



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE 234 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 23rd September 2019)

CHRISTOPHER NJARAMBA.....CLAIMANT

VERSUS

SEN-TECH LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein filed a Memorandum of Claim dated 8th February, 2016, and filed in Court on 19th February, 2016, where the Claimant states that he was unfairly, unlawfully and un-procedurally declared redundant by the Respondent herein. The Claimant further states that the Respondent failed and/or ignored to pay him his terminal dues at the time of separation.
2. The Claimant states that he was employed by the Respondent as a service technician/fitter earning a monthly salary of Kshs. 71,852.25/- as evidenced by his payslip marked as "CN1".
3. The Claimant further stated that he performed his duties diligently and to the Respondent's satisfaction until 30th April, 2013 when he received a letter from the Respondent purporting to inform him of the cessation of the Respondent's operation and therefore declaring his position redundant.
4. The Claimant contended that on 30th April, 2013, he received a letter from the Respondent terminating his services on account of redundancy as per the annexure "CN3".
5. The Claimant further contends that the Respondent unfairly, unlawfully and un-procedurally declared his position redundant as no reason for the position being declared redundant was issued to him as a prerequisite of Section 40 of the Employment Act, 2007. The Claimant further avers that the act of the Respondent declaring his position redundant was tainted by malice thereby urging the Court to allow the following prayers:-
 - a. **Maximum compensation.**
 - b. **General damages for unlawful redundancy.**
 - c. **Costs of the suit.**
 - d. **Any other remedy the Court deems fit to grant.**
6. The matter was thereafter fixed for directions on 22nd February, 2018 before the Honourable Justice J. N Abuodha who directed that the matter proceeds as an undefended cause the Respondent's having failed to enter Appearance and file its Defence despite being duly served with the Claimant's Memorandum of Claim.

Evidence

7. The Claimant gave his evidence on 18th June, 2019. He requested and was allowed to adopt his witness statement dated 8th February, 2016 and filed in Court on 19th February, 2016, as his evidence in chief.

8. The Claimant in his statement reiterated the averments made in his Memorandum of Claim. The Claimant urged this Honourable Court to allow his Claim as drawn.

Claimant's Submissions

9. It is submitted on behalf of the Claimant herein that the reason given by the Respondent while allegedly declaring him redundant was not a genuine reason and is in-fact misleading as the Respondent did not cease to operate as alleged in its letter dated 30th April, 2013.

10. The Claimant contends that the Respondent Company merged with another entity to operate under the name of **KHS EAST AFRICA**. It is further submitted that this fact was not disputed as the Respondent failed to enter appearance or file its defence to rebut the evidence on record.

11. The Claimant further contends that his termination on account of redundancy was unfair as the Respondent failed to adhere to the provisions of Section 40 of the Employment Act, 2007.

12. The Claimant avers that the process of terminating his services was equally unfair as it failed to follow the mandatory provisions of Section 45 of the Employment Act, 2007. To fortify his arguments the Claimant relied on the Court decisions in the cases of **Caroline Wanjiru Luzze Vs Nestle Equitorial African Region Limited (2012) eKLR** and **Kenya Airways Limited Vs Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR**.

13. In conclusion, the Claimant urged this Honourable Court to allow his Claim as drawn.

14. I have considered the averments of the Claimant herein. The Respondent failed to enter appearance nor file defence and therefore this claim proceeded undefended and the Claimant's case remained uncontroverted.

15. It is clear from the Claimant's case he was terminated on account of redundancy without notice and without following the law as provided under Section 40(1) of Employment Act which states as follows:-

1. "An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions:-

a. Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

b. Where an employee 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 the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

d. Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

e. The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

f. The employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

g. The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

16. In absence of following the procedure envisaged and without establishing that there was a redundancy situation, the Respondent's action of terminating the Claimant was unfair and unjustified as envisaged under Section 45(2) of Employment Act 2007 which states as follows:-

2. "A termination of employment by an employer is unfair if the employer fails to prove:

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason:-

i. related to the employee's conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c . that the employment was terminated in accordance with fair procedure”.

17. In the circumstances of this case, I find that the Claimant has established his claim as prayed and find for Claimant and award him compensation equivalent to 12 months' salary:

$$= 12 \times (38,000 + 4,385 + 7,000 + 6,000)$$

$$= 12 \times 55,385 = 664,620/=$$

Less statutory deductions

18. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgement.

Dated and delivered in open Court this 23rd day of September, 2019.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Masese holding brief Bosire for Claimant – Present

Respondent – Absent