



Mudachi v Nairobi Java House Limited & another (Employment and Labour Relations Cause 1372 of 2018) [2025] KEELRC 2581 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2581 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1372 OF 2018
MN NDUMA, J
SEPTEMBER 25, 2025**

BETWEEN

LEONARD MUDACHI CLAIMANT

AND

NAIROBI JAVA HOUSE LIMITED 1ST RESPONDENT

JAVA HOUSE (MAURITIUS) LIMITED 2ND RESPONDENT

JUDGMENT

1. The suit is premised on the amended statement of claim dated 5/4/2024 in which the Claimant has sued the 1st and 2nd Respondents seeking for the following reliefs:-
 - a. A declaration that the process leading to the termination of the Claimant’s contract amounted to unfair labour practice contrary to Article 41(1) of *the Constitution*.
 - b. General damages for breach of the Claimant’s fundamental rights under *the Constitution*.
 - c. A declaration that the Claimant’s termination was unfair, unjustified and illegal contrary to the *Employment Act* 2007.
 - d. 12 months’ salary compensation for unfair termination of contract of employment amounting to Kshs. 10,800,000.00.
 - e. A declaration that LTIP Scheme established by the Respondents was in breach of provisions of the *Retirement Benefits Act* No. 3 of 1997 and the Rules made thereunder.
 - f. A declaration that because the Respondents established and enrolled the Claimant in a Scheme in breach of statutory protections provided under the law to the Claimant as a beneficiary, the Claimant has suffered general damages.



- g. An award of general damages to the Claimant on account of being denied statutory protection under the law contrary to Article 27(1) of *the Constitution*.
 - h. An award of Exemplary/Punitive damages.
 - i. The Respondents be compelled by way of a mandatory injunction to avail the Rules and to render a full and detailed account of the affairs and status of the LTIP Scheme including but not limited to the particulars of all change of control events since the Claimant's termination of employment.
 - j. The Claimant be paid damages for breach of contract and breach of fiduciary duty with regards to the LTIP Scheme
 - i. The Claimant be paid USD 208,293.75 (Two hundred and eight thousand two hundred and ninety-three US Dollars and seventy five cents) being the value of his vested shares in the Respondent LTIP Scheme.
 - ii. The Claimant be awarded interest on the payment due on account of his vested shares from the date of the change of control event until payment in full.
 - k. The Claimant be paid his cash bonus entitlement under the LTIP Scheme to be established upon a full disclosure of information and particulars.
2. The suit was opposed vide an amended memorandum of response dated 30/5/2024 in which all particulars in the claim are disputed and reliefs sought denied. CW1, the Claimant adopted a witness statement dated 6/9/2018 as his evidence in chief and produced exhibits '1' to '11' in support of his case.
 3. The Claimant testified that the 1st Respondent was a limited liability company registered in Kenya whereas the 2nd Respondent is a limited liability company domiciled in Mauritius. That the 1st Respondent is a subsidiary of the 2nd Respondent. That the Claimant was employed by the Respondents vide a letter of employment dated 18/1/2014 in the position of "Business Development Director." That in terms thereof, the Claimant earned a gross salary of Kshs. 750,000.00 per month. That he had a medical cover and was entitled to participate in the Nairobi Java House (NJH) employee stock option plan.
 4. That the Claimant served under probation for 3 months and was confirmed and later on in 1/8/2014 was promoted to the position of Chief Operations Officer with a gross monthly salary of Kshs. 900,000.00.
 5. That the Claimant worked diligently and well. That on 29/10/2015, the Claimant was abruptly summoned to a meeting by the 1st Respondent's Chief Executive Officer (CEO), the Chief Finance Officer (CFO) and Human Resource Director (HRD) and he was informed at the meeting by the CEO that he had lost confidence in him and his services would be terminated. That the CEO outlined to the Claimant the terms of his proposed exit. The Claimant was required to give a response to the proposal in a day's time.
 6. The Claimant received a letter from the 1st Respondent dated 30/10/2015 referring to the aforesaid meeting. In the letter, the Claimant was informed that his position was to be declared redundant as a result of a review of the 1st Respondent's operational requirements.
 7. The Claimant was surprised by the development since this was not raised in the earlier meeting nor had he been informed that his position had become superfluous and would be abolished.



8. The Claimant sought the intervention of the Chairman of Board of Directors of the 1st Respondent one Isaac Awuondo by a letter dated 29/10/2015.
9. The Chairman invited the Claimant to a meeting on 26/11/2015 at Karen Country Club. The Chairman told the Claimant that he could not interfere with the CEO's decision to terminate the Claimant's services but promised to get back to him on the matter.
10. By a letter dated 30/11/2015, the Claimant's employment was terminated on account of alleged redundancy.
11. The Claimant was shocked. He had two young children in school and was paying school fees of Kshs. 195,000.00 per year for each one of them. The Claimant had a personal loan with the Commercial Bank of Africa which as at November 2015 had an outstanding balance of Kshs. 1,540,000.00 and was servicing it at a monthly rate of Kshs. 193,325.38. The Claimant further had a personal loan with Family Size Sacco with an outstanding balance of Kshs. 1,540,000.00 and was paying a monthly instalment of Kshs. 173,954.00.
12. The Claimant was at a loss how to meet the situation. The Claimant also had a car loan with the 1st Respondent which he was servicing at the rate of Kshs. 64,000.00 per month and had outstanding balance of Kshs. 1,030,000.00. The Claimant had a family to feed and to pay for service amenities.
13. In that pain and confusion, the Chairman invited the Claimant to a meeting at which the 1st Respondent offered to pay the Claimant an additional 3 months salary over and above the proposed redundancy benefits. The payment was termed "an additional discretionary gesture."
14. The offer was reduced to writing in a document dated 9/12/2015 and read as follows:-

"Dear Leonard.

We refer to the notice of termination on account of redundancy issued to you on 30th November 2015.

Further to our discussions and having duly completed the redundancy procedure, Nairobi Java House Limited is willing to give you, in good faith, an additional discretionary gesture of 3 months' salary upon acceptance of the terms and conditions outlined in this letter.

Yours sincerely

Kevin Ashley; CEO

For Nairobi Java Houses Limited

I Leonard Mudachi hereby:

1. Accept that I have been paid all dues owed to me by Nairobi Java House and that I do not have any other outstanding claims.
2. Will at all times keep confidential all confidential information which I may have acquired during my employment and shall not disclose such information except with the prior written consent of the company.
3. Will keep confidential the terms of this letter.
4. Undertake that I shall not, at any point in time, do or say anything which is detrimental or disparaging to the reputation of the company or the Group.

Signed As A Deed By Leonard Mudachi: Date: 10/12/2015



In The Presence Of: Witness Date: 10/12/2015”

15. The document is signed by the Claimant on 10/12/2015 in the presence of unnamed witness on the said 10/12/2015. Of note in the document is term 1.1 which reads:-

“I Leonard Mudachi hereby

1.1 Accept that I have been paid all dues owed to me by Nairobi Java House and that I do not have any other outstanding claims.”

16. In the letter of termination dated 30/11/2015 the Claimant had been offered:

- i. Two (2) month’s salary in lieu of notice based on his contract.
- ii. 15 days salary for each completed year of service.
- iii. In lieu of accrued leave days (27 in number) including for paternity leave days.

17. Payment was to be less any money owed to the 1st Respondent. The letter read:

“Termination of your employment by reason of redundancy” and is written by Priscilla Gathugu, Human Resource Director.

18. The notification of intended redundancy is by a letter dated 30/10/2015 addressed to the Claimant pursuant to a meeting held between the Claimant and CEO, CFO and HRD on 29/10/2015.

19. The redundancy was said to be the outcome of a recent review by Nairobi Java House Limited a result of which changes in operational requirements were arrived at. The letter is to the Claimant and not copied to the Labour Officer.

20. The Claimant states that he signed the exit letter under duress and undue influence by the 1st Respondent and the particulars of the same include failure by the 1st Respondent to consider the merit of the Claimant’s complaint of unfair termination; CEO’s failure to consider the Claimant’s request for intervention; Failure to allow Claimant enough time to seek legal advice; withholding payment to the Claimant unless he waived his right to seek legal redress; demanding that the Claimant execute the waiver despite protest of termination by the Claimant; and offering a sweetener with the full knowledge of the financial burdens faced by the Claimant at the time.

21. That the redundancy was a sham and was an unlawful and unfair termination at the behest of the CEO of the 1st Respondent. That some amounted to unfair labour practice in violation of Article 41 of [the Constitution](#) and the disguised redundancy did not meet the substantive and procedural requirements under section 40(1) of the [Employment Act](#), 2007.

22. That the Claimant under the LTIP Scheme offer letter given to the Claimant by the Respondent vested the Claimant with stock units as Chief Operating Officer at 2.58 units and as a Business Development Director at 1.17 units making a total of 3.75 units. That the said scheme for all intent and purposes is deemed to be a scheme as directed under the [Retirement Benefits Act](#) No. 3 of 1997 and ought to have been registered as such.

23. That the Respondents acted in violation of the Act as required under section 22. Failure to register managers and custodians as per section 25; failure to register administration of the scheme as per section 25B; Failure to have independent trustees appointed by the scheme; Failure to administer the scheme funds as provided in Part IV of the Act; and Failure to observe the retirement benefits Occupational



Retirement Benefits Scheme, Regulations 2000 and Retirement Benefits, (managers and custodians) Regulation 2000.

24. That as a result of the aforesaid failures the Claimant was not paid his dues upon termination. The Claimant states that as of 31/5/2017 he had vested shares as set out in the amended statement of claim following the change of control event that occurred on 31/5/2017 by way of a sale of shares when ECP Africa exited from its investment as particularized under paragraphs 38(A) to 38(L) of the statement of claim. The Claimant consequently claims USD 208,293.75 being unpaid vested units on account of the Respondents' sale in 2017 following his termination from employment.
25. The Claimant also prays for interest on the unpaid vested units from the date of the sale until payment in full based on the 3.75 vested units as follows:
 - Initial value per unit 1.17 – USD 23,000.00.
 - Value of vested units 86,250.00
 - Invested amount 3,923,662.26
 - Charge of control/sale amount 9,476,014.82
 - Return on investment (investment sale) 2,415.00
 - Value of vested units after ROT – USD 208,293.75 which amount the Claimant seeks to be paid.
26. The Claimant prays to be awarded as claimed.
27. Under cross-examination by Mr. Kuyo for the Respondent, the Claimant said he was employed by the 1st Respondent on 29/10/2015. The Claimant acknowledged payment of terminal dues set out in the exit letter in the sum of Kshs. 5.76 million out of which 2.7 million was ex gratia payment.
28. That the letter of 9/12/2015 was given with no acceptance conditions and he signed it voluntarily and received the payment. The Claimant said he had a lot of pain and suffering as explained in the financial burdens he faced upon termination regarding unpaid loans; fees for his children and sustenance of his family. The Claimant insisted that the Respondents were aware of his financial circumstances hence took advantage of the situation.
29. Claimant said he has not asked the court to cancel the letter of discharge nor has he offered to return the money paid to him by the Respondent.
30. The Claimant explained that joining the stocks scheme was mandatory and was a pre-condition of employment. That the Claimant and other employees were to earn bonuses. That the scheme was signed by both parties as a stand-alone plan.
31. The Claimant said he had no evidence that the 2nd Respondent governed his contract of employment or the scheme. Claimant said they signed a profile of the scheme and were promised verbally that they could later sign a separate agreement which they did later.
32. The Claimant said he was aware of the connection between the 1st and 2nd Respondent. The Claimant said after his appeal to the Chairman of the Board of 1st Respondent upon being declared redundant he was called to a meeting but was not offered a settlement. That the offer was made subsequently to the Claimant an intended redundancy. That the settlement was between the Claimant and the 2nd Respondent because they were the ultimate employer of the Claimant. The Claimant said that the stock plan was not part of the settlement.



33. The Claimant said in terms of the LTIP and the letter, he was awarded 1.17 units on 1/1/2014 and its value was USD 23,000.00 as at the date. That the units grew and were 2.30 by the 5th year. The Claimant said he had served for 2 years and so the units had grown. The Claimant said he executed a clearance form and accepted receipt of Kshs. 1,083,598.81. The Claimant said he accepted the money with reservations. That the amount was less deductions of amounts he owed. The Claimant said he did not follow the LTIP dispute resolution mechanism before coming to court since he had left employment. That the LTIP vested 2 years after he had left employment. That the lawyers had 1 ½ years back and forth talks on the matter. That the termination was subject to settlement of vested units.
34. With regard to the redundancy Claimant said the matter was never discussed with him prior to the notice of redundancy sent to him. Claimant said he was not aware the position he had was abolished. That he was simply placed on garden leave upon receipt of the notice. That this was an unfair dismissal by the CEO even before the notice was given to him as the CEO verbally told him at a meeting held on 29/10/2015.
35. The Claimant said the issue of LTIP has never been resolved to date. That 28 member of management were covered by LTIP. That the scheme was in lieu of performance based bonus.
36. Claimant concluded that the CEO dismissed him for lack of confidence in him as he said at the meeting of 29/10/2015. The notice of redundancy was just an offer that Claimant said he was asked to consider by the CEO but he signed the clearance certificate on 10/12/2015. That he was given 24 hours to consider the exit proposal. The package was said to be discretionary. Claimant said payment meant he would pay fees and take care of the family. That was the duress to sign the clearance dated 10/12/2015. That at the time he had not received November salary.
37. The Claimant added that the vesting event of the scheme was the sale of Nairobi Java House which occurred in 2017. It was a public affair. The Claimant and all managers with units should have been paid then. Claimant said he wrote to the Respondent but was told the units had not vested via an email and that the programme had been terminated. The Claimant said the managers who still remained with the 1st Respondent were paid at the point of sale. Claimant said he is owed to date and should be paid.
3. RW1 Priscilla Gathungu adopted a witness statement dated 21/5/2019 as her evidence in chief. RW1 testified that she is aware of the employment of the Claimant as a Business Development Director and Chief Operations Officer (COO) per contracts of employment before court four 14/8/2014.
39. That on 29/10/2015, the CEO Kevin T. Ashley; Finance Officer, Bernard M. Iria and RW1 attended a meeting with the Claimant in which the Claimant was informed of intended review of the operations of the 1st Respondent that would lead to his position being declared redundant. That it is not true that the CEO informed the Claimant that he had lost confidence in him as Claimant alleged. Also, it is not true that CEO outlined to the Claimant terms of his exit at the meeting. That following the meeting the 1st Respondent issued the Claimant with a redundancy notice dated 30/10/2015. The letter also set out the discussion between the Claimant and the other attendees at the meeting of 29/10/2015. That the Claimant wrote to the Chairman, Mr. Isaac Awuondo on 4/11/2015 seeking intervention in respect of the notice of intended redundancy dated 30/10/2015. The Claimant requested for a negotiation on an amicable separation from the 1st Respondent. That the 1st Respondent consulted the Claimant on his request and the redundancy and ultimately the 1st Respondent took decision to eliminate the position of COO held by the Claimant at the time.
40. The Claimant was informed of the decision by a letter dated 30/11/2015 before court to terminate his employment on account of redundancy and was offered terminal benefits including 2 months' salary



in lieu of notice Kshs. 1,800,000.00; severance pay calculated at 15 days salary for each completed year of service Kshs. 450,000.00 and payment of leave days not taken Kshs. 810,000.00.

41. By a subsequent letter dated 9/12/2015, the 1st Respondent offered to pay the Claimant an additional sum of Kshs. 2,700,000.00 in form of a discretionary payment on conditions listed in the letter.
42. On 10/12/2015, the Claimant accepted the 1st Respondent's offer for payment and the terms thereof.
43. RW1 said she signed the acceptance letter as a witness upon the Claimant signing the same in acceptance of the offer. That the Claimant was not subjected to any duress or undue influence to accept or sign the 1st Respondent's offer letter.
44. That the Claimant thereafter cleared with the 1st Respondent and signed Employee Clearance Form before court. The Claimant was ultimately paid all his terminal dues by the 1st Respondent in the gross sum of Kshs. 5,760,000.00 less monies the Claimant owed the 1st Respondent.
45. That by a letter dated 30/11/2017, the Claimant through its advocates, Obura Mbeche and Co. Advocates wrote to the Director of the 2nd Respondent and CEO of the 1st Respondent requesting a valuation of the vested units and also challenged his redundancy.
46. That on 11/12/2017, the 2nd Respondent vide its advocates Anjar Walla and Khana Advocates wrote to the Claimant's Advocates requesting for time to take instructions on the matter.
47. The 2nd Respondents' Advocates responded substantively to the Claimant's Advocates letter by a letter dated 27/12/2017 denying unlawful redundancy.
48. The Respondent also produced an email dated 9/12/2015 written to RW1 by the Claimant in which the Claimant thanked RW1 for an email detailing the issues the Claimant had discussed with the 1st Respondent. The Claimant thanked the CEO Kevin Ashley for availing himself for the discussion in the email the Claimant wrote:-

I would like clarification on 3 points to facilitate my decision making:- “ The Claimant enquired about severance pay payable in respect of the 1 year and 11 months worked, requested for the medical insurance for himself and family to remain in place until 31st March 2016 and said he would like to take up the offer made to him to retain his official laptop.”

49. On the same date, the Chairman Mr. Isaac O. Awuondo wrote an email dated 9/12/2015 at 12:55 p.m. thanking the Claimant for agreeing to meet him and the CEO and summarized in the said email agreed exit payments which sums were eventually paid to the Claimant including the discretionary offer in the total sum of Kshs. 5,760,000.00. In the same email, the Chairman had recalled the agreement that the Claimant would confirm acceptance of the offer by end of the following day. The Chairman also asked the Claimant as part of the discussion to sign waiver in respect of any future claims against the Respondents.
50. RW1 also presented the offer for payment of the aforesaid exit package dated 9/12/2015, signed by the Claimant on 10/12/2015 and witnessed by RW1 on the same date. The Claimant also signed acknowledgment of receipt of the net pay upon deduction of monies owed by him to the Respondent.



51. In the response to Mbeche & Co. Advocates on the matter of incentive plan (the LTIP Scheme) RW1 referred to the letter by Anne Khunule, from Anjarwalla and Khanna Advocates in which the Advocates stated:

Based on our client's analysis and computation as at November 2015 only the first 30.6% of Leonard Mudachi's (the terms employees units for his role as COO (being 2.2 units) had vested and 100% for his units for his role as Business Development Manager (being 1.17 units) under the LTIP Scheme. This differs from the number indicated in your aforesaid letter."

52. The Advocate went on to explain:

Regardless of the number of vested units and as communicated to the former employee in a letter dated 25th October, 2017, the former employee is not entitled to any payment under the LTIP Scheme on the basis that although some units may have vested, there was no amount payable in respect of any vested or unvested units as at the date of termination of the LTIP Scheme as the sale price was not high enough to give the units any value. This position was confirmed by Java Houses Chief Financial Officer based on his analysis of the relevant."

53. This letter was placed before court by RW1 but she did not in her testimony in chief speak to this matter.

54. Under cross-examination by Mr. Neru for the Claimant, RW1 said that he was the HRD and had joined 1st Respondent in March 2014 and so was a peer of the Claimant. RW1 said she was part of the LTIP Scheme and was inducted into the Scheme. RW1 said she was not sure if shares had vested. RW1 said she had received a letter from Respondents stating that the LTIP had been terminated. RW1 said she did not receive any payment. RW1 said they were given the rates of the scheme much later. RW1 said LTIP award was at the discretion of the Board. RW1 said she was now the CEO of the 1st Respondent but was HRD then. RW1 said there was a sale of Java House Nairobi in 2017. RW1 said she did not know the sale price. The purchase was by Java House Mauritius, the 2nd Respondent. RW1 said she was not involved in that process. RW1 said she testified for the 1st Respondent. RW1 said Mauritius company owes the 1st Respondent. RW1 said he is not an employee of the 2nd Respondent. RW1 said she did not know why there has been no payment for the LTIP Shares. RW1 said she received similar letter to that sent to the Claimant including all other 25 employees who belonged to the LTIP Scheme. RW1 said they had no bonus scheme at the time LTIP was started.

55. RW1 said the 1st Respondent was restructured and the position of COO was abolished and it has not been filled six years later. RW1 said the position of Head of Department operations was created. That they all reported to the CEO but before they reported to COO. RW1 said that the notice of intended redundancy dated 30/10/2015 was not specific as is usually the case. It had no details on the positions to be restructured. RW1 said she drafted the notice and sent a copy to the Ministry of Labour dated 30/10/2015 for the attention of the labour commissioner. RW1 said that they had sent two copies of the notice to the Ministry of Labour and one copy was returned stamped but not signed for acknowledgment of receipt.

56. RW1 said she was in the meeting where the Claimant negotiated an exit packaging with the CEO and the Chairman. RW1 said the discussions ended in payment of exgratia amount together with the calculated redundancy benefits.

57. RW1 said at the meeting of 30/10/2015, there was no demand that the Claimant exits the company. That he was notified of the intended redundancy and the discussion was reduced into writing in the



- notice dated 30/10/2015. RW1 said she did not attend the meeting of 29/10/2015. RW1 said the Chairman did not contact her on the discussion between himself and the Claimant. RW1 said it was normal for an employee to escalate a grievance to the Board as the Claimant did.
58. RW1 said the Claimant was not coerced to sign the exit package letter. That RW1 witnessed the signing of the letter and the clearance. RW1 said Claimant was paid after he had signed the exit letter and the clearance certificate. RW1 acknowledged the judgment of the Tax Appeals Tribunal which indicated Nairobi Java House was sold to Asians for a sum of over 100 million US Dollars. RW1 said she was not the CEO at the time of the sale in 2017 and so was not privy to the details of that sale.
59. Under re-examination, RW1 reiterated that there were 25 employees in the LTIP Scheme and she was not aware of any payment of shares to any one of them from the LTIP Scheme even after the sale in 2017.
60. RW1 said a bonus scheme was introduced in the company later after RW1 had become the CEO. RW1 said the bonus scheme had nothing to do with the LTIP.
61. RW1 said there was no need to include the dates of the retrenchment in the notice to the labour commissioner. RW1 said the process followed in declaring the Claimant redundant was fair and notice was sufficient and all payment were done in accordance with the law including exgratia payment. RW1 said COO position was replaced six years later after termination of the Claimant.
62. That the suit lacks merit and it be dismissed.

DETERMINATION

63. The parties filed written submissions and the court has carefully considered the same together with evidence adduced by CW1 and RW1 and the issues for determination are:
- i. Whether the termination of employment of the Claimant was for a valid reason following a fair procedure.
 - ii. Whether the Claimant is entitled to payment of the benefit under the LTIP Scheme.
 - iii. What other reliefs if at all is the Claimant entitled to.
64. The court has carefully captured the facts of this case as adduced by CW1 and RW1. However, the matter turns on a narrow set of facts as follows:-
- i. Whether the reason to terminate the employment of the Claimant on grounds of redundancy has been proved by the Respondent in terms of section 43(1) and (2) of the *Employment Act*.
 - ii. Whether the Respondent in effecting the redundancy complied with the provision of section 40(1) (a) to (g) of the *Employment Act* 2007.
65. The Claimant testified that at a meeting held on 29/10/2015 to which he was summoned by the then CEO Kevin Ashley and attended by RW1 and Chief Finance Officer, the CEO told him that he had lost confidence in him and that his employment would be terminated. The CEO, Kevin Ashley, has since been replaced by RW1, who testified that contrary to the testimony by the Claimant she did not attend the said meeting held on 29/10/2015. RW1 said that she was present at a meeting held on 30/10/2015 in which the Respondent informed the Claimant of the intended restructuring that would lead to declaration of the position of the COO held by the Claimant redundant. That the matter was explained to the Claimant in that meeting and a notice of intended redundancy of the Claimant's position dated 30/10/2015 was issued to the Claimant at that meeting. RW1 said that she also wrote a notice of intended redundancy to the Ministry of Labour for the attention of the Labour



- Commissioner dated the same date 30/10/2015 and that she had a copy returned from the Ministry of Labour bearing a stamp of the office though not signed. RW1 testified that the CEO was present at the meeting of 30/10/2015 where this discussion was held and the notice given to the Claimant.
66. Evidence before court shows that the Claimant raised a grievance regarding the intended redundancy with the Chairman of the Board. That the Chairman held meetings with the Claimant in the presence of the CEO in which meetings the declaration of redundancy was confirmed and the benefits payable to the Claimant on account of the declared redundancy explained in terms of section 40(1)(a) to (g) of the [Employment Act](#) 2007 and the package was enhanced upon discussion between the Claimant and the Chairman. That the actual letter of termination on grounds of redundancy was issued to the Claimant on 30/11/2015 a month after the initial notice of intention to declare the Claimant redundant was issued.
 67. The Claimant subsequently received a proposal of payment of the agreed package with a waiver not to make any further claim with regard to the redundancy against the Respondent stated in the letter. The Claimant signed the letter on 10/12/2015 in the presence of RW1 who witnessed the letter.
 68. The Claimant alleges that he was under pressure to sign the payment offer due to the financial difficulties the sudden declaration of redundancy caused him. That he signed the same under coercion and the Respondents were well aware of the loans he owed at the time and therefore took advantage of him.
 69. It is however, the court's finding that the Claimant has failed to prove that he signed the exit package with a waiver under duress. From 30/10/2015 when the notice of redundancy was given to him, the Claimant engaged the Respondent continuously regarding the matter. He sought enhancement of exit package which request was accepted. He requested to have the medical cover extended and that he be allowed to leave with the laptop he used which request was accorded to. The Claimant sought clarification on the final package which explanation was made to him in the presence of RW1 before he signed the exit package, freely and voluntarily. The Claimant also cleared from the company and voluntarily signed the clearance certificate.
 70. In *Thowy De La Rue (K) Ltd versus David Opondo Omutelema* [2013] eKLR, the Court of Appeal upheld the validity of a signed discharge document and stated that where an employee voluntarily and without undue influence or coercion accepts terminal benefits and executes a discharge, he cannot later turn around to claim that he did not understand what he signed. In the present case, the Claimant did not provide any tangible evidence of coercion, undue influence, duress or mutual mistake, factors that would invalidate the agreement and acceptance of payment accompanied by a waiver not to make any further claims against the employer in respect of the matter covered by the agreement.
 71. The court in ELRC Case no 1953 of 2015 *James Okal Mobilu versus BGP Kenya Limited* held that it is not sufficient for a Claimant to simply assert that he was coerced or harassed into signing a settlement agreement without giving any particular evidence in support of the contention.
 72. The particulars of duress and coercion set out by the Claimant in the amended statement of claim were not proved by the Claimant on a balance of probability. The lawful loans the Claimant had acquired from banks and from the Respondent and the family commitments the Claimant had are a natural occurrence of choice by a person holding a good job like the Claimant did. It is important to note that the Claimant entered into these commitments aware of the employment contract provisions that provided for termination of employment for various reasons. These reasons include termination on grounds of redundancy.



73. The court finds that the Respondent has demonstrated that it had abolished the position of COO upon a review of the structure of the 1st Respondent. The court is satisfied that the position of COO was not filled upon termination of the employment of the Claimant. Further the court is satisfied that the Respondent gave the Claimant and the Ministry of Labour at least one month notice of intended termination on grounds of redundancy. That the Claimant also served one month notice before the termination was effected by a letter dated 30/11/2025. Furthermore, the Respondent paid all the mandatory benefits under section 40(1) (e) to (g) of the Employment Act 2007 upon effecting the termination on grounds of redundancy.
74. It is also evident that the parties engaged in positive discussion which resulted in enhancement of the exit package. In Civil Appeal No. 46 of 2013, Kenya Airways Ltd versus Aviation & Allied workers union and 3 others [2014] eKLR the Court of Appeal held that an employer is entitled to declare redundancy to meet operational business needs and any dismissal ensuing therefrom is justified. The court finds that the 1st Respondent had a genuine reason to abolish the position of COO and did not re-introduce the same for a period of six years thereafter.
75. In the end, the termination of the Claimant on grounds of redundancy was lawful and fair and the reliefs sought in respect thereof are dismissed.

Payment under LTIP

76. The Claimant has sued the 1st and 2nd Respondents in respect of shares offered to the Claimant while he worked for the Claimant in the position of Business Development Director and later Chief Operations Officer (COO). The Claimant pleaded in the amended statement of claim at paragraph 32 and testified before court that in terms of the LTIP Scheme offer made to him as was done to all his peers, a position confirmed by RW1 in her evidence before court he was offered:
- a. As Chief Operations Officer 2.58 unit
 - b. As Business Development Director 1.17 units
- Total vested units 3.75.
77. The Claimant adduced a judgment of the Tax Appeals Tribunal in ECP Kenya Limited versus Commissioner of Domestic Taxes (Appeal 335 of 2022) [2023] KETAT 969 KCR (6 October 2023 (Judgment), in which the Tribunal set out details of a change of control event which occurred on 31st May 2017 by way of a sale of shares when ECP Africa exited from its investment in the 2nd Respondent through the disposal of its 90% stake in the 2nd Respondent which sale was valued at Kshs. 9,746,014,826.00 (Kenya shillings nine Billion, seven hundred and forty six Million, fourteen thousand, eight hundred and twenty-six).
78. The Claimant set out in details the proceeds of the transaction and his entitlement under paragraphs 38(A) to 38(L) of the amended statement of claim.
79. Under paragraph 24 of the statement of response to the claim the Respondents averred that the Claimant was not required to join the 2nd Respondent's long term incentive plan (the LTIP Scheme) as a condition of his employment as alleged at paragraph 25 of amended statement of claim. The Claimant was put to strict proof thereof.
80. More profoundly, the Respondents pleaded,
- 24A The Respondents aver that this honourable court does not have the jurisdiction to determine any dispute in relation to LTIP Scheme as pleaded in the amended statement of claim.”



81. The testimony by RW1 contradicts fully the assertion by the Respondents that the LTIP Scheme was not part of the Claimant's terms and conditions of service. RW1 testified that a total of 25 employees including herself were made by the Respondent part of LTIP Scheme in which the employees were allotted shares by the 1st Respondent as part of an incentive scheme of the company. RW1 said that this scheme was in lieu of a bonus scheme which the company had not put in place at the time. RW1 added that after the transfer of ownership in 2017, she was elevated to the position of the CEO of the 1st Respondent which company is owned by the 2nd Respondent and that the 1st Respondent had since introduced employee bonus scheme which was not there prior to her taking over as CEO. RW1 further testified that she was not privy to the details of the sale and ownership transfer but was aware that none of the employees were paid in respect of the shares allocated to them in terms of the LTIP Scheme by the 1st Respondent before or after the change of hands in 2017.
82. The Respondents did not deny or traverse specifically the averments by the Claimant under paragraphs 38A and 38L in the amended statement of claim. The Claimant testified in support of the claim and value of vested units after change of control /sale to the sum of Kshs. USD 208,293.75.
83. The Claimant testified that the unpaid units vested on account of the 1st Respondent's sale in 2017 following his termination from employment.
84. RW1 did not offer any evidence in rebuttal of this claim. To the contrary the claim by the Claimant is fortified by an admission made by A&K/ALN Anjarwalla and Khanna Advocates for the Respondents in the letter dated 27th December 2017, which letter was produced by RW1 before court where the Advocate stated:-
- Based on our client's analysis and computation, as at November 2015, only the first 30.6% of Leonard Mudachi's (the former employee) units for his role as COO (being 2.2 units) had vested and 100% for his units for his role as Business Development Manager (being 1.17 units) under the LTIP Scheme. This differs from the number indicated in your aforesaid letter."
85. This admission by the Advocates for the Respondent in absence of any rebuttal of the comprehensive specific pleadings by the Claimant and supported by his evidence before court leads the court to the inevitable conclusion that the Claimant had proved his claim on a balance of probability and the court grants the same as claimed.
86. The objection by the Respondent that the court has no jurisdiction to determine the issue of LTIP Scheme is completely without basis. This was a term of employment of the Claimant as admitted by RW1 in her testimony before court and as evidenced by the admission by the advocates for the Respondents in their letter dated 27/12/2017 produced by RW1.
87. Accordingly, the court enters judgment in favour of the Claimant against the Respondents jointly and severally as follows:
- a. Termination of the Claimant on grounds of redundancy was lawful and fair and the reliefs sought for award by compensation and general damages are dismissed for lack of merit.
 - b. The Claimant be paid USD 208,293.75 (two hundred and eight thousand two hundred and ninety-three US Dollars and seventy-five cents) being the value of his vested shares in the Respondent LTIP Scheme.
 - c. Costs of the suit



d. Interest on (b) above at court rates from date of filing suit till payment in full.

DATED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Weru for Claimant

Mr. Kingo for the Respondent

Mr. Kemboi – Court Assistant

