



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO 841 OF 2014**

**JOHN KIBORO NJUNGUNA.....CLAIMANT**

**VERSUS**

**THE UK BOARD OF TRUSTEES AND**

**THE KENYA COUNCIL OF REFERENCE OF VISION AFRICA (KENYA).....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that he was employed by the respondent on 2004 where he held various positions and at the time of termination he held the position of Project Administrator. According to the claimant he worked diligently and with commitment and a recent appraisal gave him a grade of 8. However, the Field Director, one Deborah Kimathi, either out of personal differences with the claimant hatched an elaborate plan to have the claimant terminated from employment.

2. According to the claimant, the campaign by the Field Director culminated in the claimant being declared redundant; despite the fact that the activities which were being undertaken by the claimant were still in existence and required his personal services. The respondent by letter dated 24<sup>th</sup> April, 2014 and 9<sup>th</sup> May, 2014, declared the claimant redundant and ordered him not to report for duty as from 24<sup>th</sup> May, 2014. The claimant therefore sought an injunction restraining the respondent from unlawfully terminating his service by declaring him redundant. In alternative the claimant sought payment of his terminal dues as tabulated in the statement of claim.

3. The respondent on its part denied the claimants allegations more particularly that the Field Director Deborah Kimathi had personal differences with the claimant or that she hatched any plans to terminate the claimant's employment. The respondent further averred that in February, 2014 and after prior consultative meetings which the claimant was involved in, the local Bard of the respondent in consultation with the U.K. Board made a decision to terminate the claimant's service by way of redundancy as it had become evident that the claimant's responsibilities had to a large extent been done away with.

4. The respondent therefore denied that the termination by way of redundancy was unlawful and irregular. In his oral evidence the claimant stated that his office was never abolished and that it was still available on the respondent's website. He further stated that appraisal was done every six months and that his last appraisal was good and he was given a token of appreciation of Kshs 10,000/=.

5. The claimant further stated that the respondent never remitted his statutory dues and that upon being declared redundant, he was never issued with a certificate of service. In cross-examination he stated that he was employed in 2004 and that he never joined the respondent as a volunteer. It was further his evidence that in 2009, he was still a Councilor and previously he worked for eight hours and that he was also a Councilor in Kandara and used to earn allowance. He was not sure if statutory deductions were remitted in respect of his allowances. Upon being declared redundant, he was paid about Kshs 200,000/= through his account.

6. The respondent's witness Ms Deborah Kimathi stated that she worked for the respondent as a Field Director. According claimant was employed in 2009 and prior to that the claimant was a volunteer from 2004. It was her evidence that the claimant served the respondent and also remained a Councilor. She denied any malice in the redundancy and that there was consultation between the UK and Kenya Board of the respondent together with the claimant. According to the witness, the program administration shifted hence they no longer considered geographical areas and that there was little construction going on. It was further her evidence that the payments to the claimant were in accordance with the Employment Act.

7. Regarding the email relied on by the claimant, it was her evidence that these were illegally obtained since the claimant was never privy to the email. She further denied hatching a plan to kick out the claimant.

8. Termination of employment on account of redundancy is provided for under Section 40 of the Employment Act. This section makes elaborate procedure to be followed before a declaration of redundancy. Failure to observe these provisions would led to the conclusion that the termination of employment on account of redundancy was unfair.

9. Some of the requirements and of relevance to this case are that an employee to be declared redundant must be given at least one months' notice. A similar notice should be given to his union where he is unionisable and to the Labour Officer. Where leave is due, such leave should be paid in cash and such employee should be paid one month's salary in lieu of notice. Further, the employee declared redundant is entitled to severance pay at the rate of not less than fifteen days pay for each completed year of service.

10. By a letter dated 24<sup>th</sup> April, 2014 the respondent informed the claimant of the intention to declare him redundant. The reason for declaration of redundancy was stated among others as that there were elements of the claimant's role that were no longer as demanding as they were in the past. For instance the respondent had carried out minimal construction work over the last four years which was a major element of his role.

11. Upon being declared redundant the respondent in its said letter offered to pay the claimant severance pay for ten years, leave days due and severance bonus. The claimant in his evidence admitted that he received about Kshs 200,000/= from the respondent through his account.

12. From his pleadings and evidence the claimant did not seem to contest the declaration of redundancy in terms of procedure followed but that the redundancy was malicious and instigated by the Field Officer Mrs Kimathi. The claimant further contended that his office was never abolished by the respondent and that it was available from the respondent's website.

13. The letter notifying the claimant of the intended redundancy was on the face of it clear on the reasons for which the claimant was being declared redundant. Whereas the claimant alleges the redundancy was malicious and instigated by the respondent's Field Officer Mrs Kimathi, he never produced any evidence to support these allegations. Under section 43(2) the reasons for termination of a contract of employment are matters that the employer at the time of termination believed to exist and which caused the employer to terminate the services of the employee.

14. The respondent in its letter communicating the intended redundancy informed the claimant that there were elements of the claimant's role that were no longer as demanding as they were in the past. Apart from alleging that his position was still available at the respondent's website, the claimant did not rebut the claim by the respondent that certain elements of his work were no longer as demanding they were in the past. For instance there was no any recent construction which was a key element of his role.

15. It is not the court's role to analyze the reason for termination of employment unless for good cause. If the reason for termination of employment is on the face of it reasonable enough, the court will not question the same and substitute with it its own view of what the court considers reasonable grounds for termination of employment.

16. The court has had the advantage of perusing the documents filed in support and opposition of the claim and further had the advantage of listening to evidence and has become of the view that the termination of the claimant's service on account of redundancy was for valid reasons and that the same was done in compliance with section 40 of the Employment Act.

17. The claim is therefore found without merit and is hereby dismissed with costs.

18. It is ordered.

**Dated at Nairobi this 28<sup>th</sup> day of June 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 28<sup>th</sup> day of June 2019**

**Hellen Wasilwa**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.