



**Sagala v Bridge International Academies Limited (Cause 46 of 2018)  
[2024] KEELRC 2565 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2565 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 46 OF 2018  
L NDOLO, J  
OCTOBER 24, 2024**

**BETWEEN**

**SARAH LUBAI SAGALA ..... CLAIMANT**

**AND**

**BRIDGE INTERNATIONAL ACADEMIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. By her Memorandum of Claim dated 15<sup>th</sup> January 2018, the Claimant sued the Respondent; citing wrongful dismissal, discrimination on account of pregnancy and unpaid house allowance as issues in dispute. The Respondent filed a Response dated 14<sup>th</sup> February 2018, but did not call witnesses despite adequate opportunity being availed.
2. On 21<sup>st</sup> September 2022, I took the Claimant's testimony *ex parte* as the Respondent failed to attend court, in spite of due service. I then proceeded to close the Respondent's case and directed the parties to file final submissions.
3. Thereafter, the Respondent filed an application to re-open the case, which was compromised by the parties. I therefore took the Claimant's testimony again on 24<sup>th</sup> October 2023, this time in the presence of the Respondent's Counsel.
4. As it turned out, the Respondent had filed its documents on the eve of the trial and the Claimant did not have them. The matter was therefore adjourned to 5<sup>th</sup> March 2024, on which date there was no appearance for the Respondent. I consequently closed the viva voce hearing and noting that the Claimant had already filed final submissions, I gave the Respondent 14 days to file its submissions.
5. When the matter came up for mention on 23<sup>rd</sup> April 2024, Counsel for the Respondent informed the Court that he had filed another application dated 17<sup>th</sup> April 2024, to re-open the case a second time. By my ruling delivered on 31<sup>st</sup> July 2024, I declined the Respondent's attempt to re-open the case one



more time. I however gave the Respondent a final opportunity to file its submissions on the main claim, an offer that the Respondent did not take.

6. This judgment is therefore based on the parties' pleadings and the Claimant's testimony and final submissions.

### **The Claimant's Case**

7. The Claimant was employed by the Respondent on 16<sup>th</sup> June 2014, in the position of Human Resource Associate, earning a monthly salary of Kshs 53,045. She worked as such until 2<sup>nd</sup> May 2017, when her employment was terminated on account of redundancy.
8. The Claimant accuses the Respondent of unilaterally terminating her employment, without prior notice or consultation. According to the Claimant, there was no genuine case of redundancy.
9. The Claimant claims to have been targeted for redundancy, stating that the selection criterion employed by the Respondent was unknown even to the Claimant, who was working in the Human Resource Department.
10. The Claimant points out that she had resumed duty from maternity leave, two weeks before the termination. She states that upon her resuming duty, the Respondent took away most of her responsibilities and she was tasked to handle resignations only.
11. The Claimant lays a claim of discrimination on the ground of pregnancy, citing the following particulars:
  - a. The Respondent's action of taking away the Claimant's responsibilities immediately after her resuming work from maternity leave;
  - b. Opaqueness of the criterion employed by the Respondent in selecting employees to be declared redundant;
  - c. The fact that the termination came just two weeks after the Claimant had resumed work from maternity leave;
  - d. The fact that there was no valid reason for the termination.
12. The Claimant now claims the following from the Respondent:
  - a. Unpaid house allowance for 35 months.....Kshs 278,486
  - b. 12 months' salary as damages for wrongful dismissal.....636,540
  - c. Compensation for discrimination on account of pregnancy.....636,540
  - d. Costs plus interest

### **The Respondent's Case**

13. In its Response dated 14<sup>th</sup> February 2018, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim. The Respondent however denies that there was any wrongful, unjust or unlawful termination of the Claimant's services. The Respondent claims that the Claimant stagnated in her employment position from commencement till departure.
14. The Respondent avers that on 20<sup>th</sup> April 2016, the Claimant's subordinates complained to the Head of Department of their difficulty in working with the Claimant. It is alleged that the Director of People Operations, Divya Venkat reached out to the Claimant and her subordinates in an effort to quell



conflicts emanating from the sour working relationship. The Claimant is said to have acknowledged the complaints, admitting that she was in the wrong. This led to the Claimant's demotion from the position of team leader.

15. The Respondent accuses the Claimant of delay in submitting her mid-year performance review for 2016, which is said to have been incomplete. The Respondent also accuses the Claimant of failing to report to work on 8<sup>th</sup> & 9<sup>th</sup> August 2016 and 4<sup>th</sup> October 2016, without any notification to her supervisors.
16. Additionally, the Respondent accuses the Claimant of failing to deactivate former employees from the system, leading to erroneous payment of their salaries in October and November 2016.
17. Overall, the Respondent claims that the Claimant's performance was unsatisfactory and she was therefore put on a Performance Improvement Programme (PIP) from August 2016 until December 2016.
18. The Respondent adds that the Claimant commenced her maternity leave on 11<sup>th</sup> January 2017. The maternity leave was to run until 11<sup>th</sup> April 2017 but the Claimant opted to extend her rest by applying for annual leave for two days and thus reported back to work on 17<sup>th</sup> April 2017.
19. The Respondent defends the decision to terminate the Claimant's employment on account of redundancy, stating that it complied with all legal requirements on declaration of redundancy. The Respondent maintains that it was under no statutory obligation to consult the Claimant.

### **Findings and Determination**

20. There are three (3) issues for determination in this case:
  - a. Whether the termination of the Claimant's employment was lawful and fair;
  - b. Whether the Claimant has proved a case of discrimination against the Respondent;
  - c. Whether the Claimant is entitled to the remedies sought.

### **The Termination**

21. On 2<sup>nd</sup> May 2017, the Respondent wrote to the Claimant as follows:

“Dear Sarah;

Re: Termination of employment by reasons of redundancy

The purpose of this letter is to confirm the outcome of a recent review by the Company of its operational requirements, and what this means for you.

The Company faced a number of challenges with regulations which affected and continues to significantly affect growth prospects in its operations in terms of continued expansion. As a result, due to the downturn in operations, we are now focusing on improving productivity and efficiency within the company. We are therefore taking necessary measures to ensure Bridge can continue to provide high quality education to thousands of families across Kenya. This will include a restructure which will affect certain roles and departments within the company. We will also be merging and/or closing academies with unsustainable pupil populations.



The redundancy affects all areas of the Company's operations. We will be declaring 300 teacher positions, 20 Academy Manager positions and 100 corporate support staff positions redundant.

After a careful evaluation of our operational needs, we have determined that your position is surplus to requirements in your area of operation. Regrettably this means your employment will terminate. This decision is not a reflection of your performance.

Due to your employment terminating on account of redundancy, you shall be paid severance pay equivalent to fifteen days' pay for every completed year of service in accordance with the statutory provisions on severance with payment for any incomplete year pro rated accordingly. You shall also be paid any accrued annual leave and bonus pay in cash and accrued entitlements to the last day in employment with the Company and shall be issued with a certificate of service and a letter of recommendation. As part of your severance package you shall remain on medical coverage for the remainder of the existing coverage period which shall expire on or before 12<sup>th</sup> September 2017.

Your employment shall end immediately and as a result you shall be paid one month's salary in lieu of notice.

Handover process shall include the following:

Deliverables listed by your Department Director as part of your handover; and  
Clearance by the People team per usual termination process.

Your final dues computation is provided in Schedule 2 and is subject to successful clearance.

We thank you for your valuable contribution during your employment with us and wish you well as you take your next steps in your career. Please contact the People Operations department if you wish to obtain a reference in the future. For immediate use, we enclose the following:

Final dues computation

Certificate of Service

Recommendation Letter

Clearance Documentation

IT

People

Finance

Departmental Clearance

Voluntary post-separation support programme

Career Forum and Counselling support

Post-Separation Talent support

Yours sincerely,

(signed)

Divya Venkat

People Operations Director



Bridge International Academies Ltd”

22. The termination letter discloses redundancy as the ground upon which the Claimant’s employment was terminated. In its Response however, the Respondent accuses the Claimant of poor performance and misconduct. The Respondent did not bother to explain its conflicting accounts regarding the reason for bringing the Claimant’s employment to an end. At any rate, there was no evidence of any prior disciplinary proceedings regarding the complaint of poor performance and misconduct.
23. Regarding the reason of redundancy, the law is clear on the procedure to be adopted. In this regard, Section 40 of the *Employment Act* provides as follows:
  40.
    - (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
      - (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
      - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
      - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
      - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
      - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
      - (f) the employer has paid an employee declared redundant not less than one month’s notice or one month’s wages in lieu of notice; and
      - (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
24. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee, their union (where applicable) and the local Labour Officer. By definition, this notice should set out the reasons for and the extent of the intended redundancy.
25. It is now settled that the redundancy notice is separate and distinct from the termination notice provided under Section 40(1)(f).



26. In *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR the Court of Appeal stated as follows:

“It is quite clear to us that sections 40 (a) and 40 (b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a union, the notification is to the union and the local labour officer at least one month before the effective redundancy date. Where the employee is not a member of the union, the notification must be in writing and to the employee and the local labour officer. Section 40 (b) does not stipulate the notice period as is the case in 40 (a), but in our view, a purposive reading and interpretation of the statute would mean the same notice period is required in both situations. We do not see any rational reason why the employee who is not a member of a union should be entitled to a shorter notice.”

27. In the subsequent decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR Maraga JA (as he then was) rendered himself as follows:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in...*ILO Convention No 158-Termination of Employment Convention, 1982*, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable.”

28. In the more recent decision in *The German School Society v Ohany* (Civil Appeal 325 & 342 of 2018) (Consolidated) [2023] KECA 894 (KLR) (24 July 2023) (Judgment) the Court of Appeal held that the requirement for consultation is implied in Section 40 of the *Employment Act* and stated that:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”

29. The Respondent did not adduce evidence to demonstrate compliance with the notice requirements under Section 40 of the *Employment Act*. Further, the assertion in its Response that it was not obligated to consult the Claimant prior to the declaration of redundancy runs counter to established jurisprudence. Moreover, the selection criterion used was not disclosed.

30. In the end, I find and hold that the termination of the Claimant’s employment was unlawful and unfair. Consequently, I award the Claimant six (6) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s length of service and the fact that she did not contribute to the termination. I have further considered the Respondent’s violation of the law on declaration of redundancy.

## **Discrimination**

31. The Claimant bases her claim for discrimination on the timing of the termination of her employment, soon after she had resumed duty from maternity leave. She therefore seeks to create a nexus between



the termination and her pregnancy. In her final submissions, the Claimant cites Section 5(7) of the Employment Act, which provides as follows:

(7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section."

32. The Claimant submits that it was incumbent upon the Respondent to prove that the termination of her employment had nothing to do with her pregnancy. The Court does not agree with the Claimant on this score; first, by the time the termination occurred, the Claimant had delivered and resumed duty from maternity leave; second, for an employer to be put on its defence in a claim of discrimination, the affected employee must first establish a prima facie case by demonstrating a direct correlation between the alleged discrimination ground and the employer's action. No such parallel was established in this case and the Claimant's claim of discrimination therefore fails and is disallowed.
33. The Claimant further claims house allowance. However, her employment letter and pay slip provided for a gross salary, which would ordinarily be inclusive of house allowance. This claim therefore also fails and is dismissed.

#### **Final Orders**

34. Finally, I enter judgment in favour of the Claimant in the sum of Kshs 318,270 being 6 months' salary in compensation for unlawful and unfair termination of employment.
35. This amount will attract interest at court rates from the date of judgment until payment in full.
36. The Claimant will have the costs of the case.
37. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF OCTOBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Job Nyasimi for the Claimant

Mr. Mugodo for the Respondent

