



**Andika v Smart Printers Limited (Cause 460 of 2018)
[2023] KEELRC 2425 (KLR) (6 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2425 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 460 OF 2018
SC RUTTO, J
OCTOBER 6, 2023**

BETWEEN

CHARLES OMUSE ANDIKA CLAIMANT

AND

SMART PRINTERS LIMITED RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim amended on 20th September, 2018, the Claimant avers that he was employed by the Respondent from August, 1998 upto September, 2017 when his services were unlawfully terminated. According to the Claimant, he was a diligent employee and met his targets at work as expected of him. The Claimant has termed his termination from the Respondent's employment unfair, unprocedural, unlawful and without substance. It is on this account that the Claimant seeks against the Respondent the sum of Kshs 2,642,313/= being unpaid rest days, public holidays, unpaid leave severance pay, notice pay and compensation for unfair termination. The Claimant further seeks special damages in the sum of Kshs 21,087/=, compensation for loss of future earnings, general damages for pain, suffering and future medical expenses, interest and costs of the suit.
2. Opposing the Claim, the Respondent avers that in September/October 2017, it held a meeting with KUPRIPUPA Workers Union to discuss staff redundancy. That pursuant to the meeting, the Claimant was advised of the termination of employment on account of redundancy on 29th September, 2017 and the statutory entitlements pursuant to the Collective Bargaining Agreement, were duly remitted to him. The Respondent further denies ever terminating the Claimant's services illegally. Consequently, the Respondent has asked the Court to dismiss the Claimant's claim with costs.
3. During the hearing which proceeded on 4th May, 2023, both sides called oral evidence.



Claimant's case

4. The Claimant testified in support of his case and at the outset, sought to adopt his witness statement and documents filed together with the Claim, to constitute his evidence in chief.
5. It was the Claimant's evidence that he was employed by the Respondent sometimes in 1998 as a binder in the finishing department. He worked with the Respondent up until sometime in September, 2017 when his services were unlawfully terminated.
6. He further stated that on 11th November, 2014, he complained of back pains and was referred to a doctor for medical treatment by the Respondent. That since then, he had to attend medical check-ups. He was diagnosed with Lumba lordosis, multilevel vertebral osteophytes, an occupational related medical condition developed while in the employment of the Respondent.
7. The Claimant further testified that in September, 2017 the Respondent sought to declare some of its employees redundant on account of economic hardship and lack of market due to new entrances in the industry. That prior to the redundancy notice of September 2017, the Respondent outsourced other workers. After the redundancy notice of September 2017, the Respondent further outsourced other workers in the same capacity as those rendered redundant.
8. It was the Claimant's further evidence that he worked until 29th September, 2017 and was sent on compulsory leave on 1st October, 2017 before the redundancy notice expired. He attended a meeting with the Respondent on 29th September, 2017 in his capacity as a shop steward.
9. The Claimant contended that he was terminated under the guise of redundancy but in actual sense, he was targeted because of his medical condition which was occasioned by the unfavourable working conditions presented to him by the Respondent.

Respondent's case

10. The Respondent called oral evidence through its Human Resource Manager, Mr. Peter Nzioka Mani, who testified as RW1. Similarly, he adopted his witness statement and the Respondent's bundle of documents to constitute his evidence in chief.
11. It was RW1's evidence that the Claimant was employed by the Respondent from 24th August, 1998 to 13th October, 2017. That on 11th November, 2014 the Claimant went to Mama Lucy hospital complaining of hip and knee and time again, he would take sick leave to seek medical attention at Mama Lucy and at no time did he ever mention being diagnosed with Lumba lordosis vertebral osteophytes.
12. RW1 further stated that in September, 2015, the Respondent issued the Claimant with a letter wanting him to work on rotational shift but he declined without reason. The Respondent thereafter followed up with the Claimant to either provide them with a rotational shift plan failing which he should provide a medical report evidencing why he could not comply with the job requirements. The Claimant once again declined to comply or provide any medical report or explanation.
13. On 14th September, 2017, the Respondent sent out redundancy notices with an intention to lay off between 15 to 20 employees, to the General Secretary of KUPRIPUPA, where the Claimant is a member and to the County Labour Office.
14. RW1 further stated that on 29th September, 2017, the Respondent's Management and the union officials held a meeting to deliberate the matter of redundancy and at the meeting it was agreed that the Respondent will lay off 10 employees. The Claimant attended the meeting and did not raise any objection.



15. On 10th October, 2017, the Claimant went personally to the Respondent company and was given final computation of his terminal statutory dues. After taking the same to the Kenya Revenue Authority (KRA) for verification/consultation, the Claimant returned after being satisfied that the computation was in order.
16. On 13th October, 2017, the Claimant went for his final dues, where he was paid all his terminal statutory dues amounting to Kshs.342,218.00. The Claimant signed the final pay slip without any complaint.
17. That on 17th October, 2017 after receiving his terminal dues, the Claimant submitted to the Respondent a medical report purported to have been issued on 3rd October, 2017, alleging he be retired on medical grounds.
18. It was RW1's evidence that the Claimant did not at any time during his employment or during the negotiations with his trade union, intimate the conditions detailed in his Claim against the Respondent.
19. According to RW1, the Claimant's allegations that the Respondent outsourced other workers prior to the redundancy notice and after the redundancy notice for the same position as those who were declared redundant, is unsubstantiated.
20. It was RW1's further evidence that the procedure followed by the Respondent in the redundancy exercise was in accordance with the Collective Bargaining Agreement and with the full knowledge of the County Labour Officer and KUPRIPUPA.

Submissions

21. On his part, the Claimant submitted that while he was terminated on allegations of redundancy, the said allegations were neither proved nor was he given an opportunity to rebut them. He further argued that the particulars of the said economic issues were not disclosed to him at the time of termination or even when the matter was in court.
22. It was the Claimant's further submission that while the Respondent relied on the redundancy to justify his termination, what was proved before this court was that the same was just a cover for its open discrimination against him. He argued that the main reason for his termination was his ailment and that the Respondent was frustrated that it could not terminate him on these grounds. In support of this argument, the Claimant placed reliance on the case of case of *Daniel Mburu Muriu v Hygrotech East Africa Ltd* (2021) eKLR.
23. It was further submitted that the Claimant's termination was premeditated and unfair and the redundancy was a good cover up as he had a disease clearly beyond his control.
24. The Claimant further argued that the Respondent's measures towards ensuring a fair procedure fell below the legal threshold.
25. The Respondent on the other hand submitted that as per the provisions of section 40 of the *Employment Act* and the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR, it has a right to declare positions at the work place redundant.
26. It was further submitted by the Respondent that the reason for separation through redundancy was valid as the company was facing harsh economic times. That at no time did the Claimant deny that the reason for the several redundancies existed, and was valid.
27. The Respondent further submitted that the Claimant's allegation that he was targeted because of an alleged occupational illness was not proved as he did not prove that the same existed at the time of



his employment and that he made it known to the Respondent. That further, the Claimant did not produce evidence to prove his claim that he suffered unfavourable working conditions.

Analysis and Determination

28. Having considered the pleadings, the evidence submitted before Court and the rival submissions, the following issues stand out for determination:
- i. Whether the Claimant's termination by way of redundancy was fair and lawful; and
 - ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's termination by way of redundancy was fair and lawful

29. From the record, it is apparent that the Claimant's contract of employment was terminated on account of redundancy. This is discernible from his letter of termination dated 29th September, 2017, which is couched as follows:

“RE: REDUNDANCY

This is to notify you that due to changes in market dynamics in the printing industry, and economic hardship, technological developments and low productivity, the company have (sic) progressively experienced serious financial losses.

The company is therefore left with no other option but to declare redundant part of workforce with effect from 13th October, 2017 and this letter serves as a notice of the intended termination of your employment on account of redundancy.

In view of the above, you shall be paid all statutory entitlements on account of redundancy in compliance with the provisions of the law which will be covered in a different letter.”

30. Pursuant to section 2 of the *Employment Act*, the term “redundancy” is defined to mean “the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment”.
31. Essentially, the circumstances or reasons which leads to an employee being declared redundant must fall within the above statutory definition.
32. In the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR, the Court acknowledged redundancy as a legitimate ground for termination of employment based on the operational requirements of an employer.
33. As stated herein, the reason given by the Respondent for the Claimant's termination was “economic hardship, technological developments and low productivity.”
34. In support of its case, the Respondent exhibited minutes of a meeting it held in September, 2017 with KUPRIPUPA Workers Union to discuss the issue of the intended redundancy. As can be discerned from the said minutes, the Claimant was among the attendees. He admitted as much during cross examination and added that he attended in his capacity as a shop steward.
35. The minutes bear that the Respondent presented the reasons which had informed the redundancy exercise. It is also discernible from the minutes aforesaid, that after consultations with the Union, the Respondent agreed to reduce the number of employees to be declared redundant from 18 to 10.



36. Cross examined, the Claimant admitted that he was not the only employee who was declared redundant. He further admitted that he did not have a problem with the redundancy.
37. According to the Claimant, he was terminated under the guise of redundancy but was in the actual sense, targeted because of his medical condition. In support of this claim, he exhibited a medical report dated 3rd October, 2017 which states that he had a back problem. The medical doctor who authored the medical report recommended that the Claimant be retired on medical grounds. Notably, the said medical report was authored after the claimant had received his notice of redundancy. It is also worth noting that the medical report was received by the Respondent on 17th October, 2017. Again, it is evident that this was after the Claimant had been served with the notice of redundancy.
38. In light of the foregoing, it is not logical to state that the Respondent was aware of the Claimant's medical condition at the time he was declared redundant. It is therefore a bit farfetched for the Claimant to state that the redundancy was a guise to terminate his employment on account of his medical condition. Indeed, if such was the case, then why were other employees affected during the redundancy exercise?
39. As to the Claimant's argument that the Respondent outsourced other employees prior to the redundancy and thereafter, the same was not substantiated by evidence.
40. As a whole, I have not discerned any aspect of the Claimant's termination by way of redundancy that can be termed as substantively unfair.
41. With regards to procedural fairness in cases of redundancy, section 40(1) of the Act stipulates the following as the conditions precedent:
- 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.
42. From the record, the Respondent notified KUPRIPUPA Workers Union, which the Claimant was a member, of its intention to declare 15 to 20 employees redundant. In the said notice, which is dated 14th September, 2017, the Respondent notified the Union of its intention to declare a redundancy, the



reasons thereof and the number of the employees affected. The notice was also copied to the County Labour Office. To that extent, the Respondent was in compliance with the provisions of section 40(1) (a) of the Act.

43. The Respondent further exhibited a copy of a letter dated 29th September, 2017 addressed to the Claimant. Through the said letter, the Claimant was notified of the terminal benefits he was entitled to. Part of the payments payable to him included one month salary in lieu of notice, pending leave days and severance pay. Notably, these payments were in compliance with the requirements under section 40(1) (e), (f) and (g) of the Act.
44. Further to the foregoing, it is common ground that the Respondent and the Claimant's Union held consultations with regards to the intended redundancy. Evidently, the consultations bore fruit as the Respondent reduced the number of employees to be declared redundant from 18 to 10.
45. In view of the foregoing, I am satisfied that the Respondent complied substantively with the requirements under section 40 (1) of the Act and I see no reason to hold otherwise.
46. The upshot of the foregoing is that the Court finds and hold that the termination of the Claimant by way of redundancy was not unfair and unlawful.

Reliefs?

47. Having found that the claimant's termination was fair and lawful, he is not entitled to any of the reliefs sought. This is further noting that as part of his terminal dues, he was paid one month's salary in lieu of notice, pending leave days, pending overtime, severance pay. This essentially covers the reliefs he is seeking from Court through the instant suit.

Orders

48. In conclusion, having found that the Claimant's termination was neither unfair nor unlawful, the Claim is dismissed in its entirety with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Nyabena

For the Respondent Ms. Achieng

Court Assistant Abdimalik Hussein

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the Constitution and the provisions of



section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Stella Rutto

Judge

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