



**Langat v AIC Kijabe Hospital (Cause E821 of 2021)
[2025] KEELRC 2499 (KLR) (19 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2499 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E821 OF 2021
SC RUTTO, J
SEPTEMBER 19, 2025**

BETWEEN

GILBERT LANGAT CLAIMANT

AND

AIC KIJABE HOSPITAL RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim dated 25th October 2021, the Claimant prays for the following reliefs against the Respondent:
 - i. A declaration that the Claimant's employment was unfairly terminated by the Respondent;
 - ii. A declaration that the Claimant was discriminated against by the Respondent;
 - iii. Compensation for unfair termination assessed at twelve (12) months, amounting to Kenya Shillings Three Million, Nine Hundred and Sixty Thousand (Kshs.3, 960,000);
 - iv. Interest in (iii) and (iv) above;
 - v. Damages for discrimination;
 - vi. Unfair labour practices
 - vii. Costs of this suit; and
 - viii. Any other relief as the Tribunal would deem just and expedient to grant.
2. It is the Claimant's case that he was employed by the Respondent in the position of Business Applications Administrator and Systems Administrator. According to the Claimant, he served the Respondent diligently and faithfully until 21st November 2019, when he was terminated from employment without lawful procedure.



3. Upon being served with the Memorandum of Claim, the Respondent entered appearance on 19th March 2025 through Peris Wanjiku, its Legal Officer. Be that as it may, the Respondent did not file a Response to the Claim. Consequently, the matter was undefended, hence proceeded for formal proof hearing on 23rd June 2025.
4. During the hearing, the Claimant adopted his witness statement and the documents filed alongside his Memorandum of Claim to constitute his evidence in chief.
5. It was the Claimant's testimony that in terminating his employment, the Respondent did not comply with Section 40(1)(b) of the Employment Act and further, did not engage in consultations before his redundancy. According to the Claimant, he was given the letter of termination at 5:00 pm after work hours.
6. The Claimant further stated that there were other people holding a similar position to his and only two of them were sent home.
7. That after his termination from employment, the Respondent recruited other people into his position. Therefore, it was his view that the redundancy was not genuine.
8. The Claimant further stated that after his termination, the Respondent still called him to assist with some work but he declined as his employment had been terminated.
9. The Claimant further averred that the Respondent drastically reduced his salary without consultation and agreement, and he would take home less than Kshs 2,000/- per month.
10. In closing, the Claimant urged the Court to award him the reliefs sought in the Memorandum of Claim.

Submissions

11. It was the Claimant's submission that the Respondent did not comply with the procedure set out under Section 40(1) (b) of the Employment Act. It was further submitted that the selection criteria employed by the Respondent was not in conformity with Section 40(1) (c) of the Employment Act. On this score, the Claimant submitted that he was not informed of the selection criteria. That having worked for the Respondent for eight years, his performance was satisfactory and his ability and reliability were never questioned at any time.
12. In support of the Claimant's submissions, reliance was placed on a number of cases, including *Hesbon Ngaruiya Waigi v Equatorial Commercial Bank Limited* (2013) eKLR, *Francis Minana Kamau v Lee Construction* (2014) eKLR, *Thomas De La Rue (K) Ltd v David Opondo Omutelema* (2013) eKLR and *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR.

Analysis and Determination

13. Flowing from the record, the Court has isolated the following twin issues for determination:
 - i. Whether the Claimant's termination by way of redundancy was unfair and unlawful; and
 - ii. Whether the Claimant is entitled to the reliefs sought.Whether the Claimant's termination by way of redundancy was fair and lawful.
14. Evidently, the Claimant's employment was terminated by way of redundancy. As was held in the case of *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR, for



- any termination of employment under redundancy to be lawful, it must be both substantially justified and procedurally fair.
15. In this regard, substantive justification refers to the reasons ascribed for the redundancy, while procedural fairness has to do with the procedure applied in effecting the redundancy.
 16. In the present case, the Claimant was notified through the letter of termination dated 18th October 2019 that his role as Business and Applications Administrator had become redundant on account of the following reasons;
 - i. The investment in the upgrade of the LAN, which had made the need for specialized support unnecessary going forward.
 - ii. The procurement & implementation of the new Hospital Management System (HMIS) and signing of the annual maintenance contract with the vendor, the role of Business and applications Admin to support the HMIS within the organization was not required going forward.
 - iii. The combined support of the Network & Infrastructure Officer to support the previous unstable LAN infrastructure and the Business & Applications Admins to support the previous unstable & unreliable HMIS, had been rendered unnecessary with the huge investments the organization has made in these two mega projects necessitating the need for restructuring the department for effective & efficient operations within the hospital.
 17. In terms of Section 43(1) of the *Employment Act*, it was reasonably expected that the Respondent would lead evidence to prove the reasons advanced for the Claimant's role being declared redundant. More importantly, the Respondent was required to prove that the Claimant's role had fallen off the organizational structure. Regrettably, this was not the case.
 18. As stated herein, the Respondent neither filed a defence nor participated in the hearing. As such, no material was placed before this Court to prove that the Claimant's position had been abolished hence his services rendered superfluous. Without such evidence, it is impossible to ascertain whether the Claimant's position was indeed declared redundant.
 19. There was also no evidence that the Claimant's termination was occasioned by the Respondent's operational requirements, thus confirming that his termination was fair, valid and connected to the Respondent's operational requirements.
 20. Besides, the Claimant's assertion that the redundancy was not genuine, as the Respondent recruited persons to the same position he was holding shortly after he was terminated from employment, remained uncontroverted.
 21. In as much as an employer has the right to declare a redundancy based on its operational requirements, the same ought to be valid and justified and should not be used as a through pass to terminate employment capriciously.
 22. There being no evidence in the instant case that there was a justified reason to terminate the Claimant's employment on account of redundancy, the Court finds that said termination was substantively unfair.
 23. With regards to procedural fairness in a case 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.
24. In the case herein, there was no evidence of compliance with the notice requirement under Section 40(1) (b) of the *Employment Act*. I say so because the letter dated 18th October 2019 was issued to the Claimant after the decision to declare him redundant had already been made by the Respondent.
25. As can be discerned from Section 40 (1) (b) of the *Employment Act*, the notice contemplated thereunder is a “notice of intention to declare a redundancy”. It is issued prior to an employee being declared redundant. The notice issued to the Claimant in this case was a notification that his position had already been declared redundant, hence his termination from employment. This was unprocedural.
26. The Respondent was first required to issue a notice of its intention to declare a redundancy prior to the notice communicating the termination of employment on account of redundancy.
27. On this issue, the Court adopts the position taken by Maraga JA (as he then was) in the case of Kenya Airways case vs Aviation & Allied Workers Union Kenya & 3 others (supra), thus:
- “My understanding of this provision is that when an employer contemplates redundancy, he should first give a general notice of that intention to the employees likely to be affected or their union. It is that notice that will elicit consultation between the parties, ...”
28. Needless to say, the Respondent was at fault for not complying with the notice requirement under Section 40(1) (b) aforementioned.
29. The Respondent further failed the test under the second limb of Section 40(1) (b) as there was no evidence that the labour office was notified of the intention to declare a redundancy.
30. In addition to the foregoing, there was no evidence that the Respondent engaged in pre-redundancy consultations in accordance with Article 13, Convention No. 158 - Recommendation No. 166 of the International Labour Organization (ILO) convention.



31. In terms of Article 13 of the ILO Convention No. 158, consultations should be aimed at averting and minimizing the terminations or mitigating the adverse effects of any terminations on the employees concerned. This confirms the significance of pre-redundancy consultations.
32. As the Court has found that there was no evidence of pre-redundancy consultations in the instant case, it follows that the Respondent is at fault to that extent.
33. The other pertinent issue on procedure is with respect to the selection criteria applied by an employer in effecting a redundancy. Under Section 40 (1) (c) of the *Employment Act*, the Respondent was required to prove that in selecting the Claimant for the redundancy, it had paid 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.
34. As the Respondent failed to file a defence or participate in the proceedings herein, there was no evidence of the criteria it applied in singling out the Claimant for redundancy. For instance, how did the Respondent determine that out of its employees performing the same job as the Claimant, he was the one to be declared redundant? In the absence of such evidence, I cannot help but find that the Respondent erred in that respect.
35. As to the payments under Section 40(1) (e) (f) and (g) of the *Employment Act*, it is notable that the Claimant exhibited a tabulation of his final dues which comprises one month's notice pay, severance pay and compensation for accrued leave days. Therefore, this covered the payments due to the Claimant as contemplated under Sections 40(1) (e) (f) and (g) of the *Employment Act*. As I note, the Claimant has not sought the said items in his Memorandum of Claim, hence I take it that he was duly paid.
36. As it is evident that the Respondent did not substantially comply with the provisions of Section 40 (1) of the *Employment Act*, the Claimant's termination from employment by way of redundancy cannot be said to have been procedurally fair.
37. All things considered, the Claimant's termination on account of redundancy was unfair and unlawful within the meaning of Sections 40, 43 and 45 of the *Employment Act*.

Remedies?

38. Having found that the Claimant's termination by way of redundancy was substantively unjustified and unprocedural, hence unfair and unlawful, the Claimant is entitled to compensatory damages pursuant to Section 49 (1) (c) of the *Employment Act*. Taking into account the length of the employment relationship, the fact that there was no justification for the Claimant's termination by way of redundancy and that the same was unprocedural, the Court awards him compensatory damages equivalent to seven (7) months of his last salary.

Orders

39. The total sum of my consideration is that judgment is entered in favour of the Claimant against the Respondent in the following manner: -
 - a. A declaration that the termination of the Claimant from employment was unfair and unlawful.
 - b. The Claimant is awarded compensatory damages in the sum of Kshs. 935,193.00, being equivalent to seven (7) months of his last salary.
 - c. Interest on the amount in (b) at court rates from the date of Judgment until payment in full.



d. The Respondent shall bear the costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER, 2025

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant No appearance

For the Respondent Ms. Wanjiku

Court Assistant Millicent

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

