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**EMPLOYMENT AND LABOUR  
RELATIONS COURT UPHOLDS  
EMPLOYEES' CONSTITUTIONAL  
RIGHT TO FREEDOM OF  
RELIGION**

**LEGAL ALERT**

**AUGUST 2023**

# Employment And Labour Relations Court Upholds Employees' Constitutional Right to Freedom of Religion

The Employment and Labour Relations Court sitting at Nairobi (the “Court”) in a recent Judgement delivered on 29th June 2023 in the case of [Qjung'a v Healthlink Matcare Ltd t/a Nairobi Women Hospital \(Cause 1620 of 2018\) \[2023\] KEELRC 1607 \(KLR\)](#) has upheld Article 32 of the Constitution of Kenya, 2010 (the “Constitution”), which guarantees the right to freedom of conscience, religion, belief, and opinion with respect to the employer – employee relationship.

In finding that the employee in question was unfairly terminated from her employment, Hon. Mr. Justice. Bernard O. M. Manani held that the Constitution places an obligation on employers as duty bearers to uphold their employees' freedom of religion. As such, employers cannot be said to have established a valid reason to terminate an employee's contract of service if it is shown that the termination was an attempt to impede the employee's enjoyment of a constitutional right.

In this dispute, the employee asserted that she was unfairly and unlawfully dismissed from her employment - this being a claim which her former employer resisted and, in opposition, asserted that the decision to terminate the employment relationship was for a valid reason and followed lawful procedure. The employee, being a practising Seventh Day Adventist, considered Saturdays as worship days for her faith, which required her not to work on this day. In order to observe this practice, the employee stated that she had asked her employer to excuse her from work on Saturdays. The employee and her employer thereafter agreed that she would work for the first Saturday in any given month and would compensate for the Saturdays she would be off duty by working on Sundays instead.

Sometime in 2018, the employee failed to attend a meeting, which her employer deemed crucial, on the premise that she had already worked the first Saturday of that month. The employee contended that she had appropriately apprised her team of the manner to proceed in the said meeting. On the employer's part, it was

contended that, owing to the position which the employee held within the organisation, she ought to have internalised her obligation to work as and when required. According to the employer, it was not open for the employee to fail to attend the meeting given that it was central to her role as the branch budget holder. Further, the employee was not entitled to be treated in a special way on account of her faith since this would, in itself, be discriminative of other employees. The employer additionally argued that the accommodation granted to the employee to work on one Saturday every month was subject to the contract of employment between the parties. It is against this backdrop that the employer terminated the employee's employment contract on account of failure to heed work instructions.

In light of the foregoing, the issue for determination before the Court was whether the employment relationship between the employee and her employer was lawfully terminated. In arriving at a determination, the Court found that at the heart of this dispute was the employee's freedom of religion and the decision to terminate her contract arose from her failure to attend the said meeting on a day which she had reserved to observe her religious obligations.

The Court noted that matters of religion are taken rather seriously in Kenya and that they are as universal as much as they are personal. As such, the Constitution unequivocally guarantees every individual the freedom of conscience, religion, belief, and opinion. Article 32 (4) of the Constitution being more elaborate on this issue, guarantees that **no person shall be compelled to act or engage in any act contrary to their personal belief or religion**. The Court further noted that as rightfully pointed out by the employer, while this right was not absolute, it could only be limited in accordance with Article 24 of the Constitution and, nonetheless, such limitation must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom.

Arriving at its findings, the Court was of the view that

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while indeed it appreciated the fact that the meeting which the employee missed was a critical one, the employee’s freedom of religion was of equal significance to her. The Constitution obligated the employer to respect and protect this right and it was up to the employer to find a way of **balancing its business interests with the employee’s freedom of religion without prejudicing the latter**. The Court held that the fact that the employer terminated the employee’s employment for failure to attend the meeting that coincided with her prayer day was clearly unfair and, the termination of her employment contract was unlawful, discriminatory, and a violation of the employee’s freedom of religion.

The upshot of this decision is that, while there are decisions finding that compensation arising out of unfair termination is capped at an equivalent of twelve (12) months’ pay – only awardable in extreme circumstances while factoring in section 49 of the Employment Act, 2007 this decision places unlawful termination arising out of discrimination on account of freedom from religion as being one of those extreme instances where the maximum compensation can be awarded. Further, the freedom of religion as enshrined in the Constitution has been previously upheld by many courts however, this decision emanating from the Employment and Labour Relations Court now places a clear – cut and unequivocal burden on employers to guarantee their employees’ rights to freedom of religion under Article 32 of the Constitution and ensure that employers uphold the human dignity of those who work for them at all times.

## Disclaimer

*This alert is for informational purposes only and should not be taken to be or construed as a legal opinion. If you have any queries or need clarifications, please do not hesitate to contact Chacha Odera, Senior Partner, ([chacha@oraro.co.ke](mailto:chacha@oraro.co.ke)) and Jonathan Kisia, Associate, ([kisia@oraro.co.ke](mailto:kisia@oraro.co.ke)) or your usual contact at our firm, for legal advice.*



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