



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NUMBER 149 OF 2015

JOHN MUTISYA MWANZIA.....CLAIMANT

VERSUS

KRYSTALLINE SALT LIMITED.....RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent on a contract to run from 15th August, 2013 upto 31st July 2015 with option for renewal. He was employed as Group Human Resource and Administration manager at a salary of Kshs 140,000/=. On 13th May, 2014 the respondent amended the termination notice period from three to one month or pay in lieu thereof.

2. In August, 2014 the claimant was directed by the respondent's Managing Director, Hasmita Patel to temporarily relocate to Malindi and Mombasa stations for a period of six months. A sum of Kshs 60,000/= was allocated to the claimant as relocation fees. On 5th September, 2014 the respondent terminated the claimant's services without any reason and reinstated him on 15th September, 2014 but terminated his services two months later on alleged grounds of redundancy.

3. The respondent however contended that the claimant was employed on a two year contract and was transferred to Malindi due to the respondent's restructuring until 15th December, 2014 when the claimant's services were terminated on account of redundancy. The respondent admitted re-engaging the claimant after terminating his services on 15th September, 2015.

4. The respondent averred that in the year 2014 it embarked on a restructuring and down sizing process leading to the position of Group Human Resource being declared redundant. The respondent further averred that on 17th November, 2014 it issued the claimant and the County Labour Officer with mandatory one months' notice of intended redundancy in accordance with the Employment Act (appendix 4).

5. The respondent further invited the claimant for consultations over the redundancy through an email dated 17th November, 2014 (appendix 5). According to the respondent at the consultative meeting the claimant requested to be allowed to leave the respondent's employment by 20th November, 2014 instead of serving one month notice that was to lapse on 15th December, 2014 (appendix 6). According to the respondent therefore, it diligently followed all the laid down guidelines in the Employment Act, Section 40 on notification, selection, negotiations and payment of terminal benefits.

6. In his oral evidence in court, the claimant repeated his averments in the memorandum of claim. The respondent did not call any witness but counsel chose to file closing submissions. In her closing submissions, Ms Bembela for the claimant submitted that her client was wrongfully terminated. According to counsel, the act of revising the notice period from three months to one month and the rehiring shortly after termination showed that there was a clear intent by the respondent right from 13th May, 2014 to unfairly terminate the claimant's employment. The respondent was as it were fishing for an excuse in order to terminate the claimant's services.

7. According to counsel, the redundancy notice by the respondent was not only vague; it clearly went against section 40 of the Employment Act. The Labour Officer of the area where the claimant was employed was not notified of the reasons for and the extent of the intended redundancy. Further, the respondent did not adduce any evidence that the termination on account of redundancy affected any other employee.

8. Redundancy is a form of termination of employment. It has to be carried out in accordance with provisions of section 40 of the Employment Act where the court finds that the procedure laid down in section 40 is not followed the shall declare the termination on account of redundancy unfair and make an appropriate order for compensation. However, where the procedure is properly followed, the court would have no reason to intercede. In this case of **Hesbon Waigi Vs Equatorial Commercial Bank Ltd [2013] eKLR** relied on by the claimant, my sister Lady Justice Mbaru stated that where redundancy is declared by an employer, the procedure to follow is as set out under provisions of section 40 of the Act and where not followed the termination will be deemed unfair.

9. By a letter dated 17th December, 2014 the respondent notified the claimant of intention to declare him redundant with effect from 15th December, 2014. The said letter informed the claimant that all his terminal dues would be settled at the Nairobi office and that he would be issued with certificate of service. The letter further asked the claimant to take his 21 days leave which had accrued by the time of the notice of redundancy. This letter was copied and stamped as received by the District Labour Officer Nairobi.

10. By an email dated 19th November, 2014 the claimant opted to leave employment immediately in order to benefit from pay in lieu of leave as provided under section 40 in redundancy cases. The claimant in this letter did not seem to dispute the fact and reason for the declaration of redundancy.

11. The respondent prepared and paid to the claimant a sum of Kshs 410,870 which comprised of leave pay, notice pay, days worked and severance pay. This pay net of statutory deductions and other due owed to the claimant came to kshs 263,217.

12. The court has reviewed the pleadings and supporting documents filed by both parties in the matter. The court has further considered the testimony by the claimant as well as closing submissions by both counsel and is not persuaded that the respondent breached the redundancy procedures set out in section 40 of the Employment Act.

13. Save for relocation allowance which the claimant merited to return to his original place of work after transfer to Malindi, the other heads of claim are found without merit and are hereby dismissed.

14. In conclusion, the court enters judgement against the respondent in the sum of Kshs 60,000 to be paid with interest thereon from the date of this judgement. There will be no order on costs.

15. It is so ordered.

Dated at Nairobi this 10th day of November 2017

Abuodha J. N.

Judge

Delivered this 10th day of November 2017

Abuodha J. N.

Judge