



**Ojwang v Bliss Healthcare Limited (Cause E244 of 2021)  
[2022] KEELRC 1392 (KLR) (28 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1392 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E244 OF 2021  
NZIOKI WA MAKAU, J  
JUNE 28, 2022**

**BETWEEN**

**THOMAS ODOL OJWANG ..... CLAIMANT**

**AND**

**BLISS HEALTHCARE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent seeking various relief. The Claimant avers that he was employed by the Respondent on 6<sup>th</sup> August 2018 vide a written agreement of the same date for an initial period of two (2) years renewable. He avers he was designated as Deputy General Manager for Infrastructure. He avers that he successfully served out the first term of employment and negotiated a renewal thereof for another two years vide written contract dated 18<sup>th</sup> August 2020. The Claimant's job description under this second contract was Senior General Manager – ICT. The Claimant avers that on or about the 18<sup>th</sup> December 2020 the Respondent announced changes in the senior management structure ostensibly to strengthen the management teams. In the new changes, the Claimant as Senior General Manager of the ICT function was to be more focused on developing IT policies and streamlining the IT function at the overall Africare level and was to be based out of Africare office. The Claimant avers he was functionally in charge of the Senior Manager IT and Senior Manager IT (TBH) for PCD. The Claimant avers he diligently served the Respondent and scored highly on appraisal until the 15<sup>th</sup> February 2021 when he reported on duty only to be casually informed by the Respondent that his position had been rendered redundant with immediate effect. The Claimant contends that the purported declaration of redundancy was totally unprocedural, illegal, and a nullity ab initio. He avers that the purported declaration of redundancy brazenly violated all basic and fundamental legal safeguards protected both under the *Employment Act* and the ILO Convention No. 158. The Claimant avers that:-



- a. There was no redundancy situation as the office the claimant held and functions he performed had neither been manifestly nor effectively abolished at all.
  - b. There was no redundancy notice issued to the claimant contrary to Section 40(1) of the [Employment Act](#).
  - c. There was no redundancy notice to the Labour Office contrary to Section 40(1) of the [Employment Act](#)
  - d. The mandatory statutory consultation redundancy were not undertaken at all.
  - e. There was no lawful nor bona fide termination notice issued to the claimant pursuant to a lawful process of a redundancy situation.
  - f. The termination was actuated by demonstrable malice, ill-will, and not in pursuance of a genuine and justifiable process and fair labour practice.
  - g. The termination was undertaken in gross violation of the Claimant's constitutionally protected right to fair labour practices as set out under Article 41(1) of [the Constitution](#).
  - h. The termination was further undertaken in total and brazen violation of the claimant's constitutional right to a fair administrative process/action as enacted under Article 47 of [the Constitution](#) and the Fair Administrative Actions Act.
  - i. The redundancy violated the Claimant's legitimate expectation of a fair legal process in the event of separation.
2. The Claimant thus prays for judgment against the Respondent for a declaration that the termination of the Claimant's employment on the alleged redundancy was unprocedural and illegal. Damages for unlawful termination as well as costs of this suit and interest on the decretal sum at court rates from the date of judgment until payment in full.
  3. The Respondent on its part avers that the claim fails to disclose any cause of action as against it. The Respondent avers that the Claimant after satisfying the Respondent that he was fit for the position he was fully absorbed by the Respondent as the Deputy General Manager – Infrastructure and later in September 2019 promoted to the position of General Manager – Infrastructure with his consolidated salary revised from Kshs. 450,000/- to Kshs. 472,500/- with effect from 1<sup>st</sup> October 2019. The Respondent avers that despite the Claimant's promotion to the position the Respondent's ICT processes were still experiencing hitches due to the Respondent's lengthy and rigid bureaucratic structure that slowed down decision making especially at the unit level. The Respondent avers that it was noted that the existing structure created disconnect between all unit heads and the executive level of management whose overall effect negatively impacted on the Respondent's brand and reputation.
  4. The Respondent avers that accordingly, considering that the Respondent has established branches all over the country, the existing structure promoted lack of accountability at the branch level and the inevitable decision was made by the senior level of management to devolve the groups centralized functions which included the human resource, administration and security, finance, supply chain management and information technology (IT) to be managed at division/branch level. The Respondent avers the decision not only affected IT but also greatly impacted on the other departments. It avers that the proposed changes would inevitably impact the employment status of some of the senior executives as most of the top-level positions would be declared redundant. As such, the Respondent on 23<sup>rd</sup> December 2020 duly notified the County Labour Office of the imminent move pursuant to the provisions of Section 40 of the [Employment Act](#). The Respondent avers that



following the issuance of the said notice it implemented the new organisational structure in January 2021 and the critical functions affected were Internal Auditors and the Claimant's position as Senior General Manager ICT. The Respondent avers that before implementing the decision to lay off any of the employee, it consulted the affected departments including the Claimant. The Respondent avers that it made the ultimate but unfortunate decision to relieve the Claimant of his duties pursuant to a letter dated 4<sup>th</sup> February 2021 but which was furnished upon the Claimant on 16<sup>th</sup> February 2021. The Respondent denied the allegations of illegality and procedural impropriety averred by the Claimant in his statement of claim. The Respondent avers that it computed the Claimant's terminal dues and remitted them to him and he accepted the payment without protest. It thus avers that all legal procedures were followed in terminating the employment of the Claimant and that further, the grounds for termination were duly and sufficiently explained to the Claimant and constituted lawful grounds for the termination of employment pursuant to the Employment Act. As such, as the termination of the Claimant's employment was lawful and the grounds for the termination valid in every respect, the Respondent avers that the Claimant's prayer for damages for wrongful and/or unlawful termination is unmerited. The Respondent thus urged the dismissal of the Claimant's suit with costs.

5. The Claimant and the Respondent's witness Irene Jemtai Cherwon testified. The Claimant stated that the even though the letter of termination is dated 4<sup>th</sup> February 2021, it was only served on him on 15<sup>th</sup> February 2021, and it was to take effect immediately. The Claimant testified that this betrays the level of malice, dishonesty and callousness of the Respondent. He said they could have separated in a more dignified manner instead of ruining his professional career growth and with a non-existent redundancy.
6. The Respondent's witness stated that the Respondent issued a notice to the staff on the restructuring and that the company notified the Labour Office. She stated that there was a meeting held by the Respondent which was to communicate the changes being undertaken to decentralize the services. It was her testimony that there would be no need for a senior IT person after the decentralization and that the Claimant was aware. She stated that the Claimant was notified by letter dated 4<sup>th</sup> February 2021 and that the letter to the County Labour Office was dated 16<sup>th</sup> February 2021.
7. The parties thereafter filed written submissions. It is not controverted that the Claimant was dismissed on account of what the Respondent called a redundancy. Redundancy is one of the means by which a contract of employment can come to an end. Section 40 of the Employment Act makes provision as follows in regards to redundancy.

40.

- (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;

8. It is common cause that the communication to the Claimant was not as set out in Section 40. The letter communicating the alleged redundancy is reproduced below:-

4<sup>th</sup> February 2021

Thomas Odol Ojwang,

P/no 10992

PO Box 22807-00100

Nairobi

Dear Thomas

RE: TERMINATION ON ACCOUNT OF REDUNDANCY.

Pursuant to the Company's restructuring and reorganization of its business and upon through evaluation of the existing employment structures, we regret to inform you that your position has been abolished and declared obsolete. Consequently, you shall be declared redundant.

Your redundancy will be effective from 15<sup>th</sup> February 2021 and you will be paid your benefits as follows:

- Salary for days worked up to 15<sup>th</sup> February 2021.

44 leave days earned but not taken.

- Fifteen (15) days' pay for every completed year of service.

2 month's salary in lieu of notice

- Less statutory deductions and any monies owed to the company. Attached, please find a copy of the clearance form which should be duly completed and signed to facilitate payments of your final dues. On behalf of the company, we wish to express our gratitude for your services and wish you the best in your future endeavors.

Yours sincerely

For: Bliss Healthcare Limited

(Signed)

Virginia Muhia

Deputy General Manager – HR

9. The letter above was received on 11<sup>th</sup> February a mere 4 days before it took effect. There was no proof that the Labour Officer was notified of the extent of the redundancy as required under Section 40. Indeed the letter to the Labour Office was delivered on 16<sup>th</sup> February 2021 after the Claimant's redundancy had taken effect on 15<sup>th</sup> February 2021. Having worked for the Respondent for some



time with what seemed like resounding success, the Claimant was entitled to better treatment and the Respondent was bound to abide by the law as well as Articles 13 and 14 of ILO Convention No. 158 which provide as follows:-

Article 13. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

Article 14. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

10. The Claimant was not afforded any of the provisions of the law and as such is entitled to remedy in the form of a declaration that the termination of his employment was unfair and unlawful as the redundancy declared in his case was shallow and a sham. The Claimant is therefore entitled to:-

- a. A declaration that the termination of the Claimant's employment through the alleged redundancy was unprocedural and illegal.
- b. Compensation for unlawful termination equivalent to 3 month's salary – Kshs. 1,417,500/-
- c. Costs of this suit.
- d. Interest on the sums in (b) above at court rates from the date of judgment until payment in full.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JUNE 2022**

**NZIOKI WA MAKAU**

**JUDGE**

