or from continuing to review, revise, convert or change the preferential rates of interest previously enjoyed by the claimant while in employment of the 1<sup>st</sup> and 2<sup>nd</sup> respondents to market rates, in respect of a mortgage facility advanced to the claimant by Stanbic Bank Kenya Limited under the respondent's staff mortgage scheme. For clarity, the 1<sup>st</sup> and 2<sup>nd</sup> respondents be ordered to pay the compensation interest to the 3<sup>rd</sup> respondent constituting the difference between the commercial and preferential interest until full repayment of the mortgage by the claimant and the 3<sup>rd</sup> respondent restrained from demanding from the claimant, repayment of the mortgage at commercial rates.
- h. In the alternative to the foregoing, an order be made for the reimbursement to the claimant of the difference between the preferential rate and commercial rate, computed from date of termination of employment (save for the period covered by the retrenchment cover) until repayment of the mortgage in full.
- i. A permanent injunction do issue restraining the 1<sup>st</sup> and 2<sup>nd</sup> respondents or their servants or agents or any other person acting in that behalf from cancelling the Group Mortgage Assurance Scheme with particular reference to the claimant and in particular the respondents be restrained from cancelling the retrenchment cover of 9 months. In the alternative to the foregoing, the 1<sup>st</sup> and 2<sup>nd</sup> respondent be ordered to reimburse to the claimant all mortgage repayments made by the Claimant for the three additional months that were to be covered in the mortgage retrenchment cover.
- j. Damages for discriminating against the claimant in violation of Article 27 of *the Constitution*.
- k. Damages for breach of the claimant's right to fair labour practice guaranteed under Article 41 of *the Constitution*.



- l. Damages for breach of the claimant's right to fair administrative action guaranteed by Article 47 of *the Constitution* of Kenya.
  - m. Damages for breach of the claimant's legitimate and reasonable expectation.
  - n. General damages. n. Interest on all the damages payable to the claimant.
  - o. Costs of this suit.
  - p. Any other or such further relief as this Honourable Court may deem just and fair to grant.
2. The 1<sup>st</sup> respondent is a subsidiary company of the 2<sup>nd</sup> respondent incorporated in Kenya and selling various insurance products including individual life assurance, funeral pre-plan, credit assurance, last expense annuities and pensions to individual and corporate clients. The 1<sup>st</sup> and 2<sup>nd</sup> respondents entered appearance through Ronn Law Advocates LLP but the pleadings were marked as closed before they could file their statement of response.
  3. The 3<sup>rd</sup> respondent opposed the claim by its statement of defence dated 28.06.2021 and filed through Daly Inamdar Advocates LLP and learned Counsel George Muchiri appeared in that regard.
  4. The claimant testified to support her case. The respondents did not call any witness. By a consent, order at commencement of the hearing, the documents filed for parties were deemed duly produced and admitted as filed. Essentially the respondents relied upon the exhibits on the replying affidavits filed in response to the interlocutory application filed by the claimant together with the statement of claim. The Court has considered all material on record as well as final submissions that were filed for the parties.
  5. To answer the 1<sup>st</sup> issue for determination, the Court returns that the 1<sup>st</sup> respondent was the sole employer of the claimant but the claimant may have as well rendered service to the 2<sup>nd</sup> respondent as employed by the 1<sup>st</sup> respondent. The 3<sup>rd</sup> respondent concluded a mortgage facility with the claimant. In that consideration, all respondents were necessary parties for the efficient, effective and complete determination of the suit.
  6. The 1<sup>st</sup> respondent employed the claimant from 01.02.2004 to 12.11.2019. The claimant was initially employed by letter of appointment dated 23.01.2004 issued by Pan Africa Life Assurance Limited which changed its name to Sanlam Life Insurance Limited by the certificate of change of name dated 15.07.2016. The 1<sup>st</sup> respondent issued the redundancy notice dated 04.10.2019 and the letter of termination on account of redundancy dated 12.11.2019. The certificate of service dated 13.11.2019 was as well issued by the 1<sup>st</sup> respondent. All evidence show that the 1<sup>st</sup> respondent was the sole employer of the claimant. The claimant testified to confirm that the 2<sup>nd</sup> respondent gave her no contract of service and the termination letter was by the 1<sup>st</sup> respondent.
  7. To answer the 2<sup>nd</sup> issue for determination, the Court finds that the contract of service between the claimant and the 1<sup>st</sup> respondent was terminated by the letter of termination on account of redundancy dated 12.11.2019. The reasons for redundancy were that the 1<sup>st</sup> respondent had carried out an organizational restructuring aimed at strengthening and optimizing the existing functions, aligning the staff complement to the company existing functions, aligning staff complement to company requirements and reducing staff and operational costs. The claimant's role of Head of Customer Experience was affected, as it no longer fitted in the respondent's new restructured organization. Consequential to the redundancy the claimant was paid terminal dues including all salary for days worked; a month's salary in lieu of notice; severance payment at one month's pay for every completed year of service and pro rata for completed months thereof



8. To answer the 3<sup>rd</sup> issue for determination the Court returns that the termination on account of redundancy was not unfair. The one-month notice to the claimant and the area labour officer was served per section 40 of the *Employment Act*. The claimant confirmed in her testimony that the 1<sup>st</sup> respondent had only one position of Head of Customer Experience and in that consideration, as per 1<sup>st</sup> and 2<sup>nd</sup> respondent's submissions, the issue of her selection for redundancy does not arise as there were no similar offices and employees to make a selection for redundancy necessary. While alleging that the role of Head of Customer Experience continued to exist after her termination, the claimant testified that had nothing to demonstrate that fact or that someone else was employed by the 1<sup>st</sup> respondent in that capacity after her termination. The claimant also confirmed that prior to her termination on account of redundancy the respondent had instituted an Early Exit Scheme or Voluntary Early Retirement Scheme (VERS). That she was aware of that scheme but she had opted not to participate. It was after the lapsing of the deadline for participation in the scheme that the claimant received the redundancy notice. It appears to the Court that VERS was one of the options the 1<sup>st</sup> respondent had instituted as an option to redundancy. The claimant also testified that prior to the redundancy notice of 04.10.2019 there was a town hall meeting at which training material was given to her about the redundancy. There was no dispute that the claimant was paid the terminal and severance payment as promised in the termination letter. The Court finds that the testimony by the claimant together with the exhibited documents show that as at termination the 1<sup>st</sup> respondent had indeed re-organized and that the claimant was duly paid per section 40 of the *Employment Act*. The reason for termination is found to have been valid per section 43 and fair per section 45 of the Act and, the redundancy procedural tests in section 40 of the Act were fully complied with. Contrary to the claimant's case and submissions that no consultations took place, the claimant was prepared for the redundancy through the training and the claimant has offered no evidence of alternative that in her view were available, urged by herself, and disregarded by the 1<sup>st</sup> respondent. The prayers for reinstatement or compensation on the account of unfair termination will therefore collapse.
9. The 4<sup>th</sup> issue is whether the claimant should continue repaying the loan on preferential staff interest rates or be indemnified by the 1<sup>st</sup> respondent in that regard, as a consequence of the termination or be reimbursed by the 1<sup>st</sup> respondent in that respect. There is no dispute that as at termination the claimant was enjoying a mortgage facility on staff preferential interest rates. The claimant's case is that by a letter dated 19.01.2011 she was informed that she would repay any mortgage at preferential rates if she had worked for more than ten (10) years as at termination. She had worked for more than 15 years as at termination on redundancy grounds in November 2019. The 1<sup>st</sup> respondent's human resource manual in clause 12.7 provided that any outstanding mortgage at point of retrenchment will be repaid at the company's prevailing rate. The claimant's case is that in June 2019 (barely three months to declaration of the redundancy) the 1<sup>st</sup> and 2<sup>nd</sup> respondents amended the human resource manual to provide that the outstanding loan at the time of termination of the employment would attract interest at the prevailing company's staff interest rates for a period of 3 months and would thereafter be governed by the terms of the contract between the employee and the financier. It is the claimant's case that the revision of the manual was in bad faith to disadvantage her from her lawful and fair entitlements under the mortgage scheme to repay her loan at preferential rates after the termination. In cross-examination by counsel for 3<sup>rd</sup> respondent the claimant stated thus, "I was to remain on preferential rates as long as I had served for 10 years. See page C37. Is letter of 19.01.2011. All loans were to be paid in full. There was HR policy on preferential interest rates and it was I do not enjoy preferential rates beyond 3 months after exiting employment. I signed for receipt of policy as was amended. It was prior to redundancy process commencing." In re-examination, the claimant testified that while she received the amended manual, she did not agree to the amendments and more important, the letter of 2011 on preferential interest rates was never withdrawn.



10. It is submitted for the claimant that she ought to have been consulted and her consent sought per section 10(5) of the Employment Act and Article 41 of the Constitution on fair labour practices and Article 47 of the Constitution on the right to fair administrative action. She was not consulted, her consent was not obtained, and therefore the amendments to the manual to disadvantage her with respect to the preferential interest rates did not apply as were not contractually binding.
11. For 1<sup>st</sup> and 2<sup>nd</sup> respondents it was submitted as follows:
  - a. The letter dated 19.01.2011 relates old mortgage scheme previously managed by the claimant. The court observes that the 1<sup>st</sup> and 2<sup>nd</sup> respondent offered no pleading or evidence in that regard and, the letter on its face does not state as much. The submission is found misleading.
  - b. The letter of 19.01.2011 was issued prior to the claimant taking the mortgage facility loan in 2018 and in circumstances that the 1<sup>st</sup> respondent could change the terms. The court finds that the submission is unfounded as the terms of the letter applied to loans before or after the letter and while the right to change the terms existed, the statutory and constitutional provisions cited for the claimant have not been shown to have been complied with.
  - c. In taking out the loan in 2018, the claimant signed that she was bound by the 3<sup>rd</sup> respondent's terms of the loan facility and in clause 16 of the conditions of the facility letter dated 18.04.2018. The claimant signed that in event of termination she would settle outstanding amounts. The mortgage loan agreement between the claimant and 3<sup>rd</sup> respondent was not governed by the 1<sup>st</sup> respondent's policy. However, the Court observes that the 1<sup>st</sup> respondent has not explained why the 3<sup>rd</sup> respondent would offer the preferential mortgage loan interest rates except on account of the employment contract between the claimant and the 1<sup>st</sup> respondent.
  - d. It is submitted for the the 1<sup>st</sup> respondent that per Court of Appeal in National Bank of Kenya Limited –Versus- Pipe Plastic Samkolit (K) Limited (2002) 2EA 503 (2011) eKLR 71-75, a court of law cannot rewrite a contract between the parties and parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.
12. For the 3<sup>rd</sup> respondent it was submitted that the claimant enjoyed preferential interest rates on the mortgage facility from April 2018 up to her termination on 12.11.2019. Clause 2.2.1 of the agreement between the 1<sup>st</sup> respondent and the 3<sup>rd</sup> respondent stated that the loan scheme shall be for the benefit of the financed staff who shall be eligible to apply and benefit from various facilities from the bank at subsidized rate provided always that such financed staff remain in the employment of the company or continues to be engaged as a financial consultant of the company. Further, existing staff members shall have six(6) months to transfer the mortgage loan. Further “...During the 6 months period, the Company will pay interest compensation for the exited employee. Upon expiry of the 6 months period, the prevailing market rate shall be applicable on the mortgage loan.” The claimant testified that she was not aware of the terms of that contract between the 1<sup>st</sup> respondent and the 3<sup>rd</sup> respondent.
13. It was submitted for the 3<sup>rd</sup> respondent that disregard the reason for termination of the contract of employment, the benefit of preferential mortgage interest rates had gone with the termination of the contract of service and the Court was urged to find that the claimant ought to repay the mortgage at commercial rates from May 2020.
14. The Court has considered the parties' respective positions and submissions. The Court returns as follows:



- a. The letter of 19.01.2011 was specifically addressed to the claimant, it was never withdrawn, and it remained binding between the 1<sup>st</sup> respondent and the claimant until the date of the separation on account of redundancy. While the claimant signed to acknowledge receipt of the new manual, the signing did not signify the claimant's acceptance or consent of the terms therein especially as relates to or varying accrued and agreed terms in the specific letter of 19.01.2011. In any event, the letter of 19.01.2011 did not state that it was subject to some provisions of a manual in place from time to time. The Court considers that a term and condition of service expressly addressed to an employee cannot be overridden by a general manual provision like in the instant case. The preferential interest rates in the letter were specific and personal to the claimant free from general manual provisions.
  - b. As submitted for the respondents, parties must be bound by their contracts and the court should not rewrite such contracts. Thus, the 1<sup>st</sup> respondent must indemnify or reimburse the claimant with respect to the amount of interest payable on the loan facility to the 3<sup>rd</sup> respondent beyond the agreed preferential rates and in terms of the letter of 19.01.2011. Thus while the claimant is bound to pay the commercial interest rates per the mortgage facility agreement with the 3<sup>rd</sup> respondent, she will be so indemnified or reimbursed by the 1<sup>st</sup> respondent. The Court returns accordingly. A relief will issue in those terms.
15. The 5<sup>th</sup> issue relates to the 1<sup>st</sup> respondent's Long Term Retention Scheme (LTRS). The claimant's case is that the scheme was in the nature of an employee share option scheme per letter-dated 28.02.2008 by which she was enrolled to the scheme and per terms of the scheme attached to the letter. The claimant signed to accept the scheme as was offered. Under the scheme, she was entitled to receive a financial incentive over and above the regular monthly remuneration and annual bonuses.
  16. The claimant's case is that up to prior to 2016 the 1<sup>st</sup> respondent provided her relevant statements of accounts and payments relating to her entitlements under the scheme. After demands, the 1<sup>st</sup> respondent paid the claimant Kshs. 1, 780, 403.00 on 23.01.2020 but which amount ought to have been paid 20 days after 12.11.2019. The claimant's case is that after the termination the 1<sup>st</sup> respondent has failed to deliver to her the statements of accounts. The claimant alleges that as at termination, she was owed approximately Kshs. 11 million under the scheme but was only paid Kshs. 1, 780, 403.00 and the 1<sup>st</sup> respondent failed to provide a breakdown of the figures.
  17. For the 1<sup>st</sup> respondent it is submitted that the claimant was paid her entitlements under the scheme and the claimant's accounts on her entitlements and payouts between 01.01.2007 and 12.11.2019 were forwarded to the claimant per pages 5 to 35 of the exhibits on the replying affidavit filed in the suit for the 1<sup>st</sup> respondent.
  18. The court returns that on a balance of probability, the claimant has failed to establish her claim under the scheme. She has not pleaded the particulars of the claim and applicable formula to assist compute the amounts. It has been submitted for her that the account statements or particulars were provided until after 2016 when the 1<sup>st</sup> respondent ceased to account – a submission the Court finds inconsistent with the relief for an account beginning 2006 till termination date. Consequential to the last payment under the scheme, she appears not to have a basis for further claims or an account as she offers no rebuttal that the relevant particulars were provided in the replying affidavit. The claims based on the scheme will collapse.
  19. To answer the 6<sup>th</sup> issue the Court returns that the claimant has not offered a basis for award of compensation for violation of Articles 41 and 47 of *the Constitution* or even Article 27 on discrimination. The case is that the Articles were invoked to show that the change of the human



resource manual had been unfairly done. The Court has already made findings in that regard and upheld the letter of 19.01.2011 on preferential interest rates after the termination. That should be sufficient contractual relief and the Court finds that the same will not attract a separate award for violation of rights.

20. To answer the 7<sup>th</sup> issue, the claim for legitimate expectation was submitted to be based upon unfair selection for redundancy but which the Court has found not to have been the case.
21. It was submitted for the claimant that the prayer as relating cancellation of the group mortgage assurance scheme had been overtaken by events. The court returns accordingly.
22. The prayer that the severance payment be computed at 2 months' pay for each completed year of service is found not based on contractual or other lawful basis. It is declined.

In conclusion, judgment is hereby entered for the claimant against the 1<sup>st</sup> respondent for:

- a. The 1<sup>st</sup> respondent to pay the claimant interest due to the 3<sup>rd</sup> respondent from the claimant consequential to the termination on account of redundancy herein being the difference between the commercial interest rates and the preferential interest rates in view of the letter dated 19.01.2011 conferring the preferential interest rates by the 1<sup>st</sup> respondent in favor of the claimant and which binds the claimant and the 1<sup>st</sup> respondent with respect to the mortgage facility of April 2018 between the claimant and the 3<sup>rd</sup> respondent.
- b. The 3<sup>rd</sup> respondent to compute the amounts due to the claimant in (a) above with respect to the whole loan facility period herein and to be included in the final decree.
- c. The 1<sup>st</sup> respondent to pay the claimant the decretal sum in (b) by 01.09.2024 failing, interest to be payable thereon from the date of filing the suit until full payment.
- d. The 1<sup>st</sup> respondent to pay the claimant's costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 28<sup>TH</sup> JUNE 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

