



**Kamau v Cleanshelf Supermarket Limited (Cause 662 of 2020)  
[2024] KEELRC 1548 (KLR) (21 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1548 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 662 OF 2020**

**J RIKA, J  
JUNE 21, 2024**

**BETWEEN**

**GRACE NYAMBURA KAMAU ..... CLAIMANT**

**AND**

**CLEANSHELF SUPERMARKET LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed her Statement of Claim on 16<sup>th</sup> October 2020.
2. She states that she was employed by the Respondent as an Assistant Accountant, on 13<sup>th</sup> December 2011.
3. Her contract was terminated unfairly and unlawfully by the Respondent, on 10<sup>th</sup> June 2020.
4. She had been promoted to the position of Reporting Accountant, by the time of termination. She was earning a gross monthly salary of Kshs. 64,000.
5. She ought to have been earning Kshs. 89,000. She had been promised an increment of Kshs. 25,000 in May 2016. The Respondent did not keep its promise.
6. The Finance Manager alleged, in May 2020, that the Claimant delayed filing of VAT returns. The Claimant had documented issues with the system, which occasioned delay. On 26<sup>th</sup> May 2020, the Respondent issued her a letter, referenced 'final warning and surcharge.' She was suspended on 27<sup>th</sup> May 2020 for 2 weeks without pay. There was no warning after the final warning, preceding suspension.
7. She was required to report back on 10<sup>th</sup> June 2020. When she reported, she was issued a letter of termination. The Respondent cited redundancy, as the reason in justifying termination.



8. The letter was dated 10<sup>th</sup> May 2020. The Claimant complained about back-dating. The letter was amended to 10<sup>th</sup> June 2020. She states that the Respondent did not adhere to Section 40 of the Employment Act, which governs termination on account of redundancy.
9. Redundancy was an afterthought, the Respondent having set out to terminate the Claimant's contract maliciously.
10. She avers that the Respondent violated her constitutional rights.
11. She avers that the Respondent made illegal deductions from her salary, including: VAT penalty at Kshs. 5,000; suspension amount at Kshs. 23,145; and unlawfully reduced her salary, in the sum of Kshs. 7,416.
12. She prays for unpaid salary increment from May 2016 to 10<sup>th</sup> June 2020 at Kshs. 25,000 monthly, totalling Kshs. 1,233,333; service pay at Kshs. 479,363; notice at Kshs. 89,000; annual leave at Kshs. 34,285; and 12 months' salary in compensation for unfair termination at Kshs. 1,068,000.
13. Her full prayers are: -
  - a. Declaration that termination was unfair and unlawful.
  - b. Refund of unlawful deduction of VAT penalty at Kshs. 5,000.
  - c. Refund of unlawful deduction of suspension amount at Kshs. 23,145.
  - d. Payment of unlawful salary reduction at Kshs 7,416.
  - e. Unpaid salary increment at Kshs. 1,233,333.
  - f. Service pay at Kshs. 479,363.
  - g. Notice at Kshs. 89,000.
  - h. Annual leave at Kshs. 34,285.
  - i. 12 months' salary in compensation for unfair termination at Kshs. 1,068,000.  
Total...Kshs. 2,939,544.
  - j. General damages for breach of constitutional rights.
  - k. Interest.
  - l. Costs.
  - m. Any other relief.
14. The Respondent filed its Statement of Response, dated 24<sup>th</sup> November 2020. It is conceded that the Claimant was employed by the Respondent as pleaded. Her contract was terminated on account of redundancy. The Respondent was introducing new integrated Entrepreneur Resource Program [ERF]. There was no option but to terminate the Claimant's contract on account of redundancy.
15. She was offered Kshs 367,269 as redundancy package, which she refused to collect. Disciplinary issues did not lead to termination. Termination was on account of redundancy.
16. She was notified about redundancy.



17. The Respondent denies that it raised, or undertook to raise, the Claimant's monthly salary by Kshs 25,000. She is not owed any money by the Respondent. Termination was fair and lawful. She is not entitled to the prayers sought. The Respondent urges the Court to dismiss the Claim with costs.
18. Partial Judgment was entered in favour of the Claimant, based on the admission made by the Respondent in its Pleadings, for the sum of Kshs. 367,269, in a Ruling of the Court dated 24<sup>th</sup> September 2021.
19. The Claimant gave evidence and rested her case, on 22<sup>nd</sup> September 2023. The Respondent's Human Resource Manager Samuel Matheri, gave evidence on 31<sup>st</sup> January 2024, closing the hearing. The Claim was last mentioned on 3<sup>rd</sup> April 2024, when the Parties confirmed filing and exchange of their closing submissions.
20. The Claimant relied on her witness statement on record, and documents- [1-21], in her evidence – in-chief. Cross –examined, she told the Court that there was no notice of redundancy. The memo exhibited by the Respondent on redundancy, was not known to the Claimant. She had a warning letter dated 22<sup>nd</sup> May 2020. It doubled up as a surcharge letter. She wrote e-mail dated 26<sup>th</sup> May 2020, recommending to the Respondent, that changes be made to her office, to enable her file VAT returns timeously.
21. She would have been earning Kshs. 89,000 from 2016. She continued to earn Kshs. 64,000. Director Finance wrote e-mail on increment, dated 16<sup>th</sup> April 2016. The amount was not specified. She explained that the Finance Manager frustrated her, occasioning delay in filing of VAT returns. She was suspended before redundancy. Suspension was for 10 days, beginning 27<sup>th</sup> May 2020, ending 10<sup>th</sup> June 2020. She reported on 10<sup>th</sup> June 2020, only to be issued a letter of termination.
22. The reason was expressed to be redundancy. Her salary was raised from Kshs. 45,000 monthly at the time of recruitment, to Kshs. 64,000 by the time of termination. She did not write a letter complaining about the withheld increment. She was offered terminal dues. Computation was wrong. She asked the Respondent to pay her through her Advocates. The Respondent insisted that she signs discharge voucher. There was issued a memo, stating that salaries would be reduced by 10%, on account of Covid-19. The Claimant did not consent to reduction.
23. Redirected, she told the Court that the new integrated system, still required her services as an Accountant. The new system was in the process of implementation. The letter of suspension did not mention the new system. The Finance Director negotiated salary increment with the Claimant. He wrote to the Human Resource Manager, stating that the Claimant, had been promoted. She did not get the commensurate salary increment as promised. She only received annual increment, which applied to all staff. She was suspended without salary. She did not consent to 10% salary reduction. She received the sum of Kshs. 367,269 granted in the Ruling of the Court dated 24<sup>th</sup> September 2021.
24. Samuel Matheri relied on his witness statement and documents [1-8] [9-33] filed by the Respondent, in his evidence-in-chief.
25. Cross-examined, he told the Court that on 26<sup>th</sup> September 2019, the Claimant's supervisor wrote to Matheri, commending the Claimant for exemplary work. Matheri was not aware that the Claimant was promised salary increment. She was moved to the position of Reporting Accountant. She raised some issues on her terms of service. An e-mail from James Ngure to Matheri, dated 16<sup>th</sup> April 2016, described the Claimant in glowing terms, saying she was dedicated, and deserved token salary increment. Ngure was the Director, Finance.



26. The Claimant was responsible for filing VAT returns. She explained that data was not provided to her on time, which occasioned late filing of VAT returns. Her concerns were addressed. The Finance Manager assisted her. There was a system upgrade, which caused challenges to the Claimant in discharging her role. She was suspended. The Respondent intended to investigate her poor performance. There is nothing exhibited by the Respondent, to show that the Claimant was advised on the result of investigations carried out, following her suspension.
27. The Respondent issued her a letter of redundancy. There was a genuine error in dating the letter of termination. It was corrected. Notice of redundancy did not issue to the Claimant. She did not know that there was a redundancy exercise taking place at the Respondent. There was no recommendation that her position of Reporting Accountant, is phased out. She was not being forced to execute discharge. The Respondent did not pay her, only after the intervention of the Court. Redirected, Matheri told the Court that the Claimant was paid 1-month salary in lieu of notice.
28. The issues are, whether the Claimant's contract was terminated through a fair procedure; whether there was valid reason to justify termination; and whether she is entitled to the remedies sought.

**The Court Finds: -**

29. The Claimant was employed by the Respondent as an Assistant Accountant, on 13<sup>th</sup> December 2011. She was promoted to the position of Reporting Accountant, in May 2016.
30. She was suspended by the Respondent on 27<sup>th</sup> May 2020, on allegation that she had delayed filing of VAT returns.
31. Suspension was for 2 weeks, without pay. At the end of the suspension period, she reported back as had been advised by the Respondent, on 10<sup>th</sup> June 2020.
32. She was issued a letter of termination, on account of redundancy.
33. Procedure: Having selected redundancy as the mode of termination, it behoved the Respondent to embrace in full, the procedure prescribed on redundancy, under Section 40 of the *Employment Act*.
34. There were no notices issued to the Claimant and the Labour Office, on intended redundancy. There was no tripartite consultation of any form, involving the Claimant, the Labour Office, and the Respondent, leading to termination. The Claimant was not advised why only she, was selected for redundancy.
35. Worryingly, she had been suspended without salary for 2 weeks, and was never told by the Respondent, about any intended redundancy. Preceding suspension, she had been issued a last warning. There was no precipitous misconduct attributed to her after the final warning, that would warrant further disciplinary action. It was only after she reported back, that she was issued a letter of termination, alleging that her position had been declared redundant.
36. Procedure was a complete aberration, and in complete disregard of Section 40 of the *Employment Act*.
37. Even if it was to be assumed that perhaps, the Respondent erroneously alluded to redundancy, and the Claimant left employment on disciplinary grounds, procedure was still an aberration, under Section 41 and 45 of the *Employment Act*.
38. Suspension was punitive, and deprived the Claimant of any income. She was on a final warning. It is not clear when the first and second warning issued. There was nothing done by the Claimant after the final warning, that would justify additional disciplinary sanction. When she returned at the end



- of 2 weeks, as advised, she was not presented with any investigation report. She was just told that the ground had shifted, and the matter was no longer a disciplinary one; it was now about redundancy.
39. The Claimant was not therefore taken through a disciplinary hearing, contrary to her expectation and the dictates of Sections 41 and 45 of the *Employment Act*, after she had been suspended on disciplinary grounds.
  40. Procedure was unfair and unlawful.
  41. Reasons. It is quite obvious to the Court that the Claimant's contract was terminated on account of a colourable redundancy exercise. There was no redundancy 2 weeks earlier, when she was suspended. The introduction of Entrepreneur Resource Program [ERP] was not shown to have rendered the Claimant's role as Reporting Accountant superfluous. Matheri confirmed that the role was not phased out. The new system was in motion when the Respondent sent the Claimant away 2 weeks earlier. She was not told that the system had necessitated declaration of her role redundant.
  42. The reason given to the Claimant by the Respondent on suspension, radically transformed when she returned to work 2 weeks later. It was no longer about late VAT returns filing; it was about a sudden redundancy.
  43. Redundancy was a most colourable exercise, which was designed to justify termination, after the Respondent realized while the Claimant was on suspension, that any disciplinary proceedings against the Claimant, would come to a cropper, and not yield the outcome desired by the Respondent.
  44. There was no valid reason to justify termination, under Sections 40, 43 and 45 of the *Employment Act*.
  45. Remedies. The Claimant worked from 13<sup>th</sup> December 2011 to 10<sup>th</sup> June 2020, a period of 8 ½ years. She was promoted on merit. Her supervisor described her performance as exemplary. She did not cause, or contribute, to the circumstances leading to termination of her employment. Her contract was for an indefinite term. She expected to work until retirement. She was paid Kshs. 367,269 in terminal dues, after the intervention of the Court. Termination was decidedly deficient in the manner of its execution and justification. She last earned a monthly gross salary of Kshs. 64,000, captured in her pay slip of January 2020. She is granted compensation for unfair and unlawful termination equivalent of 12 months' salary, at Kshs. 768,000.
  46. Her terminal dues paid at Kshs. 367,269, are shown to have been subjected to a VAT penalty of Kshs. 5,000. This deduction was not supported by the Respondent in its evidence. It was not shown that Respondent incurred the penalty, as a result of any acts or omissions on the part of the Claimant. It is not the role of Employees to pay their Employer's VAT obligations. The Claimant was never taken through a hearing of any nature, where it was established that she occasioned the Respondent loss of Kshs. 5,000, and that the Respondent was justified in deducting the sum from her terminal dues. She is granted refund of Kshs. 5,000.
  47. She was paid salary for days worked in the month of June at Kshs. 23,145, as part of her terminal dues. Her prayer for Kshs. 23,145, which she terms as 'suspension amount' is without merit.
  48. The Court did not understand the item pleaded as unlawful salary reduction at Kshs. 7,416. What the Court does not understand, has not been established, and is declined.
  49. The prayer for salary increment in arrears, at Kshs. 25,000 monthly, has not been established through the Claimant's evidence. She was given an annual increment over her years of service. Although there is evidence that she was promoted, and even garlanded for exemplary service, there was no contractual obligation created by the Respondent, to increase her salary by Kshs. 25,000 monthly. There is nothing exhibited by the Claimant, where the Respondent agreed to increase her salary by Kshs. 25,000



monthly, or made an enforceable commitment, to make such an increment. The Claimant relies on the hortatory language of her superiors in their estimation of her performance, in seeking enforcement of alleged arrears of salary increment. Such language did not result in enforceable obligation on the part of the Respondent, to raise the Claimant's salary. The figure of Kshs. 25,000 monthly, appears to have been plucked from the air by the Claimant, and thrown at the Court, with a demand that the Court endorses its payment in arrears. This item is declined.

50. The other items such as annual leave, service/ severance, and notice, were part of the terminal benefits already in the pocket of the Claimant.
51. The prayer for exemplary damages has not been established and is declined.
52. Costs to the Claimant.
53. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**In sum, it is ordered: -**

54.
  - a. It is declared that termination was unfair and unlawful.
  - b. The Respondent shall pay to the Claimant compensation for unfair and unlawful termination equivalent of 12 months' salary at Kshs. 768,000 and refund of Kshs. 5,000 - total Kshs. 773,000.
  - c. Costs to the Claimant.
  - d. Interest granted at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 21<sup>ST</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

