



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

**AT NAIROBI**

**CAUSE NUMBER 1041 OF 2014**

**ELIAS EGEITSA KIYUNDI.....CLAIMANT**

**VERSUS**

**LEGAL RESOURCE FOUNDATION TRUST.....RESPONDENT**

**JUDGMENT**

1. In his statement of claim filed on 23<sup>rd</sup> June, 2014 the claimant avers that he was employed by the respondent on 27<sup>th</sup> September, 1997 as an Accounts Clerk through a letter dated 2<sup>nd</sup> October, 1997, on a contractual period of two years. His monthly salary was stated as kshs.15,000/= per month. This contract was extended for two more months upon expiry on 15<sup>th</sup> January, 1998 and for a further 7 months from 30<sup>th</sup> November, 1997. Subsequently thereafter the claimant was on 1<sup>st</sup> March, 1998 offered full time employment and elevated to the post of an Accounts Assistant at a salary of Kshs.33,000/= per month. The claimant's terms of service were reviewed from time to time and by the time of the disputed termination of service he was earning Kshs.41,702/=.
2. According to the claimant he applied for and proceeded on leave on 20<sup>th</sup> December, 2013. While still on the said leave, the claimant avers that he received an email notice from the respondent notifying him of intention to terminate his services within one month. The claimant has disputed this termination claiming it was an unfair labour practice to terminate his services while still on leave and that he never received the termination letter purportedly sent to him through email. The claimant therefore sought the order of the Court that the respondent pays to him two month's salary in lieu of notice, travelling allowance and twelve month's salary as compensation for unlawful termination of services.
3. The respondent on the other hand denied the claimant's averments stating that it underwent restructuring and as such several employees including the claimant were affected.
4. According to the respondent, following the restructuring the claimant was issued with one month's notice as required by law and that the Labour Office was duly informed as well prior to declaring the claimant redundant.
5. The respondent further averred that upon declaration of redundancy, the claimant was paid the sum of Kshs.361,475/= being severance pay and staff welfare kitty refund. The respondent therefore contended that the termination on account of redundancy was in accordance with justice and equity and thus lawful since the position held by the claimant ceased to exist. The respondent therefore prayed that the claimant's suit be dismissed with costs.

6. In his submissions before the Court, the claimant contended that he ought to have been given two months' notice instead of one as provided in his contract of employment. According to him, the two month's notice being favourable, took precedence over the statutory one month's notice period under section 40 of the Employment Act. He further submitted that the respondent failed to justify redundancy by proving that the evaluation for redundancy was just and fair and was not based on a single occasion factor or skill but on a wide criteria. The claimant further submitted that there was no consultation prior to the declaration of redundancy. Relying on the case of **Aviation and Allied Workers Union v. Kenya Airways** he contended that consultation is now considered a fair labour practice.

7. He therefore concluded that the termination of his service was under the circumstances unfair.

8. The respondent on the other hand submitted that it followed the law in declaring the claimant redundant. According to the respondent, the Labour Office was duly informed of the redundancy and the claimants as well. Regarding notice, respondent submitted that the claimant was given notice as per his contract.

9. Termination of employment on account of redundancy is provided for under section 40 of the Employment Act. Some of the requirements which are relevant to the case before me are that; the employer must inform the Labour Officer or a Union where the employees affected are unionisable, at least, one month before the declaration of redundancy giving reasons for the intended redundancy. Second the employee must be personally notified in writing, where leave is due to such an employee such leave to be paid in cash. The employer must further give such employee one month's notice or payment in lieu of notice and further the employee must be paid at the rate of not less than fifteen days pay for each completed year of service.

10. By a letter dated 15<sup>th</sup> January, 2014 the respondent informed the County Labour Office, Nairobi of intention to terminate five of its employees on account of redundancy due to organizational restructuring. On 17<sup>th</sup> February, 2014 the claimant was given one month's notice of termination of his services on account of redundancy. The letter informed him that the respondent had been going through strategic planning and human resource/personnel review, which resulted in the abolition of his position in the respondent. As a consequence the respondent offered to pay him severance pay and refund to him his contributions to staff welfare kitty.

11. The claimant dues were duly calculated and paid to him which he does not deny. In the circumstances the Court is of the view that the respondent duly followed the law in declaring the claimant redundant and the claim as filed is therefore unmerited and the same is hereby dismissed with costs.

12. It is so ordered.

Dated at Nairobi this 30<sup>th</sup> day of October 2015

Abuodha J. N.

Judge

Delivered this 30<sup>th</sup> day of October 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge