



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE NO 7 OF 2015**

**CAROLINE WAMBUI NJUE.....CLAIMANT**

**VERSUS**

**RIFT VALLEY RAILWAYS (K) LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimant pleaded that she was employed by the respondent as supply chain and systems, applications (SAP) controller. Her monthly salary at the time of engagement was Kshs 50,050/- per month.
2. The claimant underwent several performance appraisals and on 18<sup>th</sup> July, 2014 was promoted to Supply Chain Controller. On 18<sup>th</sup> October, 2014 the respondent's General Manager supply chain. One Victor Araiyo asked the claimant for SAP username and password which she refused to disclose noting that it would be against the respondent's ICT Policy. On 21<sup>st</sup> October, 2014 GMSC despite knowing that the sharing of usernames and passwords would be against respondent ICT policy continued demanding from the claimant her username and password for the SAP business system.
3. The claimant subsequently reported the matter to Chief Human Resource Officer who told her that she would look into the issue. This never happened as the GMSC continued to demand the username and password. The claimant refused and at this point the GMSC told her that as her supervisor he could not work with someone he could not trust and threatened to terminate the claimant's employment. On 23<sup>rd</sup> October, 2014 the claimant was called by one Grace Wamita, a human resource officer and one Caroline Mwangi the general manager talent management to explain what transpired and was subsequently told that her refusal to share her password amounted to gross misconduct and insubordination.
4. There was no communication thereafter until 29<sup>th</sup> October 2014 when the claimant received a letter terminating her employment citing retrenchment as reason for termination. The claimant further stated that the respondent practiced open discrimination against her and other members of staff in terms of equal pay for work of equal value. In particular the claimant averred that foreign members of staff were handsomely and far better paid as compared to locals.
5. The respondent on its part pleaded that it was an express term of the employment contract that the claimant was required to perform such duties as are assigned by the respondent. The respondent further stated that the claimant was in clear breach of clause 11 of the code of conduct on grievance handling procedure.
6. The respondent further stated there was a meeting between its officers and the claimant on 22<sup>nd</sup> October, 2014 but denied the claimant's averments on what transpired at the meeting. The respondent further stated that the claimant's services were terminated on account of redundancy as the claimant's former position was restructured in accordance with respondent's requirements with respect to operational efficiencies and staffing levels. According to the respondent it paid the claimant all her dues upon her being declared redundant. At the trial only the claimant attended and gave evidence in which she repeated the averments in her memorandum of claim.
7. Under the Employment Act, the burden of proof that a fair or justifiable termination of employment has occurred rests with the employer. The respondent averred that the claimant's service was terminated as a result of retrenchment or redundancy. The letter of termination dated 29<sup>th</sup> October, 2014 informs the claimant that her services had been terminated with immediate effect.
8. Under Section 40 of the Employment Act, a termination on account of redundancy requires that the employee affected be given at least one month's notice and further that the Labour Office and where the employee is unionisable the union be notified as well. The purpose of this requirement is to enable the employee and his or her union or the Labour Officer appreciate the purpose of the redundancy and be satisfied that the law as stipulated in the Employment Act and any agreement in the HR Policy or Manual or CBA is also followed. There can be no urgency in the redundancy which demand that the employee affected leaves immediately.

9. The rules of this court requires a party to file with his pleadings, documents and statements in support of the averments contained in the pleadings. The claimant did so. However the respondent never filed any documents to support the allegations contained in the defence. No minutes or reports were filed to show what informed the declaration of redundancy. It therefore remained a mere allegation in the defence.

10. The claimant further complained of workplace discrimination citing disparities in salaries between foreign employees and locals. The claimant however did not state how much the foreign employees were earning to enable the court compare with what she was earning.

11. The court by its ruling made on 13<sup>th</sup> November, 2015 ordered that the respondent files copies of payslips or some of its expatriate employees but this was never done. The claimant never moved the court further on the issue. In the circumstances the court is unable to appreciate and make an assessment over the claim for workplace discrimination on account of disparity in salaries. Concerning the claim for unfair termination of service, based on the fact that the respondent never filed any documents in support of the allegation that it rightfully declared the claimant redundant and followed by the fact that it never attended the trial to defend this allegation. The court is satisfied that the claimant's service was unfairly terminated and awards her ten month's salary as compensation for unfair termination of service. This payment shall be in addition to payment offered in the impugned retrenchment letter dated 29<sup>th</sup> October 2014. That is to say the claimant is awarded Kshs 500,000/=. This award shall be subject to taxes and statutory deductions but shall attract interest at court rates from date of judgement until payment in full. The claimant shall further have the costs of the suit.

12. It is so ordered.

Dated at Nairobi this 20<sup>th</sup> day of September, 2019

**Abuodha J. N.**

**Judge**

Delivered this 20<sup>th</sup> day of September, 2019

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**