Nyaanga & 20 others v Parapet Cleaning Services (Cause E079 of 2022)
[2025] KEELRC 2541 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2541 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E079 OF 2022

BOM MANANI, J

SEPTEMBER 25, 2025

BETWEEN

FREDERICK OTWORI NYAANGA ..... 1ST CLAIMANT

VIOLET SAYO FEDHA ..... 2ND CLAIMANT

ESTHER NJERI KIGAMBA ..... 3RD CLAIMANT

NESTER ATIAMUGA SAMBAYA ..... 4TH CLAIMANT

ANJERIN MBATHA MUTUKU ..... 5TH CLAIMANT

ROSE MUINDI MWANZIA ..... 6TH CLAIMANT

JANE KANJUGU MUCHAI ..... 7TH CLAIMANT

LUCY GAICHUGI IRINGE ..... 8TH CLAIMANT

LILIAN MAKOKHA NYONGESA ..... 9TH CLAIMANT

JAMES MEMBA GEKE ..... 10TH CLAIMANT

NELLY NASIMIYU MULUPI ..... 11TH CLAIMANT

FLORENCE AKINYI OKWACH ..... 12TH CLAIMANT

LEONARD ODANGA ASAMBA ..... 13TH CLAIMANT

HYLINE MOIGE OYUGI ..... 14TH CLAIMANT

JANE WANJIRU THANDE ..... 15TH CLAIMANT

KENNEDY OBWAVO VIGEHI ..... 16TH CLAIMANT

LYDIAH MOSE GESARE ..... 17TH CLAIMANT

ANASTACIAH MUTHIKE ..... 18TH CLAIMANT

SIMON NGOMO KILILE ..... 19TH CLAIMANT

LEONADA EGHWA MGHANGA ..... 20TH CLAIMANT

VIRGINIA WANJIKU KIMANI ..... 21ST CLAIMANT

AND

PARAPET CLEANING SERVICES ..... RESPONDENT

JUDGMENT

Background

1. The Claimants have instituted these proceedings alleging that the Respondent unlawfully terminated their contracts of service through an irregular redundancy process. Consequently, they seek various reliefs against it (the Respondent).

2. The Claimants contend that the Respondent entered into individual employment contracts with them through which it engaged their services as cleaners at a monthly salary of Ksh. 10,962.00 per person. They aver that they executed their duties diligently until 23rd June 2020 when the Respondent served them with individual redundancy notices following which, their contracts of service were terminated on 18th July 2020.

3. The Claimants aver that the purported redundancy notices were irregular since they were expressed to be for a duration of twenty five (25) days notwithstanding that the law requires that a redundancy notice be for a period of not less than one month. As such, it is their case that the notices were illegal.

4. The Claimants further aver that the Respondent did not adhere to other requirements on redundancy. For instance, they contend that it (the Respondent) did not select the employees who were discharged from employment using the correct selection procedure. They further contend that the Respondent did not pay them their redundancy exit dues as required by law.

5. The Claimants also aver that the Respondent frustrated their efforts to clear with it. In addition, they contend that the Respondent did not remit their National Social Security Fund (NSSF) and National Health Insurance Fund (NHIF) contributions to the relevant agencies.

6. Consequently, they seek the following reliefs:-

    a. A declaration that their contracts of service were terminated unlawfully and unfairly.

    b. Payment of terminal dues to wit: salary for days worked in July 2020; one month's salary in lieu of notice; payment in lieu of accrued leave days; service pay; and severance pay.

    c. An order that the Respondent releases the unremitted NSSF and NHIF deductions.

    d. Compensation for unlawful termination of their contracts of service.

    e. Refund of caution money.

    f. Interest on the amounts to be awarded at court rates.

    g. Costs of the case.

7. In response, the Respondent affirms that the Claimants were its employees. It further affirms that every one of them was earning Ksh. 10,962.00 per month as their gross salary.

8. The Respondent denies that the Claimants' contracts of service were terminated on account of redundancy. It contends that the Claimants deserted duty resulting in closure of their contracts.

9. The Respondent avers that it had a contract with ABSA Bank Kenya PLC (the bank) under which it was offering the bank cleaning services. It contends that pursuant to this arrangement, it had ninety (90) individuals, including the Claimants, providing cleaning and tea services to the bank.

10. The Respondent avers that on 19th June 2020, the bank issued it with a thirty (30) days' notice communicating its decision to terminate the cleaning services contract between them. It (the Respondent) contends that in view of this development, it became burdensome to retain the services of the Claimants especially in view of the impact the Covid pandemic had inflicted on businesses.

11. As a consequence, the Respondent contends that on 22nd June 2020, it wrote to the local labour office signifying its intention to lay off the ninety (90) members of staff, including the Claimants, who had been deployed to work at the bank. It also avers that it issued the affected employees and their trade union (the Kenya National Union of Service Employees) similar notices.

12. The Respondent has tendered in evidence copies of the notices dated 23rd June 2020 which it issued to the Claimants (see pages 179 to 199 of the Respondent's trial bundle). It has also produced a copy of the notice dated 22nd June 2020 which it issued to the Claimants' trade union (see page 178 of the Respondent's trial bundle).

13. The Respondent contends that after it issued the Claimants, the local labour office and the Claimants' trade union the aforesaid redundancy notices, it received a letter dated 25th June 2020 from the trade union advising it to seek alternatives to declaring the ninety (90) employees redundant. It contends that the trade union advised it to find alternative work stations for the affected employees, including the Claimant and to only resort to redundancy declaration as a last resort.

14. The Respondent avers that following this advice by the trade union, it (the Respondent) begun sourcing for alternative placement for the affected employees. It avers that as a result of these efforts, it secured opportunities for thirty nine (39) out of the ninety (90) affected members of staff based on ''last in first out'' principle.

15. The Respondent avers that after it secured the aforesaid alternative placements, it wrote to the thirty nine (39) employees who had been earmarked for deployment on 9th July 2020 informing them of this development and revoking the redundancy notices it had issued to them. However, it contends that a majority of them rejected the proposal for their deployment.

16. The Respondent avers that when a majority of the thirty nine (39) employees rejected the offer to be deployed, it (the Respondent) opened the offer to the remaining fifty one (51) employees. Consequently, it contends that it wrote to the fifty one (51) employees on 16th July 2020 to notify them of their proposed deployment and revocation of the redundancy notices. However, it avers that most of the fifty one (51) employees (except for two) rejected the deployment.

17. The Respondent avers that on 17th July 2020, it convened a meeting with the affected employees in order to explain to them that it had revoked the redundancy notices and that they (the employees) were required to proceed to their new work stations. However, it contends that the employees still rejected the proposed deployment.

18. The Respondent avers that the employees refused to acknowledge the notices which revoked the earlier redundancy notices which had been issued to them. It contends that instead, they (the employees) expressed the desire to quit their employment with it on permanent basis.

19. The Respondent avers that because it had already revoked the redundancy notices, it informed the employees, including the Claimants, to resume duty on 20th July 2020. However, it contends that they refused to heed the directive and opted to instead stay away from work. As such, it asserts that the Claimants and the other employees who did not resume duty on 20th July 2020 absconded duty.

20. The Respondent avers that despite the Claimants absconding duty, their lawyer wrote to it (the Respondent) on 28th September 2020 alleging that it had unfairly terminated their services. It contends that in reaction, the Claimants' trade union wrote to the Claimants' lawyers on 5th October 2020 to clarify that it is the Claimants who had absconded duty after the redundancy notices that had been issued to them were revoked.

Issues for Determination

21. After evaluating the pleadings, evidence and submissions by the parties, the issues that emerge for determination are as follows:-

    a. Whether the contracts of service between the Claimants and the Respondent were irregularly terminated on account of redundancy or whether the Claimants absconded duty.

    b. Whether the Claimants are entitled to the reliefs which they seek through these proceedings.

Analysis

22. Although the suit was filed in the names of twenty one (21) Claimants, the court record shows that they (the Claimants) passed a resolution on 24th February 2021 through which they appointed Fredrick Otwori Nyaanga, Leonard Odanga Asamba and Violet Sayo Fedha to represent them in the cause. Further, the parties filed a consent dated 30th January 2025 in which they agreed that the testimonies of Fredrick Otwori Nyaanga and Violet Sayo Fedha be adopted as the testimonies of the Claimants in the suit. As such, the court considers the testimony by Fredrick Otwori Nyaanga and Violet Sayo Fedha as the evidence of the Claimants in the suit.

23. There is no dispute that the parties in the cause had an employer-employee relationship. The Claimants have presented evidence demonstrating that the Respondent engaged their services as stewards on diverse dated. Further, the Respondent does not deny that the Claimants were indeed its employees save for clarifying that they were hired at different times.

24. The record shows that the Respondent issued the Claimants with individual notices dated 23rd June 2020 communicating its intention to terminate their contracts of service on account of redundancy. A perusal of the notices shows that save for the fact that they are addressed to different persons, they contain the same information.

25. According to the information in the notices, the Respondent notified the Claimants that its contract with Absa Bank PLC for cleaning and tea services was due to close on 18th July 2020. As such, it (the Respondent) intimated to them that it had been forced to terminate their services on account of redundancy. The Respondent further informed the Claimants that their contracts were to come to a close on 18th July 2020.

26. The notices show that although the Respondent informed the Claimants of its decision to terminate their contracts on account of redundancy, it advised them that it reserved the right to revoke the redundancy notices and deploy the Claimants if the opportunity to do so presented itself. In effect and by this statement, the Respondent expressed its position that the redundancy process could be nullified midstream.

27. The law that governs the procedure for declaring workplace redundancies in Kenya is largely encapsulated in section 40 of the *Employment Act*. Whilst redundancy is recognized as a valid reason to terminate a contract of service, the employer is required to adhere to certain criteria in order for the redundancy declaration to be valid.

28. First, he must issue a notice of the intended redundancy to the employees who are likely to be affected by the process. In cases where the employees are members of a trade union, the notice is supposed to be issued to the trade union.

29. The redundancy notice should be for a period of at least one month. Further, it should specify the grounds for and extend of the proposed redundancy.

30. The employer is also required to issue the redundancy notice to the local labour office. The notice to the labour office should meet the threshold of the notice which is issued to the employee and or his trade union.

31. The employer is required to identify the employees who will be released on account of the proposed redundancy using an objective selection criteria. The rule of the thumb is that the selection should be guided by the ''first in last out'' principle.

32. However, the employer may depart from the aforesaid selection criteria for cogent reasons. Where this happens, he should undertake the selection process using other parameters such as the skills, abilities and reliability of the employees involved.

33. After identifying the employees to be discharged from employment on account of redundancy, the employer must pay the affected employees their terminal benefits comprising of severance pay, accrued leave pay, accrued salary and pay in lieu of notice.

34. The law in Kenya does not expressly obligate the employer to consult employees during a redundancy. However, case-law has decreed that employees must be consulted on the process (see Kenya Airways Limited v Aviation & Allied Workers Union Kenya, Minister For Transport, Minister For Labour & Human Resource Development & Attorney General [2014] KECA 403 (KLR) &The German School Society & another v Ohany & another [2023] KECA 894 (KLR)).

35. If the employer does not adhere to the above requirements whilst declaring a redundancy at the workplace, the process will be unlawful (see section 45 of the *Employment Act*). As such, it is imperative that employers strictly follow the aforesaid guidelines.

36. The Claimants have challenged the validity of the redundancy notices which the Respondent issued to them on 23rd June 2020. As observed earlier in the decision, save for the fact that the notices were issued to different employees, they have identical information.

37. As the record shows, all the notices are dated 23rd June 2020. Further, they indicate that they were to crystalize on 18th July 2020, approximately twenty five (25) days after they were issued.

38. As indicated earlier, section 40 of the *Employment Act* stipulates that a redundancy notice must be for a minimum period of one month. Ordinarily, a month is approximately thirty (30) days.

39. The impugned redundancy notices do not meet this threshold. Therefore, they were invalid ab-initio.

40. Notwithstanding the foregoing, the Respondent contends that it annulled the invalid notices before they matured. It contends that after it issued the impugned notices to the Claimants and their trade union, it received a letter from the trade union advising it against discharging the affected employees on account of redundancy except as a last resort.

41. The Respondent contends that based on this advice, it commenced exploring alternatives to the proposed redundancy. It further contends that it managed to secure alternative positions for the Claimants and other employees who had been affected by the process.

42. The Respondent avers that upon securing the alternative placements, it offered the positions to thirty nine (39) of the ninety (90) affected employees based on their seniority. However, it avers that most of the thirty nine (39) employees rejected the offer.

43. The Respondent further contends that after the positions were rejected by a majority of the thirty nine (39) senior employees, it offered them (the positions) to the remaining fifty one (51) employees. However, it avers that this lot (with the exception of two (2) individuals) also declined the offer.

44. The Respondent avers that after it secured the alternative placements for the affected employees, it issued them with letters on diverse dates revoking the redundancy notices dated 23rd June 2020. It contends that the revocation letters were issued between 9th July 2020 and 16th July 2020 before the redundancy notices crystalized. As such, it contends that the redundancy notices were extinguished with the consequence that the affected employees remained in its employment.

45. The Respondent avers that despite the Claimants and the other employees rejecting the offer for their deployment, it notified them of the need to report to their new workstations on 20th July 2020. However, it avers that the Claimants refused to abide by this directive but instead absconded duty.

46. In response, the Claimants deny receiving the notices which revoked the redundancy notices. Further, they contend that the Respondent could not in any evident withdraw the redundancy notices since they had already taken effect (see the oral testimony of Fredrick Otwori).

47. It is important at this juncture to point out that the Claimants exhibited ambivalence on whether they received the revocation notices as asserted by the Respondent. At one point during the oral testimony of their witnesses, they appeared to admit that they indeed received the notices. Yet, at some other point, they denied having been issued with the said notices.

48. For instance, during cross-examination of Fredrick Otwori, he observed as follows on the issue:-

> ''This is a letter of revocation dated 9.7.2020. By it, the Respondent revoked the redundancy process. Other employees I am representing received similar letters. After the letter revoking redundancy, the Respondent never called us back.''

49. By this statement, the Claimants appear to acknowledge that they were served with the revocation notices. However, they contend that the Respondent did not reach out to them after it issued them with the said notices to ask them to resume work.

50. At some other point during cross examination of the same witness, he stated as follows regarding the revocation notices:-

> ''The letter says we were to report back to be redeployed. We never received the letters of revocation of redundancy. We were not called to receive the revocation letters. I am not aware that some employees received the letter and went back to work.''

51. This passage suggests that the Claimants were not issued with the revocation notices. The Claimants deny being summoned by the Respondent in order to be given the notices.

52. When the same witness was shown a copy of one of the revocation letters which had been received by one of the employees, he observed as follows:-

> ‘’This was a revocation redundancy letter to Dalmus Obala. I see he signed the letter. This shows he accepted revocation and resumed work.....This one was for Nyanchwa. She also signed the letter. I do not seem to know this particular member of staff. She signed and reported back. ‘’

53. This excerpt from the witness confirms that some employees received the revocation notices. It further confirms that those who received the revocation notices reported back to work.

54. This ambivalence affects the credibility of the Claimants’ witnesses. The court will bear this in mind when arriving at its final verdict on the dispute.

55. The evidence on record shows that after the Respondent issued the Claimants and their trade union the impugned redundancy notices on 23rd June 2020 and 22nd June 2020 respectively, the Claimant’s trade union wrote to the Respondent on 25th June 2020 in the following terms:-

> ‘’The Group Head of HR & ADMIN,
>
> Parapet Cleaning Services,
>
> PO Box 10491-0100,
>
> Nairobi
>
> Dear Sir,
>
> RE: Notice of intention to declare redundancy
>
> We acknowledge receipt of your letter to us dated 22nd June 2020 notifying the union of your intention to declare ninety (90) employees redundant due to (sic) expire of the contract between Parapet Cleaning Services and Absa Bank.
>
> We are however asking you to try and find somewhere to redeploy the said employees or if they have pending leave then you should consider giving them leave as you await for alternative place to deploy them.
>
> Thank you.
>
> Yours faithfully,
>
> Joseph Odhiambo,
>
> General Secretary,
>
> Kenya National Union of Service Employees
>
> (KNUSE)’’

56. This letter shows that the trade union prevailed on the Respondent to shelve the idea of terminating the Claimants’ contracts on account of redundancy. During their testimony, the Claimants’ witnesses confirmed that the Claimants were members of the trade union and that it represented them in the dispute. The court thus finds that although the Respondent had issued the Claimants with the impugned redundancy notices, it was dissuaded from effecting the said notices by the Claimants’ trade union.

57. The evidence on record shows that the Respondent subsequently issued the Claimants and the other employees with notices dated 9th July 2020 and 16th July2020 revoking the redundancy notices dated 23rd June 2020. According to the record, the revocation notices were addressed to each of the affected employees.

58. Whilst the Claimants deny receiving the revocation notices, the Respondent maintains that they were all issued with them (the notices). The Respondent called three witnesses who were co-employees of the Claimants to speak to the matter. The three witnesses told the court that they were all affected by the redundancy process. They stated that although the Respondent had issued the affected employees with the redundancy notices dated 23rd June 2020, it later issued them with notices for revocation of the redundancy notices.

59. RW1 and RW3 both stated that the Respondent convened a meeting with its employees during which the employees were asked to acknowledge receipt of the revocation notices. However, the two witnesses stated that most employees refused to receive the revocation notices.

60. RW1 stated that most employees declined to receive the revocation notices because they were unsure that the Respondent would retain their services owing to the adverse effects of the Covid pandemic at the time. She stated that all that the employees wanted was for the Respondent to pay them service pay for the years they had worked for it.

61. The evidence of RW1 was corroborated by that of RW4, the Respondent's Human Resource Manager. He told the court that although the Respondent had issued the Claimants with redundancy notices, it revoked them before they crystalized. The witness stated that despite the Respondent asking the employees to accept revocation notices, most of them declined the request opting instead to push for payment of their dues. The witness averred that since the revocation notices were issued before the redundancy notices matured, the latter notices were effectively nullified with the consequence that the affected employees were not released from employment on account of redundancy.

62. Taking into account the ambivalence of the Claimants' witnesses regarding whether or not they received the revocation notices and bearing in mind the testimony by the defense witnesses who confirmed having received the said notices, the court is persuaded that the Claimants were all issued with notices to revoke the earlier redundancy notices. It is so declared.

63. The Claimants having been issued with notices to revoke the redundancy notices, the redundancy process was effectively scuttled and extinguished by the revocation notices before it matured. As such, it did not crystalize.

64. The revocation notices, which were addressed individually to each of the Claimants, informed them that the redundancy notices dated 23rd June 2020 which had been issued to them earlier stood revoked. The revocation notices further informed the Claimants that the Respondent had found alternative placement for them and that their employment was deemed to have continued uninterrupted. The Claimants were asked to report to the Respondent's Bamburi office on 20th July 2020 for further advice on their new postings.

65. The Respondent contends that despite this communication, the Claimants declined to continue in service demanding instead to conclude the redundancy process. One of the Respondent's witnesses (Emily Kasandi) indicated in her witness statement that the Claimants were keen to move on to a new employer, Lupat Cleaning Services.

66. The evidence that was tendered by the two witnesses for the Claimants shows that a majority of them transited their services to Lupat Cleaning Services which took over the Respondent's contract with

Absa Bank PLC (see the NSSF and NHIF statements). As a matter of fact, the two witnesses stated on oath that after the Respondent issued them with the impugned redundancy notice, they shifted their services to a new company which stepped into the Respondent's shoes at Absa Bank. As such, they confirmed that they continued to work at Absa Bank PLC but under a new employer.

67. Affirming the foregoing reality, Violet Sayo, CW 2, stated as follows during her oral testimony in court:-

> ''After redundancy, I continued to work for Absa under a new company. The new company had taken over the Respondent's contract from Absa. I worked for the Respondent up to 18.7.2020. I then transited to the new company. I was not trying to earn from the Respondent and the new company at the same time. I moved to the new company after Respondent declared me redundant.''

68. Speaking to the same reality, Fredrick Otwori, CW1, stated as follows during his oral testimony in court:-

> ''Another company took over our work at Absa. It is called Luppart Cleaning Services Ltd. I was employed with Luppart. We continued working at Absa. I am still at Absa but under a different company. I moved to Luppart after I lost employment with Respondent. My contract with the Respondent lapsed on 18.7.2020.''

69. The court is thus convinced that the Claimants opted to join the new company which took over the Respondent's contract and to continue in service at Absa Bank rather than take up the new positions which the Respondent was offering them. As such, it is apparent that the Claimants abandoned their employment with the Respondent in favour of their new engagement as opposed to losing their positions through redundancy.

70. This reality is further fortified by the letter dated 5th October 2020 from the Claimants' trade union. The letter, which was addressed to the Claimants' lawyer, states as follows:-

> ''We wish to reiterate that we were notified by the company (the Respondent) on their intention to terminate 90 employees stationed at Absa Bank on account of redundancy after the contract between Parapet Cleaning Services expired and the client failed (sic) the renew and (sic) rewarded it to another company. After we received the letter from the company dated 22nd June 2020, we wrote our reply on 25th June 2020 asking the company to consider finding alternatives to redeploy the employees, we were of the view that declaring 90 employees redundant at the same time was not a good idea. We as a union representing the employees, we don't recommend termination of employment but continuity of employment. That is why we wrote the letter to the company appealing to them to even consider giving leave to those who have pending leave awaiting alternative places to deploy them. The employer wrote to us on 13th July 2020 indicating that they have secured alternative places to redeploy 39 employees reducing the earlier number to 51 employees. We later learned that the employees never wanted to continue working with Parapet Cleaning Services after the employer wrote to us claiming that they had refused to acknowledge receipt of the letter revoking the earlier one issued to them on 23rd June 2020. The letter dated 23rd June 2020 had a provision giving the employer the right to revoke it before the expiry of the notice period. All these employees were members of the union and that is why we fought for their retention by the company but with no idea of what they had in their mind.

Copies of letters dated 23rd June 2020 (from the union) 25th June 2020 and 13th July 2020 (from the employer) attached for ease of reference.

Thank you,

Yours Faithfully,

Joseph Odhiambo,

General Secretary,

Kenya National Union of Service Employees (KNUSE)

Cc

Parapet Cleaning Services

PO Box 1049-00100,

Nairobi

21 Employees"

71. This letter by the Claimants' trade union confirms that the Respondent did not terminate their service. Rather, it is the Claimants who declined to take up the positions to which the Respondent deployed them after it revoked the redundancy notices it had initially issued to them.

72. The evidence on record demonstrates that after the Respondent revoked the Claimants' redundancy notices, it tried to have them resume duty but to no avail. The record shows that the Respondent wrote to the Claimants' trade union on 13th July 2020 informing it (the trade union) that it (the Respondent) had offered the employees alternative placements but they had declined to take them up. As such, the Respondent expressed the view that should the employees maintain their position on the matter and decline to report to their new stations, they will be deemed to have voluntarily left employment. This letter was received by the Claimants' trade union on 15th July 2020 (see page 222 of the Respondent's trial bundle).

73. RW4 stated that he is aware that an employee who leaves employment without explanation should be subjected to a disciplinary process before his contract of service can be closed. However, he contended that the Respondent could not do so for the Claimants because it was aware that they had already taken up employment with another employer.

74. RW4 relies on the NSSF and NHIF statements that were tendered in evidence by the Claimants to contend that they were engaged by the Respondent's competitor (Lupat Cleaning Services Ltd). A cursory look at the aforesaid statements affirms the reality that all the Claimants changed their employers the moment the Respondent issued them with the notices dated 23rd June 2020. As such, they ceased to be the Respondent's employees as early as July 2020.

75. The court agrees with the Respondent that in the circumstances of this case, it was not practicable for it (the Respondent) to conduct disciplinary processes against the Claimants since they had already changed employers. The moment the Claimants took up employment with Lupat Cleaning Services Ltd, their contracts of service with the Respondent terminated by operation of law. As such, they ceased to be employees of the Respondent with the consequence that the Respondent lost disciplinary control over them. Consequently, any purported disciplinary process by the Respondent against them would not only have been superfluous but also illegitimate.

76. The court is satisfied that the Respondent made every effort to get the Claimants to resume duty but to no avail. It is absurd to imagine that the Respondent could compel them to continue in its service. The Claimants had the liberty to either take up their new positions with the Respondent or to move to a new employer as indeed CW1 and CW2 confirmed they did.

77. Consequently, the court finds that the Respondent did not terminate the Claimants' employment through redundancy as they purport. On the contrary, it is the Claimants who ended the employment relationship by rejecting the Respondent's offer to deploy them to another area in order to obviate the anticipated redundancy.

78. The Claimants claim for various reliefs as mentioned earlier in the judgment. In this section, the court will examine whether the reliefs ought to issue.

79. The Claimants' first prayer is for a declaration that their contracts of service were unlawfully and unfairly terminated. However and as has been discussed earlier in the judgment, the Claimants' contention that their employment was illegitimately terminated is incorrect.

80. The evidence on record shows that it is the Claimants who abandoned their employment as they took up employment elsewhere. As such, it cannot be contended that the Respondent illegally terminated their services. Accordingly, the aforesaid declaration sought by them is declined.

81. The Claimants pray for salary for days worked in the month of July 2020 which they contend that the Respondent withheld. However, the Respondent contends that this amount was paid to the Claimants and that it is not owing.

82. The Respondent produced the Claimants' pay slips for the month of July 2020 and contended that this was proof of payment of their salary for that period. It is noteworthy that the pay slips bear details of the Claimants' bank accounts suggesting that their salaries used to be paid through their said accounts.

83. The Respondent also called the Claimants' co-employees to speak to this matter. The witnesses averred that the salaries for employees for July 2020 were paid.

84. Even after the Respondent tabled the aforesaid evidence to support its contention that the Claimants' salaries for July 2020 were paid, the Claimants did not offer cogent contra evidence to rebut the Respondent's position on the matter. All that they presented were bare denials that the salaries were paid.

85. In the face of the evidence which the Respondent tabled, the Claimants were expected to table contra evidence such as their bank statements for July and August 2020 to demonstrate that no money from the Respondent hit their respective accounts. However, they did not.

86. Absent this evidence, the court has no basis upon which it can discredit the Respondent's assertion that it settled the Claimants' salaries for the days worked in July 2020. If the court were to award the Claimants the purportedly withheld salaries for July 2020, it will have acted on conjecture to grant the relief which is not permissible in law. As such, the claim for salary for days worked in July 2020 is declined.

87. The Claimants have sought pay in lieu of notice to terminate their respective contracts of service. Yet and as has been seen earlier, it is them who abandoned their employment. This being the case, the claim for pay in lieu of notice to terminate their contracts of service cannot issue. It is declined.

88. The Claimants have also claimed for severance pay. This entitlement arises in cases of redundancy. However, as was demonstrated earlier, the Claimants' employment was not terminated on account of redundancy. As such, this relief cannot issue. It is thus declined.

89. The Claimants also seek for service pay. This relief is awardable under section 35 of the *Employment Act*. However, it is not available to employees who are registered contributors to the National Social Security Fund (see section 35 (6) (d) of the Act).

90. The evidence on record shows that the Claimants were registered contributors to the National Social Security Fund. As such, they are not eligible to pursue the relief of service pay. Accordingly, the claim is declined.

91. The Claimants also pray for compensation for unfair termination of their contracts of service. However, the Respondent did not terminate their contracts, let alone doing so unfairly. Accordingly, this relief is declined.

92. The Claimants have further prayed that the Respondent be compelled to release their NSSF and NHIF dues. However, during the testimony of their witnesses, they conceded that the Respondent had remitted the dues to the relevant agencies. The Respondent also produced certificates from the agencies to demonstrate that it had no liabilities owing to the said agencies.

93. In the face of this evidence, the court finds that the prayer for an order to compel the Respondent to remit NSSF and NHIF deductions on the Claimants' behalf is not merited. It is declined.

94. The Claimants have prayed for payment of caution money. However, no evidence was tendered on this claim. Absent evidence on the matter, the court is unable to grant it.

95. The Claimants have also claimed for accrued leave days. In the witness statements which they filed in court, they all contended that the Respondent denied them the right to proceed on paid annual leave.

96. On the other hand, the Respondent maintained that all its employees, including the Claimants, enjoyed the right to annual leave. The Respondent asserted that owing to the large number of staff members who work for it, it had adopted an automated leave processing system in a bid to manage its leave roster with ease. It contended that all employees apply for and have their annual and other leaves processed and approved digitally.

97. The Respondent presented data to suggest that the Claimants had taken their annual leave. It also called several witnesses who stated that, as employees of the Respondent, they used to enjoy their annual leave. RW4 asserted that the Respondent's leave processing system was automated and data on it was available digitally. This fact was corroborated by other witnesses who were the Claimants' co-employees.

98. During the trial, CW1 confirmed that the Respondent's employees used to go on leave as per their request. He further stated that employees who wished to go on leave would fill their leave application forms which would then be fed into the Respondent's digital system. This is despite his earlier assertions and the assertions of the other Claimants through their respective written witness statements to the effect that the Respondent did not allow employees to take leave.

99. When CW1 was shown the leave history data for the Claimants from the Respondent's automated platform, he denied having applied for leave for the year 2020. However, he did not controvert the Respondent's position regarding the other Claimants having taken their annual leave.

100. On her part, CW1 denied having taken her annual leave. However, she offered no cogent evidence to controvert the data by the defense which suggested that she had taken her leave.

101. The Claimants' contention that the Respondent did not grant them annual leave was contradicted by the testimony of CW1 who conceded that the Respondent's employees used to apply for and go on leave whenever they desired. CW1's only contention appeared to be that he did not utilize his leave for the year 2020.

102. The court notes that contrary to the attempts by the Claimants to initially paint a picture of having been deprived of their leave benefit, their own witness (CW1) eventually painted a contrary picture. Further, the Respondent called four witnesses who were also its employees and who confirmed that they all used to benefit from annual leave.

103. Having regard to the foregoing evidence, the court is convinced that the Claimants took their annual leave contrary to their assertions that they did not. It is noteworthy that the Claimants did not even bother to present particulars of the periods they allege that they did not utilize their annual leave, if at all. In the premises, their claim for pay in lieu of accrued leave days fails.

Determination

104. After evaluating the evidence on record against the applicable law, the court finds that the suit by the Claimants lacks merit.

105. As such, the cause is dismissed.

106. Each party to bear own costs.

DATED, SIGNED AND DELIVERED ON THE 25TH SEPTEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimants

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI