



**Marita & 8 others v Bakers Parlour (Maggies Hotel and Bakery Eldoret)  
(Cause 122 of 2017) [2023] KEELRC 979 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 979 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 122 OF 2017  
NJ ABUODHA, J  
APRIL 28, 2023**

**BETWEEN**

**THOMAS M MARITA ..... 1<sup>ST</sup> CLAIMANT  
ROBERT O. MIGOSI ..... 2<sup>ND</sup> CLAIMANT  
GEORGE OMONDI ..... 3<sup>RD</sup> CLAIMANT  
VICTOR ONYANGO ..... 4<sup>TH</sup> CLAIMANT  
EDWARD MUKHASA ..... 5<sup>TH</sup> CLAIMANT  
WESLEY K TONUI ..... 6<sup>TH</sup> CLAIMANT  
MARK TOO ..... 7<sup>TH</sup> CLAIMANT  
DORCUS SIMIYU ..... 8<sup>TH</sup> CLAIMANT  
ALEX W MASINDE ..... 9<sup>TH</sup> CLAIMANT**

**AND**

**BAKERS PARLOUR (MAGGIES HOTEL AND BAKERY  
ELDORET) ..... RESPONDENT**

**JUDGMENT**

1. The instant suit was filed on July 3, 2017 by the claimants and later amended on May 4, 2018 seeking reliefs set in the Statement of Claim to wit;
  - a. A declaration that the termination of the claimants’ employment on account of redundancy was discriminatory, malicious, unlawful, unfair, unprocedural and a fundamental violation of the rights of the claimant.



- b. Claims as enumerated here below to wit:-Notice pay, Leave dues, Severance Pay, overtime and underpayment.
  - c. A maximum compensation as per Section 49(c) of the [Employment Act](#), 2007
  - d. A certificate of service as per section 51 of the [Employment Act](#).
  - e. Costs and interest of this suit
  - f. Any other award as the honourable court deems fit to grant in the circumstances of the case.
2. According to the Claimants, on April 2, 2016, the respondent unlawfully and unprocedurally, orally terminated the claimants' from the said employment contracts on grounds of redundancy; the respondent could not allegedly accommodate all the existing workers.
  3. It was the claimants' case, that despite the said termination, the respondent had declined to pay the claimants' their terminal dues contrary to the provisions of the [Employment Act](#) more specifically sections 40,35,36,49(c) and 51.
  4. The claimants' further averred that their termination was unlawful, unprocedural and unfair for the following reasons;-No notice of termination of employment was issued to the claimants as envisaged under Section 35 of the [Employment Act](#),2007.-No notice of termination was issued to the claimants' union as envisaged under section 40(a) of [Employment Act](#),2007-No notice was issued to the local labour officer as envisaged under Section 40(b) of the Employment Act, 2007-The Claimants' were not given their pay in lieu of the notice pursuant to section 36 and 40(f) of the Employment Act, 2007-The Claimants were not issued with notices as envisaged under section 40(1)(a) and (b) of the [Employment Act](#),2007-That the respondent did not comply with Section 40(e)(g) and section 49(c)of the [Employment Act](#), 2007
  5. The respondent filed a Statement of defence under protest(sic) to the claim on September 6, 2017 in which the respondent denied the claim.
  6. The claim was then set for hearing where it proceeded *ex-parte* after the respondent's advocates ceased acting for it.
  7. At the hearing of the Claimants' case, the 2<sup>nd</sup> claimant testified as CW1 on his behalf and on behalf of the other claimants.
  8. CW1 in his testimony stated that they were terminated from employment on April 2, 2016 and were not given any reason for the termination.
  9. That they were told by the manager one Mr Gideon, that there was a plan to move the bakery from where it was to the hotel and that some people would be retained while others were to be laid off.
  10. According to CW1, the condition was that those who intended to join the union would not be retained and it was after they refused to leave the union that the claimants were terminated.
  11. CW1 further testified that they were never informed of the intended redundancy, were not issued with any redundancy notice, and further that, the union was not notified of the intended redundancy and that they were not paid their terminal dues.
  12. The claimants filed their written submissions on December 5, 2022



## Determination

13. The Court has considered the pleadings and the evidence on record as well as the submissions of the claimant and finds that the only issue for determination is whether the Claimants have proved that they are entitled to the reliefs they are seeking.
14. It was not in dispute, as the respondent never attended court to do so, that the claimants were terminated from employment on account of redundancy.
15. Section 40 of the *Employment Act*, 2007 provides for the procedure to be complied with in event of termination of employment contract on account of redundancy as follows: -  
40 (1) An employer shall not terminate a contract of service on amount 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 which the employee is a member and the Labour Officer in charge of the area where the employee is employed of the reasons for and the extent of the intended redundancy not less than a month prior to the date of intended date of termination on amount 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 him and to the still, ability and reliability of each employee of the particular class of employees affected by the redundancy,
  - (d) Where there is an existence of 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.
16. In the instant case, nothing has been tabled before the court to show that the above conditions were met before the Claimants employment was terminated on account of redundancy.
17. The burden of proof was on the Respondent to show that indeed, the provisions of Section 40(1) the *Employment Act* were met before the Claimant were terminated from employment.
18. From the evidence on record, the claimants had served for various periods and were terminated from employment on account of redundancy without any compensation or any payment of terminal benefits.
19. However, the claim for 12 months compensation will not stand since the termination was on the basis of redundancy. Also, as regards the claim underpayment of wages and public holidays allowance I will not award the same as they were not proved. The claimants never presented before the Court their respective skill sets and minimum wage payable for each category and the actual wages actually paid for the Court to compare and see if indeed they were underpaid.
20. In the end, I find that the claimants have proved their case on a balance of probability and I enter judgment as follows:-
  - a. A declaration that the Claimants termination of employment by way of redundancy was unfair



b. I make the following awards as terminal benefits

(a) Thomas Marita

- (i) Notice pay ..... Kshs 19,372.20
  - (ii) House Allowance ..... Kshs 232,478.40
  - (iii) Leave dues..... Kshs 19,373.20
  - (iv) Serverance pay..... Kshs 19,373.20
  - (v) Overtime.....Kshs 29,357.76
- Kshs 300,581.56

(b) Robert Migosi

- (i) Notice pay ..... Kshs 19,372.2
  - (ii) House Allowance ..... Kshs 232,478.4
  - (iii) Leave dues.....Kshs 36,697.58
  - (iv) Serverance pay..... Kshs 19,373.20
  - (v) Overtime.....Kshs 13,859.2
- TOTAL Kshs 302,407.38

(c) Alex Masinde

- (i) Notice pay ..... Kshs 19,372.2
  - (ii) House Allowance ..... Kshs 12,654
  - (iii) Overtime.....Kshs 6,457.7
- TOTAL Kshs 28,483.90

(d) George Omondi

- (i) Notice pay ..... Kshs 14,529.00
  - (ii) Overtime.....Kshs 5,781.95
- TOTAL Kshs 20,310.95

(e) Victor Onyango Ndeda

- (i) Notice pay ..... Kshs 14,529.00
  - (ii) Overtime..... Kshs 2,421.50
- TOTAL 16,950.50

(f) Edward Mukhasia

- (i) Notice pay ..... Kshs 14,529
  - (ii) Overtime.....Kshs 5,781.95
- TOTAL Kshs 20.310.95



- (g) Wesley K. Tonui
  - (i) Notice pay ..... Kshs 14,529
  - (ii) Overtime.....Kshs 5,781.95
  - TOTAL Kshs 20.310.95
- (h) Mark Too
  - (i) Notice pay ..... Kshs 14,529
  - (ii) Overtime.....Kshs 5,781.95
  - TOTAL Kshs 20.310.95
- (i) Dorcas Simiyu
  - (i) Notice pay ..... Kshs 14,529
  - (ii) Overtime.....Kshs 5,781.95
  - TOTAL Kshs 20.310.95

(c) Costs of the suit.

(d) Interest at Court rates from the date of judgment till payment in full. The award shall where applicable be subject to taxes and statutory deductions.

(e) The respondent shall issue each of the claimants with a certificate of service.

It is so ordered

**DATED AT NAIROBI THIS DAY OF 2023**

**DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL 2023**

**ABUODHA J. N.**

**JUDGE**

**In the presence of:-**

.....for the Claimant

..... for the Respondent

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