



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO.325 OF 2017

JULIUS ONYANGO AGUTU

CLAIMANT

v

KISUMU WATER AND SEWERAGE COMPANY LTD

RESPONDENT

JUDGMENT

1. Julius Onyango Agutu (the Claimant) was offered employment as a driver through a letter dated 3 June 2015 by Kisumu Water & Sewerage Co Ltd (the Respondent).
2. On or around 26 September 2016, the Respondent redeployed the Claimant, and on 24 January 2017, the Respondent notified the Claimant that his position had become redundant because the motor vehicle which had been assigned to him had been *inoperational* for over 3-months. The effective date of redundancy was given as 27 January 2017.
3. The Claimant, being aggrieved, sued the Respondent on 17 July 2017, alleging unfair termination of employment and breach of contract.
4. The Respondent filed a Response on 12 October 2017, denying unfair termination of contract and breach of contract, and the Claimant filed a Reply on 16 November 2017.
5. The Cause was heard on 17 October 2019, when the Claimant testified and on 16 March 2021, when the Respondent's Human Resources Manager testified.
6. The Claimants submissions were not on record by the agreed timeline, while the Respondent filed its submissions on 27 April 2021.
7. The Court has considered the pleadings, evidence and submissions and identifies the Issues for adjudication as:
 - (i) Whether there was unfair termination of contract?
 - (ii) Breach of contract.
 - (iii) Appropriate remedies.

Unfair termination of employment through redundancy

Procedural fairness

8. In order to pass the statutory procedural fairness test on redundancy, an employer is required to comply with the conditions outlined in section 40(1) of the Employment Act, 2007. The conditions include written notice to the employee or trade union and local labour officer.
9. Where the employer has a collective bargaining agreement with a trade union, any provisions on redundancy should also be adhered to.
10. In the instant case, the Respondent produced a copy of a collective bargaining agreement with the National Union of Water and Sewerage Employees.
11. The Respondent notified the Claimant and the trade union of the intended redundancy through a letter dated 24 January 2017, and the

Claimant received the notice on 27 January 2017 (the effective date of redundancy was 27 January 2017).

12. Nevertheless, the Respondent did not disclose when the notice was served upon the trade union and the local labour officer.

13. By dint of section 40(1)(a) of the Employment Act, 2007, the Respondent was expected to issue a 30-day notice to the trade union and local labour officer in advance.

14. The Respondent did not comply, and the Court finds that there was procedural unfairness.

Substantive fairness

15. The reason given by the Respondent for the redundancy was that the motor vehicle assigned to the Claimant had not been inspected by the National Transport and Safety Authority for lack of a log-book and therefore could not be driven on the roads.

16. Challenging the fairness of the reason, the Claimant asserted that he would be allocated other vehicles from time to time.

17. The Respondent did not rebut the assertion. It did not disclose the total number of drivers it had (or establishment number) nor the total vehicles in use at the material time.

18. Consequently, the Court finds that the Respondent did not prove valid and fair reasons to terminate the Claimant's contract on the ground of redundancy.

Compensation

19. The Claimant served the Respondent for about 3-years, and in consideration of the length of service, the Court is of the view that the equivalent of 4-months gross salary as compensation would be appropriate (gross salary in January 2017 was Kshs 46,473/-).

Breach of contract

20. The Claimant pleaded that he was owed withheld salaries and terminal dues, but he did not lead any evidence in respect to these alleged breaches of contract.

21. The same were not proved.

Conclusion and Orders

22. The Court finds and declares that the termination of the Claimant's employment on account of redundancy was unfair, and he is awarded:

(i) Compensation Kshs 185,892/-

23. The Claimant did not file submissions as agreed, and he is denied costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND DELIVERED ON 8TH DAY OF DECEMBER 2021.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Odumbe Okello & Associates Advocates

For Respondent Ouma Njoga & Co. Advocates

Court Assistant Chrispo Aura