



**Kenya Union of Commercial, Food and Allied Workers v London Distillers (K) Limited  
(Cause E746 of 2023) [2023] KEELRC 3334 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3334 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E746 OF 2023  
SC RUTTO, J  
DECEMBER 20, 2023**

**BETWEEN**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**LONDON DISTILLERS (K) LIMITED ..... RESPONDENT**

**RULING**

1. What comes up for Ruling is the Claimant/Applicant’s Notice of Motion Application dated 13<sup>th</sup> September 2023, expressed to be brought under Section 12 of the *Employment and Labour Relations Court Act*, 2011, Sections 40 and 87 of the *Employment Act*, 2007, Article 47 of *the Constitution* of Kenya, 2010 and Rule 17 of the *Employment and Labour Relations Court (Procedure) Rules* 2016. The Claimant seeks the following principal orders:
  1. Pending hearing and determination of this application, this Honorable Court be pleased to order the Respondent to provide a full list of the employees to be affected by the intended redundancy before termination is affected(sic).
  2. Pending hearing and determination of this Application, this Honorable Court be pleased to order the Respondent to disclose how the employees to be affected have been identified and a full list of all their employees be provided showing date of employment, departments and union membership status to aid in confirming compliance with LIFO principle.
  3. Pending hearing and determination of this Application, this Honorable Court be pleased to order the Respondent to provide the Applicant with their tabulation of benefits for each of the employees to be affected showing Notice pay, leave due, severance pay, outstanding salaries and any other applicable benefits ahead of termination.



4. Pending hearing and determination of this Application, this Honorable Court be pleased to order the Respondent to provide a payment plan when all the redundant benefits shall be paid before terminating the services of any employee as required under section 40(1) (c-g) of the [Employment Act](#) 2007.
  5. Pending hearing and determination of this Application, this Honorable Court be pleased to issue an order stopping the unlawful unpaid leave.
  6. Pending hearing and determination of this Application an order to issue directing the Respondent to pay full salaries to all her employees for the month of August 2023 and any other outstanding unpaid wages occasioned by the unlawful unpaid leave.
  7. Pending the hearing and determination of this Application an order do issue restraining the Respondent from effecting redundancy until they fully comply with section 40 (1) of the [Employment Act](#), 2007 and clause 6 & 23 of the parties Collective Bargaining Agreement.
  8. Cost of this application be in favour of the Applicant.
2. The Motion is premised on the grounds appearing on its face and the Supporting Affidavit sworn on 13<sup>th</sup> September 2023, by Mr. Mike O. Oranga who describes himself as the Claimant's National Organizing Secretary. Briefly, Mr. Oranga deposes that:
- a. The Applicant and the Respondent do have a valid Recognition Agreement signed on 6<sup>th</sup> March 1996 and have negotiated several collective bargaining agreements, the last of which came into effect on 1<sup>st</sup> May 2015.
  - b. The Respondent served the Claimant with a redundancy notice dated 21<sup>st</sup> August 2023 declaring their intention to declare about 100 employees redundant.
  - c. On 23<sup>rd</sup> August 2023, the Claimant addressed the Respondent asking them to disclose specific details of the employees to be affected including their union membership status. The Applicant expected that the Respondent would provide; a full list of the targeted employees, details of the applicable benefits which each employee will be paid; tabulation of benefits for each of the affected employees for scrutiny and approval and payment plan ahead of the exit.
  - d. On 25<sup>th</sup> August 2023, the Respondent reverted and stated that the specific details would only be known upon the conclusion of the exercise.
  - e. Upto the date of filing the Application, no such details had been availed to enable the Applicant to ascertain whether the selection of the employees to be affected has been carried out in compliance with Section 40(1) (c) of the [Employment Act](#), 2007 and the Collective Bargaining Agreement; whether the redundancy benefits have been prepared in strict compliance with clause 6(b) and (c) and clause 23 of the Collective Bargaining Agreement; whether payment has been put in place to pay the affected employees as required under Section 40(1) (e-g) of the [Employment Act](#) and whether the redundancy does not disadvantage any employee because of his union membership or non-union membership.
  - f. The Applicant reads a malicious plan to withhold all the requisite details until the expiry of the redundancy notice and to terminate the service of the employees without affording the said employees the opportunity to interrogate whether the redundancy law and their collective bargaining agreement have been observed.



- g. The respondent has forced its employees to take unpaid leave and has opted to pay her employees only when they are recalled to work while other days are treated as absent days which is an unlawful action.
  - h. The Respondent's employees who have not been recalled to go back to work have not been paid any salary yet they have utilities, services and rents to pay.
3. In response to the Application, the Respondent filed a Replying Affidavit sworn on 29<sup>th</sup> September 2023 by Mr. Mohan Galot, who describes himself as a Subscriber, Founder, Governing Director and Principal Shareholder of the Respondent. Briefly, he avers that:
- a. The Respondent is a distillery and relies on molasses as its primary source of raw materials, which product it has been sourcing locally from the local sugar millers.
  - b. For a long time, there has been acute shortage of molasses in the entire industry which led to the ban by the Government on exportation of molasses by the local sugar millers.
  - c. Even after lifting of the ban, the local sugar millers have commenced the process of exporting the entire molasses beyond the borders starving the local distilleries. He wrote a complaint letter to all the relevant agencies highlighting the plight of the company.
  - d. The situation has been made worse by the biting cane shortage that forced the Agriculture and Food Authority (AFA) to suspend the milling of sugar leading to the closure of sugar milling factories in the Western Belt.
  - e. The situation persisted and the Respondent had no choice but to scale down the distilleries and shut down majority of the production lines owing to lack of molasses in the entire market.
  - f. Many companies in the sector have negatively been affected by the current shortages in raw materials and the ban on sugarcane harvesting. The ripple effect has either been closures or staff rationalization for the companies to stay afloat.
  - g. The decision to shut down the Distillery by the Respondent was occasioned by the fact that there existed no raw materials completely and there was no work at all for the employees.
  - h. The Respondent made several attempts to work around the situation and tried all it could to keep employees at the workplace but it proved impossible as there existed no work completely for them.
  - i. The Respondent and the Applicant had joint meetings on 3<sup>rd</sup> August 2023, 10<sup>th</sup> August 2023 and 15<sup>th</sup> August 2023 wherein they had candid discussions on how to avert the situation and arising from the said meetings, the Respondent highlighted to the Applicant the plight it faces in its efforts to keep the employees at work and pay them when there was no work at all. The Respondent indicated to the Applicant that it now had no other way but to completely scale down operations and send the employees on unpaid leave at least until the situation stabilizes. The Respondent also clearly indicated to the Applicant of the need to scale down employees through redundancy in order to keep the company afloat as it was completely unable to pay the employees.
  - j. It was upon the said consultations that the Respondent was compelled to send the employees on an unpaid leave on account of no production which was only to last until the situation normalizes.



- k. On realization that it would not be possible to make a complete turnaround in the near future with the current staff levels, the Respondent had no other choice but to issue the Applicant with a redundancy notice dated 21<sup>st</sup> August 2023.
  - l. A notice was issued and served on the Labour Office as required by the law.
  - m. On 23<sup>rd</sup> August 2023, the Respondent received a letter from the Applicant requesting to be availed specific details of the employees marked for redundancy.
  - n. Since it was a redundancy based on cost-cutting measures, it was made clear by the Respondent that employees in all departments are affected and upon conducting the selection criteria is when the specific employees declared redundant would be known.
  - o. On 8<sup>th</sup> September 2023, the Applicant wrote a letter requesting to be availed the tabulation of benefits payable to the employees to be declared redundant.
  - p. By a response letter dated 14<sup>th</sup> September 2023, the said information was supplied accordingly.
  - q. The employees to be declared redundant were objectively selected and weighed using the legal parameters and shared with the Applicant accordingly.
  - r. The affected employees were subsequently issued with letters of termination.
  - s. All the administrative directions that have been undertaken in the matter are taken with full knowledge, discussion and consultations with the Applicant and it is an act of bad faith for the Applicant to claim not being involved in measures purely aimed at sustaining the business owing to factors beyond it.
4. On 5<sup>th</sup> October 2023, by consent of both parties, the Court directed that the Application be canvassed by way of written submissions.

### **Submissions**

- 5. The Claimant has submitted that under the Collective Bargaining Agreement and the provisions of Section 40(1) of the *Employment Act*, it is agreed that no redundancy would be effected until after all conditions are met and payments under the CBA are satisfied. The Claimant further submits that it can never be that the Respondent had planned to terminate the services of approximately 100 employees and did not know the employees to be affected and their departments.
- 6. It is the Claimant's further submission that where the employer contemplates to declare redundancies, the law governing redundancy does not provide for unpaid leave as an option. On the contrary, it demands that outstanding leave is paid.
- 7. The Respondent on the other hand has submitted that the entire prayers sought in the Application are clearly spent and not subject to further adjudication before this court. The Respondent further argues that the manner in which the prayers in the Application are styled seeks information to be supplied before the termination of the contract of the affected employees on account of the redundancy. On this issue, the Respondent contends that these employees' contracts, having been terminated and the redundancies effected, hence prayers 2,3,4, and 5 are overtaken by events.
- 8. The Respondent maintains that there exists no intended redundancy but a redundancy has already occurred. It is the Respondent's further submission that it had addressed all aspects as relates to how the redundancy was carried out both on substantive and procedural fronts.



9. The Respondent further submits that the employees to be declared redundant was arrived at through an objective selection criteria and weighed using the legal parameters, which information was shared with the Applicant.
10. As regards payments of dues owed to individual employees, the Respondent has submitted that the termination letters indicated that the payments shall be remitted into individual employees' bank accounts. It contends that there has been no complaint by the employees so served with the letters of not being paid. As such prayers 4 and 5 have also been overtaken by events.
11. The Respondent maintains that since it was clear that there was no complete production, it was agreed that employees would be sent on unpaid leave and once it was realized that it would not be possible to make a turnaround, it opted to commence the redundancy process. The Respondent has urged that the Applicant has not placed before the court any evidence of employees still on compulsory leave after the date the Notice of Redundancies was served.

### **Analysis and Determination**

12. Upon considering the Application, the grounds in support thereof and the rival submissions, the singular issue that stands out for determination is whether the Claimant's Application is merited.
13. Whereas the Respondent maintains that the Application is spent and not subject to further adjudication by this Court, the Claimant on the other hand maintains that the prayer for orders 2 to 5 are extremely necessary.
14. Turning to the specific prayers sought in the Application, the Respondent exhibited a list of the employees affected by the redundancy together with the attendant selection matrix. Therefore, the information sought by the Claimant in that regard in terms of prayers 2 and 3 of the Application, is already within its knowledge. In the event, the Claimant is dissatisfied with the criteria applied by the Respondent in effecting the redundancy, the said issue cannot be the subject of determination through the instant Application. Indeed, the same can only be canvassed at the hearing of the main suit.
15. With respect to prayers 4 and 5, the Claimant sought to know from the Respondent the tabulation of benefits for each employee affected by the redundancy. Notably, the Respondent shared with the Respondent the payments due to the employees selected for redundancy in its letter of 14<sup>th</sup> September 2023.
16. Further the affected employees were notified in their individual letters of termination, of their respective entitlements and the fact that the same would be remitted to their respective bank accounts. This includes salary for the days worked upto 28<sup>th</sup> September 2023.
17. In the event of a dispute regarding the manner of tabulation of the said benefits, it should be appreciated that the same is a different issue altogether that can only be canvassed at the hearing of the main suit.
18. As to prayers 6 and 7 of the Application, the record bears that in a meeting held on 10<sup>th</sup> August 2023, the Claimant and the Respondent agreed to send employees on unpaid leave. It was further agreed that the company might be compelled to render a substantive number of employees redundant. On 15<sup>th</sup> August 2023, the parties agreed that the Respondent would send employees on unpaid leave or render others redundant.
19. It would thus appear that unpaid leave was being considered by the Respondent as an option to redundancy. Further, this was before the redundancy exercise had commenced. As I see it, unpaid



leave was not being effected at the same time as the redundancy exercise. Seemingly, unpaid leave and redundancy were two separate processes. It is also notable that the Applicant did not state whether there are employees who are still on unpaid leave, thus warranting issuance of the orders sought.

20. With regards to prayer 8, it is clear that the said prayer is spent as the redundancy exercise is already concluded as the affected employees were issued with their letters of redundancy. As a matter of fact, the Respondent through Mr. Mohan Galot averred on oath that all affected employees have been issued with letters of redundancy and there is no pending redundancy.
21. In light of the foregoing, I do not discern a prayer in the Motion Application that can be issued at this juncture.
22. Accordingly, I am inclined to decline the Claimant's Motion Application dated 13<sup>th</sup> September 2023 with an order that each party bears its own costs.

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

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

No appearance for the Claimant/Applicant

Mr. Ogembo for the Respondent

Abdimalik Hussein Court Assistant

**ORDER**

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

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