



**Chumba v Wells Fargo Limited (Cause E004 of 2021)
[2023] KEELRC 176 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 176 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E004 OF 2021
J RIKA, J
JANUARY 31, 2023**

BETWEEN

JOSEPH CHUMBA CLAIMANT

AND

WELLS FARGO LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on January 4, 2021.
2. He states, he was employed by the Respondent as an ATM Services Manager, based at Nairobi, on October 9, 2007.
3. He worked his way up, to the position of Cash Operations Manager, a position he held until his contract was terminated.
4. He states, that in this position, he stood a reasonable chance of progressing to the position of General Manager, which had gone vacant.
5. He had been asked by the Respondent, in August 2019, to send his CV to the Executive Director, Gray Cullen, to be competitively considered for the position of General Manager.
6. He was however not interviewed, and was not appraised about his job application for the position of General Manager.
7. In December 2019, the position was filled by an expatriate.
8. The Claimant realized later, that his CV was required by the Respondent, only for the purpose of obtaining a work permit, for the expatriate who filled the position of General Manager. The Claimant states that use of his documents was illegal, and did not have his consent.



9. He continued working, but on July 30, 2020, he received from the Respondent, a Notice of Intent to Terminate Employment on account of Redundancy. He was barred from accessing his office and official e-mail account. He was asked to immediately surrender the company vehicle. There was no consultation on redundancy. Redundancy was a foregone conclusion. He received termination letter, which was effective on August 31, 2020.
10. He states that his right to privacy under Article 31 of the Constitution was infringed by use of his CV to support the expatriate General Manager's work permit application. His right to fair labour practices was violated.
11. His position was not scrapped, but only renamed Cash Centre Manager. He states that the Respondent did not follow the prescribed redundancy procedure under the Employment Act. He was not heard.
12. He prays for the following orders: -
 - a. Declaration that termination was unfair.
 - b. Declaration that the Respondent Violated Articles 31 and 41 of the Constitution, and Section 43 of the Employment Act.
 - c. 12 months' salary in compensation for unfair termination at Kshs 2,400,000.
 - d. Compensation for unlawful disclosure and use of Claimant's private information.
 - e. Exemplary and aggravated damages.
 - f. Costs and interest.
13. The Respondent filed a Statement of Response dated March 9, 2021. It is agreed that the Claimant was employed by the Respondent as pleaded, and that his employment came to an end, through redundancy. It is true that there was a vacancy for the position of General Manager, but there was no representation made to the Claimant, that he would be considered for the position.
14. He was identified as a suitable candidate to understudy the incoming General Manager. He was advised by the Respondent that this was the reason why he was asked to forward his CV to the Respondent. The request for his CV was made in January 2019, not August 2019. The policy of pairing an understudy Employee to an expatriate, was based on transfer of skills policy, to enable the understudy to be considered for the role, once the expatriate had served out his contract. Submission of the Claimant's CV to the Department of Immigration Services was necessary for legal compliance.
15. There was no application made by the Claimant, for the position of General Manager. He was not qualified for the General Manager's role.
16. The Respondent undertook a restructuring exercise. The Claimant's position was one of the positions which was declared redundant. The Human Resource Director and General Manager-ICT met the Claimant on July 30, 2020, and informed him of the intention to reorganize the business. He was advised that his position would be declared redundant. He was issued notice of intention to declare redundancy, which was also served upon the Labour Office and the Kenya National Private Security Workers Union.
17. He was advised that he would not be required to serve the notice period. He was given time to consult up to August 31, 2020, when notice took effect. The Respondent issued a letter dated August 31, 2020, communicating to the Claimant the decision to terminate his contract.



18. He was paid terminal benefits including Kshs 212,000 being the salary for the month of August; 3 months' basis salary in lieu of notice at Kshs 600,000; severance pay at the rate of 18 days' salary for each complete year of service at Kshs 1,540,000; and Kshs 20,000 being 3 days of pending leave.
19. There was no invasion of privacy. The Claimant was asked to submit his CV, which he did. There was no breach of confidentiality. The Claimant's role was expanded. Cash Centre Manager took the roles of Cash Operations Manager and Treasurer. More people reported to the Cash Centre Manager, and remuneration in the new position was higher. The Respondent followed redundancy law. The Claim has no merit. It should be dismissed with costs.
20. The Claimant, and the Respondent's Group Human Resource Director Willis Onyango, gave evidence for the respective Parties, on June 8, 2022. The Claim was last mentioned on September 21, 2022, when Parties confirmed filing and exchange of their Closing Submissions.
21. The Claimant adopted his Witness Statement and Documents on record as his evidence. He restated his employment history and his terms and conditions of employment, as pleaded in the Claim. He explained that he was a Cash Solutions Manager on termination. The letter dated July 30, 2020, referred to him as Cash Centre Manager. The 2 terms were used interchangeably. He was told by the Administrative Manager, that his CV was used to facilitate work permit for an expatriate. He did not give his consent. There was no evidence that redundancy notice issued on his Union and the Labour Office.
22. Cross-examined, the Claimant told the Court that he was VIT Cash Solutions Manager on termination. Paragraph 4 of his Statement of Claim states that he was Cash Operations Manager. General Manager's position fell vacant in 2018. The Claimant did not apply for the position. He forwarded his CV in January 2019, not August 2019. He was issued redundancy notice in July 2020, a year after the position of General Manager was filled. He signed redundancy notice without reading. His terminal dues were tabulated. He was advised that if he had a question on tabulation, he should consult the Human Resource Director. He considered himself bundled out. Other Employees left on redundancy. There was a new organogram. The Claimant was not aware that the new role attracted different remuneration from that he earned in his role. He received his terminal dues, and signed the letter of termination. He stated that he had no other claims against the Respondent. Redirected, the Claimant stated that the position he held was still there, in the new Organogram.
23. Willis Onyango similarly adopted his Witness Statement, and Documents filed by the Respondent in his evidence. The Claimant was never being considered for the position of General Manager. He was requested to avail his CV as an understudy for the incoming General Manager. He was to act as an understudy in accordance with the law. Onyango called the Claimant and explained to him everything about redundancy. Notice issued to the Claimant's Union and to the Labour Office. The new position was not the same as that held by the Claimant. The duties and remuneration were different. The Claimant was paid his terminal dues, acknowledged receipt and was issued Certificate of Service.
24. Cross-examined, Onyango told the Court that the Claimant's contract shows he was ATM Services Manager, not Cash Operations Manager. He was promoted to Cash Solutions Manager. The Respondent referred to the Claimant as Cash Centre Manager. Remuneration changed, as did reporting lines. Before reorganization, 4 positions reported to the Cash Centre Manager. It remained the same after reorganization. Only remuneration changed. There is no document showing that the Claimant was asked to be an understudy for the incoming General Manager. Notice was not served on the Union. The Claimant was not a member of the Union. Redirected, Onyango told the Court that the Claimant himself referred to himself as Cash Operations Manager in his Pleadings and Witness Statement. In the old organogram, 2 people reported to him. In the restructured organogram, 4 people



reported to the position. Business operations were not discussed with Employees. They were not involved at the time the Respondent's Board made its decisions. 34 Employees were unionisable, and notice issued to their Union. The Claimant was a Manager, and not unionisable.

25. The issues are whether the Claimant's right to privacy was impaired by the Respondent; whether he was denied the opportunity to become the General Manager; whether he was taken through a fair redundancy process; and whether his prayers are merited.

The Court Finds: -

26. The letter of appointment dated October 9, 2007 indicates that the Claimant was employed by the Respondent as the ATM Services Manager, based at Nairobi.
27. On August 2, 2014, he was issued a letter of appointment as the VIT Cash Solutions Manager, effective July 1, 2014, on a monthly salary of Kshs 200,000.
28. The last letter of appointment on record is dated August 16, 2016, through which the Claimant was appointed VIT Manager – Coast Region, with effect from October 1, 2016.
29. There is a gap in the evidence of the Parties as to when the Claimant became Cash Operations Manager, based at Nairobi. There is no letter of appointment seen by the Court, establishing this, but Parties agree in their Pleadings, that this was the position the Claimant held, at the time of termination, on August 31, 2020.
30. Right to privacy, and lost opportunity to become the General Manager. The Claimant did not establish that he was ever promised he would be the General Manager, or that he was led by the Respondent into believing that he would be the General Manager. There was never any ground for the Claimant to have reasonable and legitimate expectation, of his ascendance to the coveted position of General Manager.
31. He did not even apply for the position, to expect to be considered for the position. He was just asked to supply his CV, which is a common occurrence in an employee-employer relationship. It is not unusual for an Employer to ask for an Employee's CV from time to time, with no strings attached. In most instances, employment records must be updated. There is nothing placed before the Court by the Claimant, to show that a request for his CV was a job promise of application, for him to be considered to fit in the shoes of the General Manager.
32. The Respondent explained that the Claimant's CV was required, for him to fit in the shoes of an understudy to the incoming General Manager, rather than fit in the shoes of the General Manager.
33. This explanation is adequate, to dispose of the issue relating to Claimant's expectation concerning the General Manager's vacancy, and leads to next issue: whether by being required to provide his CV for use at the Immigration Office, the Claimant's right to privacy was violated.
34. The Claimant's documents which were part of his personnel file, in the custody of the Respondent, were shared with the Department of Immigration Services, for purposes of granting the new General Manager a work permit, which would then allow the Claimant to understudy the General Manager, with the hope that someday in the future, the Claimant would have the requisite skills, to become the General Manager. It is a requirement of the Department of Immigration Services, that expatriates applying for work permits, must provide an understudy, a Kenyan Citizen, who shall be trained to take up the position being applied for by the expatriate. The Claimant was interested in the position of General Manager, and would in the view of the Court, be the logical choice, to understudy the new man. His CV was used for his own good, the good of the expatriate, and the good of the Respondent. It was not in violation of the Claimant's privacy; it was intended to build up his career and transfer skills



from the foreigner to the Claimant, and the Respondent. There was nothing sinister, or in violation of the Claimant's right to privacy, in sharing the documents with Immigration. Article 12 of the [Universal Declaration of Human Rights](#) states that,

“ No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, nor to attacks upon his honour and reputation.”

Article 31 of the [Constitution of Kenya](#), which the Claimant invokes, states that,

“ Every person has the right to privacy, which include the right not to have – their person, home or property searched; their possessions seized; information relating to their family or private affairs unnecessarily required or revealed; or, the privacy of their communications infringed.”

35. The Claimant's CV was submitted by the Claimant as part of his employment record. It was not required by the Respondent unnecessarily, but as part of a legitimate process, where he would understudy an incoming expatriate, and gain skills for his career advancement. The Respondent did not engage in arbitrary interference with the Claimant's privacy, or in any manner attack his honour and reputation, by use of his CV.
36. Consequently, the Court declines the prayer for declaration, that the Respondent violated the Claimant's right to privacy under Article 31. The prayer for compensation, for unlawful disclosure and use of the Claimant's private information, is declined. The Court is not persuaded that there was any violation, under the [Constitution](#) or [Employment Act](#), to warrant exemplary and aggravated damages.
37. Redundancy. On cross-examination, the Claimant told the Court that: -I received termination letter.I received terminal dues.I said that I was not owed further dues.
38. This evidence indicates that the Claimant discharged the Respondent, after he had been paid his redundancy package. This comprised Kshs 212,000 being full salary for the month of August 2020; Kshs 600,000 as 3 months' salary in lieu of notice; Kshs 1,540,000 in severance pay, calculated at the rate of 18 days' basic salary for each completed year of service; and Kshs 20,000 in pending leave. In total, he was paid Kshs 2,372,000.
39. The Claimant did not have good ground to file a Claim in Court, challenging the redundancy process, after he had received redundancy package from the Respondent, and conceded that he did not have further claims from the Respondent. He testified that he was advised if he had any questions on redundancy and the package paid to him, he could direct his query to the Human Resource Director. He did not have any query. There were other Employees who left employment alongside the Claimant, on redundancy. He was a Senior Manager, aware of the legal effect of discharging the Respondent, from future claims. Senior Managers do not go about signing employment records, without reading the records, as the Claimant alleged to have done. There may well have been infirmities, in the redundancy process, and without his discharge of the Respondent, the Court would have taken time to analyse these, and make a finding on whether the infirmities rendered redundancy and eventual termination of employment, an unfair exercise, warranting compensation. But the Parties agreed that once the Claimant was paid redundancy package, there would be no further claims, and the Court is not mandated, to go beyond what was agreed voluntarily by the Parties. The Claim is about further dues, while the Claimant committed that he would not pursue further dues, after he was paid off.
40. It Is ordered -
 - a. The Claim is declined.



b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST
DAY OF JANUARY 2023.**

JAMES RIKA

JUDGE

