



**Karuri v Acceler Global Logistics Ltd & another (Petition E162 of 2023)
[2023] KEELRC 2969 (KLR) (20 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2969 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E162 OF 2023
B ONGAYA, J
NOVEMBER 20, 2023**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 ARTICLES
10, 19 (2), 20 (1), (2), (3) & (4), 21 (1) & (2), 41 (1) & (2), 165 (3) (B) & 158 (I)**

IN THE MATTER OF: THE EMPLOYMENT ACT

AND

**IN THE MATTER OF: UNCONSTITUTIONAL REMOVAL FROM THE EMPLOYMENT OF
ACCELER GLOBAL LOGISTICS LTD AND NAIROBI BOTTLERS LTD OF PAUL KARURI)**

BETWEEN

JOHN KARURI PETITIONER

AND

ACCELER GLOBAL LOGISTICS LTD 1ST RESPONDENT

NAIROBI BOTTLERS LTD 2ND RESPONDENT

JUDGMENT

1. The petition was filed on August 17, 2023 through the firm of J. A Guserwa & Company Advocates. The petitioner prayed for:
 - a. A declaration that the respondents jointly and severally have no constitutional and or statutory right in terminating or removal of the petitioner illegally from the organization without following the law.
 - b. The Honorable Court do issue a prohibitory order by way of an injunction against the respondents restraining them from terminating the petitioner's services.
 - c. A declaration that the petitioner remains and continue to serve in his employment at the respondents' establishments.



- d. The Honorable Court do issue a conservatory order in favour of the claimant directed against the respondents to retain and maintain his employment opportunity until lawfully terminated if need be.
 - e. In the alternative, the Honourable Court do assess the damages payable to the petitioner for the unlawful and unconstitutional removal from employment.
 - f. Exemplary damages.
 - g. Damages for constitutional violations.
 - h. Such further orders as this Honourable Court may deem just and expedient.
 - i. That the respondents do jointly and severally to bear the costs of this petition in any event.
2. The petition is supported by the affidavit by John Karuri, the petitioner herein, filed on August 17, 2023 and exhibits thereto filed together with the petition. The petitioner's case is as follows:
- a. The petitioner was first employed by the 1st respondent in the position of porter with effect from July 15, 2010. He stated that he performed his duties diligently and to the 1st respondent's satisfaction and as a result rose through the ranks to the position of warehouse supervisor. The letter of appointment dated July 14, 2010 is exhibited. The letter is signed by Peter W. Muthoka, Chairman &CEO. The claimant appears to have accepted the appointment by signing on July 16, 2010. The letter stated that his annual gross salary was Kshs.192,000.00 and with payroll number 458.
 - b. The petitioner stated that during the subsistence of his employment he was stationed in Nairobi Kenya from where he executed the duties as assigned to him per his employment contract issued by the 1st respondent on its own behalf and on behalf of the 2nd respondent. The Court has considered the letter of appointment. While it is signed by the petitioner and Peter W. Muthoka, Chairman &CEO, nowhere does it mention that it is being signed for the two respondents. The claimant says he was elevated to the position of Warehouse Supervisor from March 15, 2016 when the 2nd respondent employed him. The letter emplacing him to the position of Warehouse Supervisor appears not exhibited at all.
 - c. That the 2nd respondent purportedly terminated the Freight Forwarding & Logistics Services Agreement entered on the March 15, 2016. The termination took effect on August 24, 2023. As a result, the petitioner was issued with a letter of intended redundancy July 24, 2023 which redundancy was to take effect on August 24, 2023. The letter of notice of redundancy is signed by Mr. Vincent Mwaniki Chief Finance Officer. It says that the company is no longer in a position to keep the claimant at work with effect from August 24, 2023 following the Freight Forwarding and Logistics Agreement with Nairobi Bottlers Ltd. The petitioner has exhibited the letter dated July 24, 2023 signed by Nairobi Bottlers Limited Managing Director one James Bowmaker. The letter is dated July 24, 2023 and it is addressed to the 1st respondent. The letter informed the 1st respondent, as a partner of the Nairobi Bottlers Limited, Nairobi Bottlers Limited was terminating the service agreement entered into by the parties in respect of the Freight Forwarding Services & Logistics Agreement dated May 26, 2014. The letter stated that the termination was with effect from May 26, 2014.
 - d. Thus the termination of the service contract was effective 26.05.2014 and the termination of the petitioner's employment was effective 24.08.2023 per notice issued on July 24, 2023.



- e. The petitioner maintains that the decision to cancel the Freight Forwarding & Logistics Services Agreement was not based on any legal or commercial basis but was rather on racial discrimination and malice to render him and all other members of staff serving the 2nd respondent on contract terms jobless.
 - f. The petitioner argues that he has been sidelined in the decision made to cancel the engagement between the respondents despite the fact that the decision greatly affected the petitioner and other members of staff through the intended redundancy.
 - g. The petitioner states that the respondents' actions are unconstitutional, illegal and in contravention of the provisions of section 5 of the Employment Act as read with Article 41 of the Constitution of Kenya, 2010 as the decision was arrived without according the petitioner his right to be heard.
 - h. Further, that the respondents' decision to terminate and declare the petitioner redundant is made in total disregard to the provisions of the Constitution of Kenya, 2010 and the Employment Act, 2007.
 - i. The petitioner urged this Honourable Court to find that the respondents' administrative action is unreasonable and procedurally unfair and allow his petition in terms of the reliefs sought therein.
3. The respondents were served with both the petition and the application and only the 1st respondent entered appearance in the matter through the firm of Ahmednasir Abdullahi Advocates LLP. They however, did not file any response or replying affidavit to the petition and the application. The advocates have since filed an application dated October 25, 2023 to cease acting for want of client's instructions.
 4. The petitioner urged this Honourable Court to find the petition with merit and to allow it as prayed.
 5. To answer the 1st question, the Court returns that the letter dated 24.07.2023 confirms that the respondents are partners. While the letter of appointment and the letter of notice of redundancy appear as file letters not original ones on letter head, the letter of redundancy refers to the termination of the service agreement. On a balance of probability, the Court returns that the respondents were the only joint employers of the petitioner. They employed him as a porter.
 6. To answer the 2nd issue, the Court returns that the contract of employment was terminated per the letter on notice of redundancy dated July 24, 2023.
 7. To answer the 3rd issue, it appears that the redundancy was on account of termination of the service agreement. The petitioner has not shown that the termination of the service agreement was upon racial discrimination to deny, the petitioner and other 50 employees serving the 2nd respondent through the 1st respondent, the right to continued employment and to work. The Court finds that by the petitioner's assertion, it is established that the reason for the redundancy was valid and fair per sections 43 and 45 of the Employment Act because the termination of the service contract indeed took place and, therefore, the redundancy was indeed due to the respondents' operational requirements as envisaged in section 45 of the Act. Racial discrimination is not established for want of particulars and evidence in that regard. The Court finds accordingly.
 8. On the procedure, the respondent appears to have substantially served the one-month redundancy notice upon the petitioner. The issues for selection appear not to arise as they are not pleaded at all. The claimant having been served the notice, it appears that his lamentation that he was not consulted on the



cancellation of the service contract is far-fetched and unfounded. It is not that in the contract of service it was so agreed that he would be consulted if the cancellation was to take place. The Court considers that the cancellation of the service contract appears to have been the 2nd respondent's prerogative to manage the methods of enterprise delivery. The prerogative was the employer's exercisable free of consulting the employees. To that extent, the claimant's lamentation that he was not consulted prior to cancellation of the service agreement is found unjustified.

9. The 4th issue is whether the petitioner has established the constitutional violations as alleged. The termination appears not to amount to unfair administrative action contrary to Article 47 of the Constitution because the reason has been found to have been valid and with due notice to the petitioner. The petitioner has not established the alleged arbitrariness or discrimination.
10. The Court finds that there is established violation of Article 27 on equality before the law and freedom from discrimination, and Article 41 on fair Labour practices. In particular, upon declaration of the redundancy, the petitioner appears not to have paid the redundancy and final dues as envisaged in section 41 of the Employment Act.
11. The 5th issue is on remedies. It appears that upon the filing of the petition, interim orders were granted on the application on 21.08.2021 by Nziki Wa Makau J staying the redundancy from taking effect. In that consideration, the petitioner was kept in employment until determination of the petition. The constitutional violations appear not to have occasioned the petitioner much suffering as the adverse consequences were arrested by the interim orders. The Court will not grant exemplary damages or compensation for violation of rights in the circumstances of the case.

In conclusion, judgment is hereby entered for the petitioner against the respondents, jointly and severally, for:

- a. The declaration that the respondents jointly and severally have no constitutional or statutory right to terminate or remove the petitioner from employment without following the law.
- b. A prohibitory order hereby issued restraining the respondents from terminating the petitioner's services except in strict compliance with the law including section 40 of the Employment Act and Article 41 of the Constitution of Kenya.
- c. The respondents to retain the petitioner in employment except when the contract of service between the parties is lawfully terminated.
- d. The respondents to jointly and severally bear the costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 20TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

