



REPUBLIC OF KENYA



KENYA LAW
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**Kerich v Monarch Insurance Company Limited (Cause 2433 of 2017)
[2022] KEELRC 13212 (KLR) (10 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13212 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2433 OF 2017
AN MWAURE, J
NOVEMBER 10, 2022**

BETWEEN

SOSTEN KIPRUTO KERICH CLAIMANT

AND

MONARCH INSURANCE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his claim dated 6th December 2017. The Respondent in return put up a response dated 7th February 2018.

Claimant' case

2. The Claimant introduces himself as a person with rich exposure and experience in project development marketing and insurance.
3. He says his last position was in Occidental Insurance where he was head hunted by the Respondent to a newly created position. He says he left a comfortable job and joined Respondent in June 2017 (13th June 2017) contract commenced on 17th July 2017.
4. He says his monthly salary (gross) was Kshs 390,000/-. He further says he worked with diligence and faithfulness but on 24th November 2017 he did not receive his salary. He says when he inquired about his salary the Managing Director told him he had not approved his appointment and for the sake of his CV he should resign. He says he was not comfortable to resign and on 29th November 2017 he received a termination letter and the termination was with immediate effect.
5. He says he did not receive his November salary. He also says the reason for the termination was redundancy but then it was un procedural and was in contravention of Section 40 of the [Employment Act](#). He says the reason for redundancy removes the matter from the notice period of seven (7) days.



He says it is trite law that in redundancy the provision of Section 40 of the *Employment Act* must be followed strictly.

6. The Claimant therefore prays for the prayers set out in the claim including compensation for wrongful termination and reinstatement.

Respondent's case

7. The Respondent basically denies the Claimant's claims but says Claimant was to serve a mandatory six (6) months probationary period. He says Claimant was employed by the Respondent on 17th July 2017 and contract was dated 13th June 2017 and he was employed as a Regional Business Development Manager.
8. The Respondent says it was a term of contract during period that each party was free to terminate employment by giving (7) days written notice or pay 7 days' pay in lieu of notice. He says it was on the strength of the aforesaid that they terminated the Claimant's employment during his probationary period and so they paid him salary for seven days in lieu of notice as required in Section 42 of the *Employment Act*.
9. The Respondent further says the Claimant accepted the payment of Kshs 452,600/- and signed a discharge voucher dated 6th December 2016 whereby he absolved the Respondent from any claims brought by the Claimant.
10. He says the Claimant who is a highly educated individual signed the discharge voucher and so understood the effect of signing the same. The Respondent says he was at liberty to terminate the Claimant by giving him 7 days' notice or pay in lieu of notice and he did not even have to give any reason for termination.
11. He therefore submits to Court that the claim herein is frivolous and vexatious and incompetent and an afterthought. He prays the same be dismissed with costs.

Claimant's evidence in Court

12. The Claimant says he was headhunted from Occidental Insurance by the Respondent and worked for only about 4 months. He says he was then terminated due to redundancy. He says he was given 7 days' notice but was not paid salary for the last month. He says the redundancy process was not properly conducted and he was the only one declared redundant.
13. In cross examination claimant admitted he signed the discharge voucher in order to receive his salary of Kshs 452,600/-. He says he was broke and needed to pay school fees for his children. He says he was not coerced to sign the discharge voucher but he was under economic distress.
14. He says he was informed in the termination letter that his position of regional Development Manager was henceforth removed.
15. The Respondent did not adduce any evidence in Court.

Determination

16. The questions to answer are as follows:-
 - a. Was Claimant terminated under redundancy or in accordance to his contract hence 7 days' notice as he was still under probation.
 - (b) Was he unlawfully terminated?



- (c) Is he entitled to the reliefs claimed?
17. The Claimant in his submissions and pleading and viva voce evidence in Court says he was terminated under redundancy and yet the right procedure to terminate employment under redundancy needed to be strictly adhered as provided in section 40 of the *Employment Act*.
18. Indeed the Respondent's letter to the Claimant dated 29th November 2017 read as follows:-
- “The Monarch Insurance Board of Directors and management has changed strategy of the company and decided to eliminate the position of a regional business development manager” the Respondent then terminated his employment with immediate effect.
19. The Court finds the termination letter speaks for itself. This clearly was situation where Respondent removed or purported to remove a position from their organisation and so in essence declared the position redundant. Redundancy in Section 2 of the *Employment Act* is defined as follows:
- “Redundancy” 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, or occupation and loss of employment;
20. Indeed Section 40 of *Employment Act* 2007 makes it mandatory the procedure to be complied by any employer who intends to declare an employee or employee's position redundant. Section 40 of *Employment Act* 2007 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.
21. In the case of *Jane Khalechi vs Oxford University Press E.A. Limited* (2013) eKLR the Court held Section 40 of the *Employment Act* was mandatory. The Court held that decision taken by the respondent to terminate the employment of the claimant was procedurally unfair and the same was not based on any reasonable grounds and therefore substantially unfair.
22. The Respondent vehemently submits the termination of the claimant was in accordance to his contract where it was provided that each party could terminate the employment by giving 7 days' notice or 7 days' pay in lieu of notice. The Respondent in their hurry to release the Claimant did not even consider the terms of the contract. It seems they were looking for whichever way to terminate him and so never ever referred to the contract. They cannot allude to it at this point as the letter of termination is self-explanatory.
23. The Court will not go to the issue of Section 45(3) of the *Employment Act* which indeed has been declared unconstitutional by the Court and which the Respondent is relying on in the case of *Monica Munira Kibuchi & 6 Others vs Mount Kenya University & Attorney General (Interested party)* (2021) eKLR.
24. The Court finds logically the Claimant was terminated on the guise of redundancy and clearly the procedure stipulated under the statute Laws and authorities was not followed. The Court finds on that score the Claimant was unlawfully and wrongfully terminated from his employment.

Remedies

25. Having entered judgment in favour of the Claimant I have this to say about the remedies.
- a. Claimant was paid 7 days' notice as stipulated in his contract as well as leave days. He had even claimed he was not paid his last month's salary. He has also not been transparent as on one side he claims he was not paid November salary. On cross examination he admitted he was paid his salary and he signed the discharge voucher under "economic duress" as he was broke and needed to pay school fees for his children. It is not clear why he was lying and definitely the Court is weary of people who tell lies.
26. The remedy awarded to the Claimant is one month salary in lieu of notice as he was declared redundant less the 7 days paid by the Respondent totalling Kshs 301,333/33.
27. Since termination was on the premise of redundancy the Claimant was entitled to severance pay being 15 days for each completed year. In this case there was no completed year. Claimant was not terminated under Section 45 of *Employment Act* and so is not entitled to damages under Section 49 of *Employment Act*.
28. The final impact of the Claimant's award is Kshs 301,333.33 plus interest at Court rates from date of judgment until full payment.
29. The prayer for discrimination is not proved and so is declined.
- Costs are awarded to the Claimant.
- Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 10TH NOVEMBER, 2022.

ANNA NGIBUINI MWAURE



JUDGE

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 15th March 2020 and subsequent directions of 21st 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.

ANNA NGIBUINI MWAURE

JUDGE

