



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE 1928 OF 2014**

**HELEN ARAKA OSORE.....CLAIMANT**

**VERSUS**

**MUSONI KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that she was on 1st April, 2010 offered a job by the respondent as a Branch Manager whose main task was to pioneer and set up the business development program. She further averred that due to her excellent performance she was promoted to the position of Business Development Officer, a position she held on until on until she was unlawfully terminated on account of redundancy.

2. The claimant further pleaded that in a bid to entice her to leave her former employment, the respondent offered her 7.5 shares in the company. She further averred that by a letter dated 3rd April, 2012 the respondent enticed her to forego her right to the shares in the respondent company in exchange for a sum of Kshs 788,133/= which unknown to her represented an ulterior motive to get rid of her services. The respondent on the other had pleaded that the claimant was not promoted to the position of Business Development Manager on account of her supposed excellent performance but instead redeployed to that position from that of Branch Manager. The terms and conditions of her employment did not change save for the new title and job description.

3. The respondent admitted that it offered the claimant 7.5 shares but denied an offer to her to extinguish her shares was made in bad faith or to hoodwink her. The respondent further pleaded that it did not discriminate against the claimant by not offering her the 17% inflation adjustment pay rise. According to the respondent, the claimant had already received salary increment in April, 2012 and was therefore already cushioned against inflation.

4. Regarding termination, the respondent stated that the same was procedural and lawful as espoused under section 40 of the Employment Act. Sufficient notice was given both to the claimant and the Labour Officer.

5. In her oral evidence the claimant additionally stated that upon employment, she was put on probation for six month and that she was the only one who was declared redundant. She further stated that she was treated as a non-performing worker which she never understood because there was no prior communication she therefore felt discriminated against in the redundancy. According to her, she was called when the decision had already been made. There was no prior discussion. In cross-examination she stated that she got a review in April which was tied to her salary. She further stated that the Labour Officer was never notified of the redundancy. The claimant further stated that she was paid her terminal dues as per the termination letter. She further stated that she was told that it was the boards decision that she be terminated and that she read the Boards minutes but did not understand the Boards reasoning.

6. The respondent's witness Mr Stanley Charo stated that he was the respondent's CEO. It was his testimony that the claimant was in charge of developing business by the time she left. According to him, the movement to development officer was horizontal. He further stated that in 2014 there was business review since performance was not good. A decision was therefore made to declare the post of Business Development Officer redundant since Branch managers could carry out the same function. The respondent tried to look for a suitable redeployment for the claimant but could not identify one. The claimant could not be redeployed as a branch manager because her salary had grown beyond that of Branch Manager and could have caused disquiet among other Branch managers. According to him, the respondent followed the law in declaring the claimant redundant.

7. In cross-examination, he stated that the decision to terminate the claimant was made in April and she was notified almost immediately. The county labour officer was notified on 22nd May, 2014 and the termination done two days later.

1. Section 40(1) of the Employment Act provides in material part as follows:

2. 40(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the

following conditions:

(a).....

(b) where an employer 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 seal ability and reliability of each employee of the particular class of employees affected by the redundancy.

10. By a letter dated 26th May, 2014 the respondent notified the claimant of the intention to terminate her service on account of redundancy with effect from 31st May, 2014. In the said letter the respondent offered the claimant among others leave pay for leave not taken, severance pay at rate of 15 days pay for each completed year of service and one month's salary in addition to the notice period.

11. The claimant acknowledged receipt of the letter on 5th June, 2014. She however indicated that she did not consent to the compensation outlined since some outstanding payments had not been captured. Further by a letter dated 21st may, 2014 the respondent notified the County Labour Office of the intention to declare the claimant redundant. The claimant in her acknowledgement notes on the redundancy letter referred to above, did not seem to dispute the redundancy itself but the computation of her terminal benefits which she felt did not factor in some 17% 2012 salary review. To this the respondent in their evidence in court stated that the staff had just received hefty salary increment before the general review and this catered for the 17% inflation adjustment.

12. From the foregoing and in view of the provision of section 40(1) reproduced above, the Court is persuaded that the respondent followed the law in declaring the claimant redundant. The claim is therefore found without merit and is hereby dismissed with no order as to costs.

13. It is so ordered.

**Dated at Nairobi this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 17<sup>th</sup> day of May 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.