



REPUBLIC OF KENYA



**Akumu v Bidcoro Africa Limited (Employment and Labour Relations Cause 298 of 2019) [2023] KEELRC 3305 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3305 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 298 OF 2019  
MN NDUMA, J  
DECEMBER 20, 2023**

**BETWEEN**

**EDDAH ANYANGO AKUMU ..... CLAIMANT**

**AND**

**BIDCORO AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 6<sup>th</sup> May 2019 seeking to be reinstated to his job and in the alternative to be compensated for unlawful termination on grounds of redundancy. The claimant adopted his witness statement dated 2<sup>nd</sup> May 2019 and testified that he was employed by the respondent on 25<sup>th</sup> January 2018 as a Purchasing and Supplying Manager in the Supply Chain Department at a salary of Kshs. 252,000/= per month. In addition he received travel allowance of Kshs. 47,880/= and special allowance of Kshs. 120,120/=.
2. That he was on a fixed term contract commencing on 26<sup>th</sup> January 2018 to 25<sup>th</sup> January 2020. The claimant was placed on six months' probation period which could be extended to a further six months. The claimant completed the six months' probation and was confirmed by a letter dated 23<sup>rd</sup> July 2018.
3. The claimant served diligently until when he received a letter of termination dated 15<sup>th</sup> October 2018 on grounds of redundancy. The letter stated that the current economic situation had compelled the company to review its operational structure and manpower requirements in order to sustain the business. That the termination was unexpected and without notice. That the procedure under Section 40 of the *Employment Act*, 2002 was not followed. That the termination was unlawful and unfair.
4. The respondent filed a memorandum of reply on 11<sup>th</sup> March, 2021 in which the respondent admits the particulars of employment of the claimant and asserts that it had a valid reason to declare the claimant redundant and, had followed the proper procedure in doing so.



5. RW1 Lucy Akinyi Obwoyo, the Human Resource and Administration Leader testified and adopted a written statement dated 8<sup>th</sup> March, 2019 as her evidence in chief.
6. RW1 testified that the claimant was on a fixed term contract from 26<sup>th</sup> January 2018 to end of 25<sup>th</sup> January, 2020. That his basic salary was Kshs. 252,000/=; house allowance of Kshs. 47,800/= and special allowance of Kshs. 120,120/= making a gross salary of Kshs. 420,000/=.
7. That the claimant was involved in leadership meetings where the performance of the company was reviewed and was found that the company was not performing as expected. The leadership team was informed of a planned redundancy declaration at a meeting held on 29<sup>th</sup> August 2018. The claimant was present in that meeting.
8. That on 1<sup>st</sup> October 2018, the respondent wrote a letter to the Ministry of Labour and Social Security Services, informing them of the impending redundancy due to challenging economic situation. That the respondent announced the impending redundancy to its employees in a letter dated 3<sup>rd</sup> October 2018 explaining the reason for the action.
9. The claimant was on leave on that day but was communicated to via WhatsApp in which the claimant was an active member.
10. On 15<sup>th</sup> October, 2018, the claimant had a one-on-one counselling session with the support team and was later called to the Chief Operations Officer's office to be informed that he had been declared redundant.
11. The claimant received a letter of termination on the same day in which reasons for redundancy were given and terminal set out.
12. On 11<sup>th</sup> and 17<sup>th</sup> October, 2019, the claimant underwent a training on entrepreneurship, personnel branding and financial planning carried out by an outsourced company.
13. That on 17<sup>th</sup> October 2018, the claimant received her clearance certificate and her final dues were paid on 24<sup>th</sup> October 2018. RW1 produced the letters to the Ministry of Labour; to all employees and the WhatsApp conversation to the claimant referred to above.
14. The claimant did not deny having received the letters nor did she deny having attended the meetings set out above by RW1. The claimant was paid terminal dues calculated at Kshs. 1,801,999.99/= comprising gross salary up to 17<sup>th</sup> October 2018 at Kshs. 184,799.99 basic; Kshs. 88,088.00 special allowance and Kshs. 35,112.00 travel allowance.
15. The claimant was paid Kshs. 140,000/= in lieu of 12.99 leave days not taken and Kshs. 140,000/= in lieu of the notice. The claimant was then paid service pay in the sum of Kshs. 154,000/= making the total gross of Kshs. 1,801,991.99/=.
16. The claimant was paid the sum less all statutory deductions in the sum of Kshs. 1,308,286.99/=.
17. The respondent prays the court to find that the suit lacks merit and it be dismissed.

**Determination:**

18. The parties filed written submissions and the issues for determination are:
  - a. Whether the respondent had a valid reason to declare the claimant redundant.
  - b. Whether the respondent followed a fair procedure in terminating the employment of the claimant.



- c. Whether the claimant is entitled to the reliefs sought.
19. Section 40(1) of the *Employment Act* provides:
- “(1) An employer shall not terminate a contract of service on account 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 to 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 the intended date of termination on account 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 time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
  - (d) Where there is in existence 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;
  - (f) The employer has paid an employee declared redundant not less than one month’s notice or one month’s wages in lieu of notice; and
  - (g) The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days’ pay for each completed year of service.”
20. On the testimony of RW1 the respondent notified the Ministry of Labour of the intended redundancy on 17<sup>th</sup> October 2018 and notified all employees of the intended redundancy on 3<sup>rd</sup> October 2018.
21. The claimant was however personally notified of the intended termination on 15<sup>th</sup> October 2018 and he received the letter of termination on that day. On its own evidence, the respondent failed to notify the claimant “personally in writing - of his intended termination on grounds of redundancy not less than a month prior to the date of the intended date of termination on account of redundancy” in violation of section 40(1)(b). Clearly the claimant’s employment was terminated on 15<sup>th</sup> October 2018, the same day he was ‘personally’ notified of the intended termination of his employment. The respondent failed the procedural test in this regard to the loss and detriment of the claimant.
22. The respondent also did not pay the claimant one month’s gross salary in full, in lieu of notice in the sum of Kshs. 420,000/=. The respondent paid the claimant only Kshs. 154,000/= in lieu of notice for unexplained reasons.



23. The respondent did not pay the claimant the final salary of the month of October 2018. The claimant's last day of work should have been 15<sup>th</sup> November 2018, if the respondent had observed proper procedure.
24. The notice the respondent gave to the Ministry of Labour on 1<sup>st</sup> October 2018 was due to expire on 30<sup>th</sup> October 2018. It was unlawful and unprocedural for the respondent to implement the termination before the expiry of one month notice period, which is supposed to be given to the Ministry of Labour in terms of Section 40(1).
25. The claimant has proved on a balance of probability that the respondent failed to follow the mandatory procedure under Section 40 in terminating his employment on grounds of redundancy. The court however finds that the respondent had a valid reason to reduce its employees but did not provide any reasons why it targeted the claimant in particular, a matter that needed to be discussed in terms of Section 40(1)(c) during the notice period provided under Section 40.
26. Accordingly, the termination of employment of the claimant on grounds of redundancy was unlawful and unfair. The claimant had only served the respondent for a period of nine (9) months but had legitimate expectation to serve the fixed term contract for a period of two years. The claimant suffered loss and damage having lost a good job and income without notice. The claimant was not adequately compensated for that loss. The claimant did not contribute to that unprocedural and unlawful termination of employment.
27. The court has taken into account Cause No. 975/2017 *Daniel Onyango Onyimbo versus Chiba eKLR and Wi Yi Company Ltd* [2021] eKLR Civil Appeal No. 54/2019 *Cargill Kenga Ltd versus Caroline Mutana Mwaka and 5 others* and the circumstances of this case and has awarded the claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs. 1,680,000/=.
28. In addition the court awards the claimant one month salary in lieu of notice less the Kshs. 140,000/= already paid to the claimant in the sum of Kshs. 280,000/=.
29. In the final analysis judgment is entered in favor of the claimant against the respondent as follows:
  - a. Kshs. 1,680,000/= in compensation
  - b. Kshs. 280,000/= in lieu of notice  
Total amount Kshs. 1,960,000/=
  - c. Interest at court rates from date of judgment till payment in full.
  - d. Costs of the suit

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mrs. Oledo for Claimant

Mr. Kevechi for Respondent

