



**Wamwangi v Robert Bosch East Africa (Cause E689 of 2020)
[2023] KEELRC 2916 (KLR) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2916 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E689 OF 2020
NJ ABUODHA, J
NOVEMBER 10, 2023**

BETWEEN

CATHERINE MUTHONI WAMWANGI CLAIMANT

AND

ROBERT BOSCH EAST AFRICA RESPONDENT

JUDGMENT

1. The Claimant filed her statement of claim dated 27th October, 2020 pleaded inter alia as follows: -
 - a. The Claimant was employed by the Respondent by a letter dated 26th November, 2015 as a Human Resources Manager East Africa to be based in Nairobi, Kenya at a gross salary of Kshs 600,000.00 per month.
 - b. The Claimant was on probationary terms for the first six months from 1st January, 2016 and upon successful completion of probation period the Claimant was confirmed as a permanent employee and she continued with her duties as the Human Resources Manager East Africa for the Respondent until the Respondent unfairly and unlawfully terminated her employment through redundancy without following due procedure as required by law.
 - c. The Claimant further averred that on or about 29th September, 2017 at around 3.00pm she was summoned abruptly by the Respondent's General Manager Vandan Rughani for a meeting in his office and he proceeded to call Paul Vemeji the Head of Human Resources for Africa using skype for business call where she was informed that with effect 1st November, 2017 the position of Human Resource Manager East Africa had been abolished and his services were no longer required as the position had been transferred to South Africa because she was receiving a very high salary for the position.
 - d. The Claimant further averred that the Respondent's General Manager handed her a letter which served as notice of termination of her employment dated 29th September, 2017



and on the following week on 2nd October,2017 she was handed over a document titled Termination Agreement which contained computation of her dues upon termination where the Respondent offered to pay her a sum of Kshs 2,287,800; she was asked to sign and return the termination agreement so that the terminal dues would be paid and she was shocked since she was never told that her position would be abolished prior to the meeting at the General Manager's office.

- e. The Claimant further averred that the Respondent's termination of her employment was unfair, irregular and a clear breach of the mandatory provisions of the law as she was not consulted or afforded an opportunity to express her views before the termination notice was issued by the Respondent and she was not aware if the Labour office was notified of the intention to abolish the position of Human Resources Manager East Africa.
 - f. The Claimant averred that there were no valid reasons to abolish her position and the decision to terminate her employment was unjustifiable as there had been no change in the Respondent's business resulting in a decline or cessation of her functions and that is why the Respondent went ahead to hire a new person to fill the position because they required someone to perform the Human Resource roles and this opportunity was not offered to her.
 - g. The Claimant further averred that the decision to terminate her services was not operational requirements as she had submitted an annual work plan for the year 2017 prior to the termination notice being issued and the Respondent's General Manager had on 21st July,2017 requested for a meeting with her to discuss the work expectations for the year 2017 and that she was the only one who was affected by the said restructuring out of all the employees yet the Respondent did not inform her the criteria used to arrive at the decision to terminate her employment out of all the employees in the organization.
 - h. The Claimant further averred that there were other Heads of Department earning the same salary and at the same level of responsibility as her such as Head of packaging, power tools and automotive but they were not affected by the restructuring hence unlawfully and unfairly terminated through redundancy without any valid reasons without following proper procedure set out under section 40,43 and 45 of Employment Act and that she suffered emotional distress and financial loss due to the Respondent's unfair and unlawful termination of her employment which caused abrupt loss of income and she claimed compensation for the loss occasioned.
2. The Claimant prayed for the following against the Respondent;
- a. A declaration that the Respondent's termination of the Claimant's employment was unlawful and unfair.
 - b. Kshs 7,200,000/= compensation for unlawful termination being 12 month's salary.
 - c. Kshs 1,200,000/= being two months salary for failing to give a notice of intention to declare the Claimant redundant.
 - d. Costs of the suit and interests on present court rates.
3. The Respondent filed its statement of Response dated 4th June, 2021 in which they averred inter alia:
- i. The Respondent denied the contents of the claim and averred that the Claimant's termination of employment was procedurally fair and lawful as all legal requirements for redundancy were duly complied and that the Claimant was keen on misleading the court yet as a human



Resource General Manager she understood its structure well that although duly incorporated in Kenya it operates under the Robert Bosch Group of Companies based in German.

- ii. The Respondent averred that it has various companies in various Regions in different continents with each region having sub regions such as the East African Region with each subregion having its Human Resource Manager there is a single Director of Human Resource management for each region where the Claimant was based in Nairobi reporting directly to General Manager, or his nominee and her responsibilities being that the East Africa region she worked in coordination with Human Resource Director Africa based in South Africa.
 - iii. The Respondent averred that it mandated the managing Director as a trustee of the Board of Management with the disciplinary Responsibility and associate evaluation as well as disciplinary decisions including staffing, assessment of potentials, remuneration and associate development as well as final decision-making body in case of conflicts and also the responsibility for personnel measures and adherence of legal boundary conditions with effect for the employment relations. And that the Claimant's position became irrelevant after it failed to open business in Tanzania and Ethiopia as it had anticipated at the time of hiring her which was due to economic challenges it was facing a fact well known to the Claimant.
 - iv. The Respondent averred that the Claimant was earning a salary equivalent to that of a sub-regional Manager who was to oversee several countries yet she only overseeing one country which at that time had less than 30 employees hence the roles were not commensurate to the salary she was receiving as per the payment of its structure.
 - v. The Respondent further averred that the General Manager held a meeting with the Claimant and agreed on the terms to be contained in the Termination Agreement prior to reducing it in to writing and in any event the Claimant executed the termination agreement without any force, coercion or duress and should not therefore turn back and disown the contents and that the amount was mutually agreed between the Claimant and the Respondent's General Manager that is severance pay, one month's salary in lieu of notice and accrued leave pay of Kshs 174,193.55 and amount of severance pay was way above what the Claimant was entitled as the Respondent paid this out of goodwill and gift to the Claimant.
 - vi. The Respondent averred that the Claimant was notified in writing one month prior to her termination as required by law and it was her responsibility to inform the labour office of the redundancy and failure to do so shows malice of the Claimant to use against it and that her position has never been filed to date and the Respondent hired a Human Resource Business Partner whose role as per job description was in charge of Kenyan offices and not East Africa region as was the case with the Claimant hence Claimant's position being higher than the business one and a higher salary too.
 - vii. The Respondent averred that it normally issues goal plans/objectives for its employees and sets targets- for them annually and that does not bar it from terminating an employee legally and that her position was shared not the same as that of Head of Power tools and Automotive which are independent units hence the Claimant couldn't compare herself with them
 - viii. The Respondent prayed that the Claimant's claim be dismissed with costs.
4. The Claimant's (CW1) case was heard on 20th April, 2023 where she testified and adopted her witness statements and the documents filed before the Court as evidence in chief and exhibits. CW1 further testified that she was not issued with a redundancy notice; no report was shared with her before the decision was reached and that she was not given opportunity to present her views.



5. In cross examination CW1 testified that she received communication from the director to attend meeting verbally. She was called around 3 pm and informed that her position had been abolished. It was her evidence that she did not report the Board but to the director for Africa based in South Africa on day to day technical roles while for administrative issues she reported to General Manager in Kenya. She stated that she was called abruptly and told that her position had been abolished because she was highly. She questioned the procedure followed but was told it had already been decided. She was never given a chance to think through or an opportunity for redeployment. She protested the termination but later signed for it under duress and her terminal dues were processed and paid through her bank.
6. CW 1 testified that she asked for another position and never got any response yet there were positions available at the website at that time. It was her evidence that she did not have any disciplinary issues and her performance was good. CW1. further confirmed that her letter of appointment provided for one month notice and that she was given a week to sign the termination agreement.
7. The Respondent's case on the other hand was heard on 6th June, 2023. The Respondent called its only witness Joseph Kariuki, its Human Resource Partner who testified and he adopted his witness statement and the document filed in court as his evidence in chief and exhibits in the case.
8. In cross examination RW1 stated that he joined the Respondent after the Claimant had left employment. According to him, the Claimant was hired to perform HR functions and that the Respondent was yet to open businesses in Ethiopia and Tanzania. He conceded that no assessment report was produced in court and further that no minutes of the meeting held on 29th September, 2017 were produced in court. He further could not tell if consultations took place at the meeting.
9. RW1 further testified that he was not aware of criteria of lay off and whether any explanation was done. However the termination agreement showed it was mutual with payment being clearly being explained. He had no knowledge of any bonus entitlement to the Claimant and that the payment made of Kshs. 1,087,800/= was bonus and not severance pay.
10. RW1 testified that he was not aware if any other staff was laid off and he was not aware as well if the labour office was notified. On re-examination confirmed that the Claimant did not dispute the agreement.

Claimants' Submissions

11. The Claimant filed written submissions dated 23rd June, 2023 and on the issue of whether she was terminated on account of redundancy she relied on section 2 of the [Employment Act](#) on description of redundancy and the case of Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (2014) eKLR to submit that redundancy only happens at no fault of employee in this case it is the Respondent who initiated the process by the letter dated 29th September, 2017 in which her services were terminated due to operational requirements hence her termination was on account of redundancy.
12. On the issue of whether the redundancy was unlawful and unfair the Claimant submitted that the employer ought to comply with provisions of [Employment Act](#) and relied on the case of Titus Muriuki Ndirangu v Beverly School of Kenya Limited(2022) eKLR and Daniel Mburu Muriu v Hypotech Est Africa Ltd (2021) eKLR to submit that the termination of employment by redundancy must meet both the substantive and procedural test under section, 40,43 and 45 of the [Employment Act](#).
13. On the substantive fairness the Claimant submitted on section 43 and 45 of the [Employment Act](#) and relied on the above cases of Daniel Mburu and Kenya Airways Limited to submit that whereas the Claimant was terminated due to change in operational requirements no report was produced in



- court to prove the assertion. The Respondent did not illustrate how the services of the Claimant had diminished hence the termination was not based on operational requirements.
14. On the procedural fairness the Claimant submitted that the Respondent was supposed to meet requirements on redundancy under section 40 of the *Employment Act*. The Respondent failed that test as the Claimant was never consulted prior to the notice and relied on the Kenya Airways case above and article 41 of *the Constitution* on fair labour practices. The Claimant was not given an opportunity to express her views, not informed of the criteria applied in selecting her for termination hence there was no objective reason. The Respondent did not send a notice to labour office notifying the office of the number of employees that was to be affected by the redundancy.
 15. On the issue of reliefs sought the Claimant submitted that having established that her termination was unfair and unlawful she was entitled to reliefs sought. According to the claimant the amount paid by the Respondent of Kshs 600,000 as one month's pay in lieu of notice and Kshs 2,287,800/as severance, was one month's notice pay and Kshs. 1,087,800 as bonus pay for the month of October, 2017. In conclusion the Claimant submitted that the Respondent did not follow the due procedure and as such the claim should be allowed with costs.
 16. On the other hand, the Respondent filed its submissions on 28th July 2023 and on the issue of whether the Claimant was procedurally, lawfully and fairly terminated submitted that the Respondent terminated the Claimant on grounds of redundancy in line with section 40(1) (f) of the *Employment Act* vide a written notice with grounds of the said termination clearly highlighted in the notice. The Claimant did not dispute receiving the said notice.
 17. Relying on the case of Barclays Bank of Kenya, Barclays Africa Group(S.A) Ltd vs Gladys Muthoni & 2 Others (2018) eKLR and Kenya Airways case the respondent submitted that a notice of termination before declaring a redundancy was not a requirement or condition under section 40(1) (f) of the *Employment Act* and that what was required was the payment in lieu of notice for the employees affected by redundancy and not the issuance of notice. The Respondent therefore submitted that the Claimant was called to a meeting on 29th September 2017 to discuss the termination and thereafter given a letter explaining that the termination was due to operational requirements. The HR functions she held were no longer necessary. The respondent therefore followed a fair procedure in terminating the Claimant's services and the fact that the claimant signed the termination agreement, received her remuneration and as an afterthought decided to file this claim.
 18. On the issue of valid reason and substantive justification the Respondent submitted on section 45 of the *Employment Act* that the Claimant was terminated for valid reason and that the claimant failed to prove her allegations. The respondent further submitted that a virtual meeting was called before the managing director and even though there were no minutes produced before the Court. All avenues regarding fair termination were observed and a termination letter issued specifying the reasons and grounds for terminating which was duly acknowledged and signed by the Claimant in form of agreement hence fair and lawful.
 19. It was the Respondent's submission that the Claimant failed to prove wrongful dismissal under section 47(5) of the *Employment Act* and relied on the case of Galgalo Jarso Jillo v Agricultural Finance Corporation (2021) eKLR to submit that the matters existed before termination hence the issue of unfair dismissal had no base yet the Respondent had justifiable grounds for its actions.
 20. On the fair procedure the Respondent submitted on section 41(2) of the *Employment Act* and relied on the case of Kenya Revenue Authority v Menginya Salim Murgani (2010) eKLR to submit that fairness of a hearing is not only oral that it can be conducted through exchange of letters and submitted that it complied with disciplinary process.



21. On the claim for 12 months compensation for unfair termination the Respondent submitted that this does not arise under section 49 of the [Employment Act](#) since the termination was fair and the two month's salary in lieu of notice ought to fail since the Claimant was issued with written notice. The respondent relied on the case of Boniface Muhatia v UBA Kenya Bank Limited (2001) eKLR.
22. On the issue of reliefs sought the Respondent submitted on section 49 of the [Employment Act](#) which provides for considerations to be made in awarding the damages and relied on the case of Kenya Power & Lighting Company Limited vs Aggrey Lukorito Wasike(2017) Eklr which is to render justice to parties. According to the respondent, it terminated the Claimant's service within the law hence she was not entitled to reliefs sought. The Respondent paid the Claimant her severance pay and leave pay balance and not indebted to the Claimant.

Determination.

23. The reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to the case. I have also considered authorities relied on by Counsels.
24. I have I have come up with two main issues;
 - a. Whether the Claimant's termination was unlawful and unfair
 - b. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's termination was unlawful and unfair

25. In a claim for unfair termination, the test has always been the reasonable test. That is to say, would a reasonable employer put in the circumstances dismiss"? If the answer be in the affirmative, the court will not interfere.
26. In this case, the Respondent alleged that they terminated the services of the Claimant on grounds of redundancy because HR services for which she was hired were no longer necessary since it did not open businesses in Ethiopia and Tanzania. The Claimant's case is that she was terminated for invalid reasons. That is redundancy due to operational requirements. She was the only one affected among the Respondent's staff. According to her even if it was on account of redundancy the Respondent did not follow the procedure stipulated under section 40 of the [Employment Act](#).
27. On the issue of the reason for termination the Court is guided by Section 43 of the [Employment Act](#) which requires the employer to prove the reason for termination. The reason has to be valid and fair and if the employer fails to prove so the termination shall be deemed unfair under Section 45 of the Act.
28. Redundancy on the other hand has been defined under section 2 of the [Employment Act](#) as;

“ means 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”.
29. It was not in dispute that the Claimant was in charge of East Africa region and that the Respondent claimed it did not open businesses in Ethiopia and Tanzania. This was not the fault of the Claimant. However, the Respondent before abolishing the said position and hiring someone else to head Kenyan operations ought to have consulted the Claimant and discussed the issue with her. The Respondent did not provide any report to the court showing the challenges it had with opening the business in



those countries and any recommendation in form of minutes or resolutions to abolish the claimant's position as unnecessary.

30. The court has stated severally that even in cases of redundancy the reason ought to be valid under section 43 of the *Employment Act* and the Employee given a right to be heard under section 41 of the *Employment Act*. In *Kenya Airways Limited VS. Aviation and Allied Workers Union of Kenya and 3 Others* (2014) eKLR, the Court of Appeal pronounced itself as follows:

“Thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with a fair procedure. As Section 43(2) provides, the test of what is fair reason is subjective. The phrase “based on operational requirements of the employer” must be construed in the context of the statutory definition of redundancy.

What the phrase means, in my view, is that while there be underlying causes leading to a time redundancy situation such as reorganization, the employer must nevertheless show that the termination is attributable to redundancy – that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment.”

31. From the above precedent it is clear the reason has to be valid and a fair procedure has to be followed. In this case, the Court is not persuaded that the position of Human Resource Manager was abolished since someone else was hired although junior to the Claimant. This was an issue the respondent could have sat down with the Claimant and talked about and sought her opinion including if it was possible for her to accept the junior position due to the prevailing circumstances.
32. Assuming the reason for redundancy was valid the Respondent was bound to follow a fair procedure in terminating the Claimant's service on account of redundancy. In this case the Respondent summoned the Claimant on a meeting at the offices of the General manager on 29th September, 2017 at 3 pm and the Human Resource at South Africa attended virtually where they told the Claimant her services were abolished and she was given a termination letter to that effect.
33. The Claimant was not given a chance to think about this abrupt action by the Respondent. This did not amount to sufficient notice and the Claimant was not given chance to express her views which was against the clear provisions of the law under section 41 of the *Employment Act*.
34. Regarding procedural fairness, it was held in the case of *Walter Ogal Anuro -vs- Teachers Service Commission* (2013) eKLR that for termination to pass the fairness test, it must be shown that there was not only substantive justification for termination but also procedural fairness.
35. On the burden of proving and justifying the grounds of dismissal/termination of employment, Section 47(5) of the *Employment Act* puts the same to the Employer. The Respondent has maintained that the provisions of Section 40(1) require payment of salary in lieu of notice. This is a misapprehension of the section. The section talks on notice. Redundancy is loss of employment through no fault of an employee hence such employee needs to be physiologically prepared. The notice is therefore necessary.
36. The Respondent has also acknowledged never notifying the labour office of the decision to terminate the Claimant on account of redundancy. Notification of the Labour Office is a mandatory requirement under section 40 of the *Employment Act*. In conclusion I am of the view that the Claimant's termination was substantively unjustified and procedurally flawed hence amounted to unfair termination of service.



Whether the Claimant is entitled to reliefs sought.

37. Having found that the Claimant was unfairly terminated therefore proceed to find that she was entitled to compensation for unfair termination as provided for under section 49 of the *Employment Act*. The Claimant had only worked for the Respondent for about two years and the fact that the Respondent paid the Respondent a sum of Kenya Shillings 2,287,800/ as severance pay, one month salary in lieu of notice of Kshs 600,000/, accrued leave of Kshs.174,193.55, an award of six month's salary as compensation would be reasonable in the circumstances.
38. In conclusion the Court awards the claimant Kshs.3,600,000/- being six month's salary as compensation for unfair termination. This award shall attract interest at court rates from the date of judgment until payment in full but subject to statutory deductions. The claimant shall further have costs of the suit.
39. It is so ordered.

DATED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2023

DELIVERED VIRTUALLY THIS 10TH DAY OF NOVEMBER, 2023

Abuodha Nelson Jorum

Judge

