



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

**AT NAIROBI**

**CAUSE NUMBER 886 OF 2015**

**LAWRENCE OMONDI.....CLAIMANT**

**VERSUS**

**CREATIVE EYE (K) LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Court on 31<sup>st</sup> July, 2015 made a ruling that the respondent do pay the claimant Kshs.189,704 which was undisputed between the parties. The Court however directed that the parties do make submissions on the question of underpayments of salary and fairness or otherwise of the termination of claimant's services.
2. By a contract dated 29<sup>th</sup> July, 2013 the respondent employed the claimant as an art director for a period of one year. The commencement period of the contract was 1<sup>st</sup> August, 2013. The salary attached to the claimant's appointment was Kshs.150,000 per month.
3. The claimant served the respondent until the expiry of the contract which was supposed to have been 31<sup>st</sup> July, 2014 but continued thereafter until 30<sup>th</sup> April, 2015 when the respondent terminated the claimant's services on account of poor business performance leading to closure of Kenya Operations.
4. On 29<sup>th</sup> October, 2014 the respondent informed the claimant that as a result of negative business environment the management decided to review senior staff salaries in order to cut overhead costs. Each senior management staff was therefore subjected to 30% pay cut with effect from November, 2014. A letter in that regard was issued to the claimant with the request that he signs as a confirmation of the same. The claimant duly signed the letter. The respondent implemented the pay cut and this was evidenced by payslips attached to the respondent's memorandum of response.
5. The claimant therefore having signed the letter informing him of salary reduction as confirmation that he understood the contents thereof cannot again turn around and claim under payment more so after drawing the reduced salary for close to five months. A reduction of salary is a fundamental variation of contract of employment which entitles the employee concerned to repudiate the contract and sue for constructive dismissal. The claimant did not do so hence cannot be heard to bring a claim for underpayment upon termination of his services.
6. Concerning closure of Kenya Office with the consequent loss of jobs this was an act of redundancy which required that the respondent follows the procedure set under section 40 of the Employment Act which included notification of the intended redundancy to the nearest Labour Office and the Union where

such employees are unionisable, payment of pending leave in cash, not less than one month's notice or salary in lieu of notice and payment of severance pay at the rate of not less than fifteen days pay for each completed year of service. The claimant has been paid Kshs.189,704 which comprised among others salary in lieu of notice and leave days. These are some of the items payable upon declaration of redundancy under section 40 of the Act. Whereas the respondent may not have strictly complied with the provisions of section 40 of the Employment Act, it does not void the redundancy. It merely makes the termination of employment on account such flawed redundancy unfair and the Court will award appropriate compensation.

7. The claimant was part of senior management hence not unionisable. Further the intention of the legislature in requiring notification to the labour office and union was to guard against labour unrest and unfair labour practices especially with regard to lower cadre and unionisable workers who have none or weak bargaining power and naturally need protection from such practices. In this particular case the omission to notify the labour office on the declaration of redundancy of the claimant cannot be said to have disadvantaged him to warrant a finding of unfair termination of services. The Court will therefore order that he be paid fifteen days salary as severance pay for the period between 1<sup>st</sup> August, 2013 to 31<sup>st</sup> July, 2014.

8. The claimant will further have costs of the suit.

9. It is so ordered.

Dated at Nairobi this 6<sup>th</sup> day of November 2015

**Abuodha J. N.**

**Judge**

Delivered this 6<sup>th</sup> day of November 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**