



**Ochola v Standard Chartered Bank Kenya Limited (Cause E343 of 2021)
[2024] KEELRC 13176 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13176 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E343 OF 2021
L NDOLO, J
NOVEMBER 21, 2024**

BETWEEN

KENNEDY ONDU OCHOLA CLAIMANT

AND

STANDARD CHARTERED BANK KENYA LIMITED RESPONDENT

JUDGMENT

Introduction

1. By his Memorandum of Claim dated 27th April 2021, the Claimant makes a claim of unlawful redundancy, against the Respondent. The Respondent denies the claim by its Memorandum of Response dated 31st September 2023.
2. The matter went to full trial where the Claimant testified on his own behalf and the Respondent called its Employee Relations Manager, Anthony Kilonzo. The parties also filed written submissions.

The Claimant's Case

3. The Claimant was employed by the Respondent Bank on 12th February 2010, upon which he served in various positions the last one being Client Incident Manager (Cash Management Operations). The Claimant worked for the Respondent until 23rd February 2021, when his employment was terminated on account of redundancy.
4. The Claimant complains that in the course of his employment, the Respondent kept changing his direct reporting team leader, unilaterally. He states that these unilateral changes resulted in poor appraisal on his performance.
5. On 12th October 2020, the Claimant proceeded on approved annual leave, which was to run until 30th October 2020. He claims to have received a call on 29th October from his line manager, asking him



to apply for the position of Operations Assistant Grade 10, which the Claimant terms as a low cadre clerical position.

6. The Claimant states that he was perplexed as to why his employer was asking him to apply for a lower position; he nevertheless went ahead to place his application on 30th October 2020. He attended an interview for the new position on 5th November 2020 but was not successful. He claims that the interview was conducted in a skewed manner.
7. On 21st January 2021, the Claimant was served with a notice of risk of redundancy. He was advised to look for any suitable alternative role within the Respondent's establishment, with a view to avoiding the redundancy.
8. According to the Claimant, the notice of risk of redundancy was a mere scapegoat to cover up a premeditated decision to terminate his employment. He states that the redundancy was in violation of Section 40(1)(c) of the Employment Act, which provides for objective selection criteria.
9. The Claimant further states that the redundancy was a smokescreen as the role which was to fall off still exists in the Respondent's establishment. He adds that his job was assigned to other employees.
10. The Claimant also complains that the redundancy process was shrouded in mystery and lack of participation, contrary to the Respondent's internal procedures.
11. The Claimant makes a claim of unlawful and unfair termination of employment and therefore seeks the following remedies:
 - a. 12 months' salary in compensation.....Kshs. 1,493,812.80
 - b. Damages for loss of reputation and career growth.....5,000,000.00
 - c. Damages for discrimination.....5,000,000.00
 - d. Compensation for long service award.....55,000.00
 - e. Balance of ex gratia payment.....871,390.80
 - f. Costs plus interest

The Respondent's Case

12. In its Memorandum of Response dated 31st September 2023, the Respondent admits having employed the Claimant from February 2010 until 23rd February 2021, when his employment was terminated on account of redundancy. The Respondent states that the redundancy was occasioned by a restructuring, aimed at meeting the Respondent's operational requirements and digital transformation.
13. Regarding the redundancy process, the Respondent avers that by letter dated 1st September 2020, it notified the Ministry of Labour, Social Protection and Services of an intended redundancy, that would affect employees in various departments, including Operations and Corporate Banking. According to the Respondent, the notice was precipitated by its digital transformation agenda that would result in its clients accessing services online.
14. The Respondent avers that thereafter, it held various meetings with staff in the Cash Management Operations. The Respondent adds that the Claimant was informed of alternative positions that he could apply for, within the Respondent's internal platforms.
15. On 5th November 2020, the Claimant was invited for an interview for the position of Operations Assistant but he was not successful. The Respondent claims that in a meeting held on 17th November



2020, the Claimant acknowledged that his position had been rendered redundant. The Claimant is said to have begun handing over duties, with an extension of the period within which he could seek an alternative role, up to 31st December 2020.

16. On 21st January 2021, the Claimant was given notice of risk of redundancy owing to migration of the cash management operations to GBS India. The Respondent states that the Claimant was well aware of the migration.
17. On 23rd February 2021, the Claimant was issued with a termination letter on account of redundancy. His terminal dues were tabulated and paid out to him through the March 2021 payroll.
18. The Respondent maintains that it complied with all the legal requirements on declaration of redundancy. In particular, the Respondent states that the redundancy process was consultative, with the Claimant being given an opportunity to seek alternative positions within the Respondent Bank.

Findings and Determination

19. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

20. The Claimant's employment was terminated by letter dated 23rd February 2021, on account of redundancy.
21. Section 2 of the *Employment Act* defines redundancy as:

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”
22. The law recognises redundancy as a legitimate mode of termination of employment, subject to the following conditions, set out in Section 40 of the *Employment Act*:
 - (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.
23. 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.
24. As held by the Court of Appeal in *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR and *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, the redundancy notice is separate and distinct from the termination notice provided under Section 40(1)(f).
25. Prior to the termination letter, the Claimant had been issued with a notice of risk of redundancy dated 21st January 2021. The notice made reference to a 30-day consultation period with the Claimant, during which he was at liberty to look for any suitable alternative roles, to avoid the redundancy.
26. More significantly, the Claimant was availed the opportunity to candidate for an alternative role and when it became apparent that the redundancy could not be forestalled, he was issued with a termination notice.
27. The Respondent filed a redundancy notice dated 1st September 2020 addressed to the Commissioner for Labour, Ministry of Labour, Social Security and Services. This notice gives the reason for and the extent of the intended redundancy. It also details the selection criteria as well as dues to be paid to departing employees.
28. The Court is therefore satisfied that apart from issuing the required notices, the Respondent engaged the Claimant in the necessary consultations. This accords with the holding of the Court of Appeal in *The Germany School Society & another v Ohany & another* [2023] KECA 894 (KLR) where it was held that Section 40 of the *Employment Act* embodies an implied requirement for consultation.
29. The Claimant did not adduce any evidence to support his claim that there was no genuine case of redundancy and that he was targeted. The claims for compensation and damages are therefore without basis and are disallowed.
30. The claims for long service award and balance of ex gratia payment were not proved and are also disallowed.

Final Orders

31. Finally, the Claimant's entire claim fails and is dismissed with an order that each party will bear their own costs.
32. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF NOVEMBER 2024

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JUDGE

Appearance:

Ms. Kariuki h/b for Mr. Koceyo for the Claimant

Mr. Okeche for the Respondent

