



Kenya Engineering Workers Union v Soham Singh Josh and Sons Limited (Cause 1378 of 2018) [2024] KEELRC 2654 (KLR) (30 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2654 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1378 OF 2018
DKN MARETE, J
OCTOBER 30, 2024**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
SOHAM SINGH JOSH AND SONS LIMITED RESPONDENT**

JUDGMENT

1. The matter came about by way of a Claimant’s Memorandum of claim dated 7th September, 2018. The issue in dispute is therein cited as;
Unfair redundancy
2. The Respondent in a Reply to Memorandum of Claim dated 22nd June, 2023 denies the claim and pray that it be dismissed with costs.
3. The Claimant again in a Claimant’s Response to Respondent’s Reply dated 24th July 2023 further supplements the claim and scandalizes the defence.
4. The Claimant’s case is that the Respondent is a pure Engineering Company Ltd located along Ukwala Ring Road Nairobi. The Claimant is the rightful union and this is not disputed.
5. The parties have had a cordial relationship with a Recognition Agreement besides various negotiated CBA’s guiding the conduct of their affairs.
6. This dispute arose on 15th September 2017 when the grievant was served with a redundancy letter in contravention of Section 40 of the Employment Act, 2007 and the Collative Bargaining Agreement (CBA) inter partes.

A detailed background to the dispute comes out thus;
The grievant Mr. Dominic Asembo Ochieng reported this imposed redundancy to the Claimant union. The union sought audient with the Respondent on 17th October, 2017 which indeed



occurred. Here, the Respondent gave out the grievant's working of service gratuity and parties disagree on this and even the Claimant's version of the same. Ultimately, the parties settled and agreed on the Claimant's version of the gratuity. The parties agreed in a meeting on 1st November, 2017 to arrest an error of gratuity payment to the grievant from Kshs. 119,635.00 to Kshs. 185,861.00 to which both parties agreed. They did not agree on medical expenses service. On 31st October, 2017 the Claimant received a letter from the Respondent for postponing the meeting of 1st November instant. At a meeting on 23rd November, 2017 the Managing Director was of the view that the Guru Nanak Hospital bill should be deducted from a payment from WIBA. They disagreed. A trade dispute was reported on 18th January, 2018 and Madam Mwereza was appointed as conciliator. Meeting on 9th May 2018 and 8th June 2018 inter partes failed due to non-attendance by the Respondent. After two failed meetings, the conciliator advised the parties to seek any other recall to their dispute resolution

She prays as follows;

1. Two months notice = Kshs. 64,090.00
 2. One month leave for 20 days = Kshs. 32,045.00
 3. September 2017 salary for half month = Kshs. 16,022.50
 4. Severance pay for 8.7 years = Kshs. 225,177.80
 5. Medical treatment which subtracted his benefit un procedurally = Kshs. 105,180.00
 6. Add compensation paid to company by WIBA Insurance = Kshs. 278,305.00
 7. Compensation for un-procedural Redundancy for four months = Kshs. 128,180.00
Total Amount = Kshs. 849,000.30
7. The Respondent's case is that Claimant is non suited to herself and that the claim is totally defective and should be struck off in the first instance.
 8. It is the Respondent's further case that the Claimant's employment was terminated on 15th September, 2017 on account of redundancy and his dues were calculated and were paid to her (union.) She therefore denies the claim and prays that it be dismissed with costs.
 9. The issues for determination therefore are;
 1. Whether the termination of employment of the grievant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the reliefs sought.
 3. Who should bear costs of this cause.
 10. The 1st issue for determination is whether the termination of employment of the grievant by the Respondent was wrongful, unfair and unlawful. The Claimant in her written submission dated 28th November, 2023 reiterates her case and submit that the redundancy instituted against the grievant was irregular it was issued without notice or consultation with the Claimant and is therefore a violation of section 40(a) of the *Employment Act*, 2007. This provides that where the employee is a member of a trade union the employer should notify the relevant union and the local labour officer.



11. In the instant case, the termination of employment by the Respondent was verbal and only formalised after the claimant raised issues on the matter.
12. The Respondent's case is a denial of the Claim.
13. The Respondent's further case is that she has been a competent union dues contributor to the Claimant's Union in the meaning of section 48(2) of Labour Relation Act 2007. The parties herein have a duly signed (CBA) in the meaning of sections 57(1) on C.B.A Negotiations procedure [Labour Relations Act, 2007](#).

The issues for determination therefore are;

1. Whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
14. The 1st issue for determination is whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful. The Claimant in her written submissions dated 28th November, 2023 reiterate her case for unlawful termination of the grievant. This was because the Respondent failed to issue a notice of redundancy to the grievant who was a member of a trade union in contravention of section 40(a) of [Employment Act, 2007](#). The verbal termination of employment cannot amount to a valid termination on grounds of redundancy.
 15. The Respondent written submission merely deny unlawful termination of employment. It is her case that the Claimant has adduced any evidence of unlawful termination of employment. And therefore her case should fail. She insist on a case of redundancy and denies infringement of the right of the Claimant.
 16. Again, the Respondent submit that the Claimant has failed to prove in evidence her allegations of unfair redundancy and is bent on rely on mere assertions in support of his case. The Claimant's burden of proof has not shifted to the Respondent and therefore the claim becomes a non-starter.
 17. Looking at the respectively cases of the parties, the Claimant's case abounds. The Claimant presents a case of redundancy where no notices were issued to the Claimant or even the local labour officer per section 40 of the Employment Ac, 2007. It is her case that the Respondent only adduces the letter of redundancy dated 15th September, 2017 but does not tender any evidence of compliance with the law on service of notices.
 18. The Claimant also present a CBA inter partes dated 27th June, 2017 outlining the terms and condition of service between the Respondent and her members. This is besides evidence of the report of a trade dispute which did not bear fruits ending in a certificate of unresolved trade dispute dated 11th June, 2018.
 19. The Respondent merely denies the claim through a sham defence belatedly dated 22nd June, 2023. This and her submissions do not come out of the way to demonstrate the validity of the redundancy process. The Respondent through and through demonstrate evasiveness of the claim. I therefore find a case of unlawful termination of employment and hold as such.
 20. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;



- (i) One (1) month's salary.....Kshs.32,045.00
- (ii) Severance pay for 8.7 years .32,045x8.7x21/26....Kshs. 225,177.80
- (iii) Compensation from WIBA.....Kshs. 278,150.00
- (iv) Medical treatment deducted from the terminal dues..Kshs.105,180.00
- (v) Four (4) months compensation for unlawful termination of employment 32,045x4Kshs. 128,180.00
- Total of claim.....Kshs.768,732.80
- (vi) The costs of the claim shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF OCTOBER 2024.

D. K. Njagi Marete

JUDGE

Appearances:

1. Mr Araka for the Claimant Union
2. Mr. Odhiambo holding brief for Mr. Midwa instructed Churchil Midwa & Company Advocate for the Respondent.

