



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KISUMU**

**CAUSE NO. 247 OF 2018**

**FRANKLINE OKOME OMETTY.....CLAIMANT**

v

**TRANSMARA SUGAR CO LIMITED.....RESPONDENT**

**Consolidated with**

**CAUSE NO. 248 OF 2018**

**OBEDY OBARE MACHOGU.....CLAIMANT**

v

**TRANSMARA SUGAR CO LTD.....RESPONDENT**

**AND**

**CAUSE NO. 249 OF 2018**

**MAURICE JUMA OGAMA.....CLAIMANT**

v

**TRANSMARA SUGAR CO LTD.....RESPONDENT**

**JUDGMENT**

1. On 18 December 2017, Transmara Sugar Co Ltd (the Respondent) issued a notice of termination on account of redundancy to Frankline Okome Ometty, Obedy Obare Machogu and Maurice Juma Ogama (the Claimants).
2. The Claimants felt the decision was unfair, and on 3 July 2018, they instituted separate legal proceedings against the Respondent alleging unfair termination of employment on account of redundancy.
3. The Respondent filed Memoranda of Response on 20 August 2018.
4. On 14 March 2019, the Court directed that this Cause be consolidated with Kisumu Cause No. 248 of 2018, *Obedy Obare Ogama Ometty v Transmara Sugar Co. Ltd* and Kisumu Cause No. 249 of 2018, *Maurice Juma Ogama v Transmara Sugar Co. Ltd*.
5. This Cause was designated as the lead file, and the evidence was recorded herein.
6. The Claimants evidence was taken on 17 October 2019, and the Claimant herein testified. The Court will adopt the evidence which was given by this Claimant in the lead file on behalf of all the Claimants as the circumstances leading to redundancy was the same.
7. The Respondent's Human Resources Manager's testimony was taken on 19 November 2020.

8. The Claimants filed joint submissions on 10 December 2020, while the Respondent's submissions were not on file by the agreed timeline of 27 January 2021.

9. The Court has considered the pleadings, evidence and submissions.

### **Unfair termination of employment/redundancy**

#### **Procedural fairness**

10. The Respondent issued notices of redundancy to the Claimants on 18 December 2017. This was after a meeting on 11 December 2017.

11. The notices informed the Claimants that they would be paid December 2017 and January 2018 wages, accrued leave, gratuity, service pay, holidays worked and that they would be issued with certificates of service.

12. While challenging the fairness of the decision, the Claimants asserted that due process was not followed in that the required notices were not given, there were no selection criteria, and that the real reason was to replace them.

13. According to the Claimants, the letters of 18 December 2017 did not constitute notices as contemplated by section 40(1) of the Employment Act, 2007.

14. Section 40(1) of the Employment Act, 2007 sets out how a redundancy should be carried out. The conditions include 30-days written notice to the employee or his union and the local Labour Officer.

15. The Respondent issued written notices to the Claimants. The local Labour Officer was also served with a notice on the same day.

16. The notices indicated that the effective date of redundancy would be 25 January 2018.

17. On the selection criteria, the Respondent's witness explained that due to the decentralisation of operations, it became necessary to reorganise the departments of transport and agriculture. The reason was not controverted.

18. The Court is satisfied that the notices met the threshold required by law (the notices gave slightly more than 30-days). The Court also notes that the written notices were preceded by a face to face meeting on 11 December 2017.

#### **Valid reasons for redundancy**

19. The notices given to the Claimants gave the reason for the redundancy in general terms, efforts to keep the Respondent afloat.

20. The Claimants doubted the reason and testified that the real reason was to replace them by preferred expatriates and/or without justified reasons. The expatriate who was to be recruited was not named in the witness statement.

21. Under cross-examination, the Claimant stated that new investors had partnered with the Respondent and that they were key persons in the restructuring process.

22. The Respondent's Human Resources Manager, in defending the redundancy, testified that the transport and agriculture department were being reorganised and that the situation was precipitated by adverse weather though she did not have any weather reports in Court. She also testified that the redundancy was informed by the need to move to a decentralised system from a centralised system to enhance engagements with farmers. An organogram to show the new structure was produced.

23. The witness denied that the Respondent took in new employees were taken in after the redundancy to replace the Claimant.

24. The Claimants did not disclose the name of the expatriate who allegedly replaced them. They admitted in the submissions that the sugar sector had gone down in the country. The Respondent produced documentation to show new structures to respond to the dynamics of the business.

25. It is not the business of a Court to shepherd an employer on how to run its business. On the material before the Court, the Court cannot fault the Respondent for its actions. There were valid and fair reasons for the redundancy.

#### **Conclusion and Orders**

26. From the foregoing, the Court finds no merit in the consolidated Cause(s), and they are dismissed with no order on costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 24<sup>th</sup> day of February 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

<b>For Claimant</b>	<b>Ms. Miranda instructed by Mose Nyambega &amp; Co. Advocates</b>
<b>For Respondent</b>	<b>Mr. Dickens Ouma, Advocate, Federation of Kenya Employers</b>
<b>Court Assistant</b>	<b>Chrispo Aura</b>