



**Waithaka v Mabati Rolling Mills Limited (Cause 599 of 2019)
[2023] KEELRC 200 (KLR) (31 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 200 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 599 OF 2019
J RIKA, J
JANUARY 31, 2023**

BETWEEN

DORCAS WANGARI WAITHAKA CLAIMANT

AND

MABATI ROLLING MILLS LIMITED RESPONDENT

JUDGMENT

1. The claimant filed her statement of claim on September 9, 2019.
2. She avers that she was employed by the respondent on July 7, 2014 as a procurement officer.
3. She worked for 5 years until May 24, 2019, when her contract was terminated on redundancy.
4. She received notification of redundancy dated April 24, 2019. The respondent advised that it was streamlining its operations to reduce costs. She was told that the respondent was in the process of tabulating her final dues, and that she had been awarded bonus of Kshs 104,814, on account of the respondent's good performance for the year 2018.
5. She was not involved from the outset, in the process of restructuring. She was only told of the decision already made. The labour office was not involved. There was no consultation. She was not told why her position was selected for redundancy. Section 40 of the *Employment Act* was disregarded. Her last salary was Kshs 134,895 monthly. She prays the court to find that termination was unfair and unlawful, and award the following orders: -
 - a. Declaration that redundancy was unfair and unlawful.
 - b. Compensation for unfair and unlawful redundancy.
 - c. Costs and interest.



6. The statement of response was filed on October 11, 2019. The respondent's position is that the claimant was employed as a senior administrative officer, and later became a procurement officer. Bonus for the year 2018 was awarded to the claimant, in accordance with the respondent's policy. It is correct that the respondent declared the claimant's position redundant. This was geared at reduction of operational costs, and business sustainability. The claimant was aware of the challenges the respondent was experiencing. Consultations took place between the respondent and affected employees. Notice issued to the labour office on April 16, 2019. There was no alternative position available to the claimant. The claimant opted to be paid salary in lieu of notice, instead of serving the notice period. She signed a letter dated May 16, 2019, undertaking that upon receipt of Kshs 654,958 as final dues, she would not have further claim against the respondent. The respondent prays the court to dismiss the claim.
7. The claimant testified on January 25, 2022, as did respondent's Human Resource Manager Julius Ochieng', closing the hearing. The claim was last mentioned on October 11, 2022, when parties took directions on filing and exchange of their submissions.
8. The claimant adopted the contents of her statements of claim and witness, and her documents, in her evidence-in-chief. Cross-examined, she told the court that she looked for alternative work unsuccessfully. The employees were told by the respondent that business was performing poorly, and that they should put more effort. Other employees left on redundancy. She did not expect a company in dire straits, to be paying bonus. She heard that others in her logistics department left. She received notice on April 24, 2019. She did not lodge complaint about notice. She was paid Kshs 654,948 on exit. Bonus was paid based on performance. It was not automatic. She was paid severance at the rate of 28 days' salary, for each complete year of service. She questions the process. Redirected, she told the court that she did not have a real discussion with management. She accepted payment of Kshs 654,958 without prejudice.
9. Julius Ochieng' adopted his witness statement, the statement of response, and documents filed by the respondent. Redundancy process was consultative. There were barazas, involving Employees. The CEO issued memo to all employees. Redundancy was in 2 phases- in 2017 and 2019. Almost 200 employees left in 2017, and another 14 in 2019. Bonus was based on performance from the last year. The claimant was not ambushed. Notice to the Labour Office issued. Cross-examined, she told the court that other employees were affected. There are 3 procurement officer positions. The respondent needed 2.
10. The issues are whether the claimant's position was fairly declared redundant; whether her contract was unfairly terminated; and whether she merits the prayers sought.

The Court Finds: -

11. The claimant worked for the respondent from July 7, 2014 to May 24, 2019. She last held the position of procurement officer. Her position was declared redundant. She was paid redundancy dues, at Kshs 654,958, which she acknowledged receiving, without prejudice. The package included severance pay at a very good rate, of 28 days' salary for each complete year of service. The minimum rate under section 40 of the *Employment Act*, is 15 days' salary for each complete year of service. She was in addition paid bonus, of Kshs 104,814. She told the court that she does not question the validity of redundancy, but questions the procedure.
12. The claimant has not shown defects in the procedure expect perhaps, on the criteria adopted in her selection. The respondent stated that there were 3 procurement officers against the optimum number of 2 officers. Why was the claimant and not the other 2 officers selected? This was not explained by the respondent.



13. Other procedures do not seem to have significantly departed from the minimum statutory standards of fair redundancy, under section 40 of the *Employment Act*. Notice issued; the process was not abrupt, but had been going on in phases from 2017; other employees were involved; and barazas were held involving staff and management. The claimant was aware that the respondent was undertaking restructuring from 2017, and she cannot reasonably complain, about notification of the process.
14. The fault was in not explaining to the claimant, why out of 3 procurement officers, she was selected for redundancy.
15. She had worked for about 4 years and 10 months. Redundancy was not her fault. She was paid a good enough redundancy package and a sweetener in the name of bonus. She did not leave employment empty-handed. She is awarded a month's salary in compensation for unfair termination, at Kshs 134,895.
16. No order on the costs.
17. Interest allowed at court rate, from the date of judgment till decree is satisfied in full.
In summary, it is ordered: -
 - a. It is declared that termination was unfair, on account of the selection criteria.
 - b. The respondent shall pay to the claimant compensation equivalent of a month's salary, at Kshs 134,895.
 - c. No order on the costs.
 - d. Interest granted at court rate from the date of judgment, till decree is met in full.

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

Court Assistant: Emmanuel Kiprono Webale & Associates,

Advocates for the claimant Guandaru Thuita & Company,

Advocates for the respondent

