



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 404 OF 2017**

**CYNTHIA ATIENO OMONDI .....CLAIMANT**

**VERSUS**

**VICTORIA INTER-DIOCESAN INVESTMENT CO LTD..... RESPONDENT**

**JUDGMENT**

1. Cynthia Atieno Omondi (the Claimant) was offered employment as an Administrative Assistant from 1 November 2012 by Victoria Inter-Diocesan Investment Co Ltd (the Respondent)(previously called Inter-Diocesan Properties Ltd).
2. On 15 March 2017, the Respondent notified the Claimant of the termination of her contract, and the reason given was restructuring (redundancy).
3. The Claimant was aggrieved, and on 16 October 2017, she lodged a Memorandum of Claim with the Court alleging unlawful termination of employment.
4. The Respondent filed a Response on 17 November 2017, and the Cause was heard on 14 June 2021.
5. The Claimant and the Respondent's Finance and Administration Executive Officer testified.
6. The Claimant filed her submissions on 26 July 2021 (should have been filed on or before 14 July 2021), while the Respondent filed its submissions on 28 September 2021 (should have been filed before 14 August 2021).
7. The Court has considered the pleadings, evidence and submissions and observed that although the Issues as proposed by the Claimant and adopted by the Court listed 4 Issues for adjudication, there is only 1 substantive question for determination:  
  
Whether the termination of the Claimant's employment on account of redundancy was unfair.
8. The reason given by the Respondent for terminating the Claimant's employment was restructuring/redundancy.
9. The separation was therefore not on account of misconduct, poor performance or physical incapacity on the part of the Claimant, thus implicating the procedural steps envisaged by section 40 of the Employment Act, 2007.
10. Pursuant to section 40(1)(b) of the Employment Act, 2007, the Respondent was expected to give written notice of 30 days to both the Claimant and the local Labour Officer.
11. Although the Claimant attended a meeting on 2 December 2016, where the Respondent discussed the restructuring, there was no evidence that the envisaged 30-days written notice was issued to the Claimant and the local Labour Office.
12. In light of the aforesaid provision and the decision of the Court of Appeal in *Thomas De La Rue v Moses Opondo Omutelema* (2013) eKLR, the Court finds that the termination of the Claimant's employment on account of redundancy was procedurally tainted. It was unfair.

**Compensation**

13. The Claimant sought compensation amounting to Kshs 396,000/-.

14. The Claimant served the Respondent for slightly over 4 years, and in consideration of the length of service, the Court is of the view that the equivalent of 5 months gross salary as compensation would be appropriate (gross salary in January 2017 was Kshs 38,106/-).

**Discharge voucher**

15. The Respondent submitted that the Claimant had signed a Clearance Certificate indicating that upon payment of final dues, she had no further claims against it.

16. The Court has looked at the Certificate. It was not unequivocal that the Claimant was waiving her right to sue for unfair termination of employment.

**Conclusion and Orders**

17. The Court finds and declares that the termination of the Claimant's employment was unfair, and she is awarded:

(i) Compensation                      Kshs 190,530/-

18. The Claimant did not file submissions within set timelines, and no explanation was offered. She is denied costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 1<sup>ST</sup> DAY OF DECEMBER, 2021**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

**Appearances**

For Claimant   Bruce Odeny & Co. Advocates

For Respondent   Ameli Inyangi & Partners, Advocates

Court Assistant   Chrispo Aura