



**Kigomo v Lewa Wildlife Conservancy (Cause E345 of 2022)
[2024] KEELRC 1588 (KLR) (21 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1588 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E345 OF 2022**

**SC RUTTO, J
JUNE 21, 2024**

BETWEEN

JOAN HELLEN NJERI KIGOMO CLAIMANT

AND

LEWA WILDLIFE CONSERVANCY RESPONDENT

JUDGMENT

1. Through a Statement of Claim which was amended on 25th September 2023, the Claimant avers that she was employed by the Respondent as a Receptionist/Purchasing Assistant with effect from 1st September 2004 and rose through the ranks to the head of procurement. The Claimant contends that the Respondent unceremoniously and without any colour of right unfairly terminated her employment on grounds of redundancy. According to the Claimant, her termination was unfair and unlawful. To this end, she seeks the following reliefs against the Respondent:
 - a. Withheld/unpaid salary of Kshs 694,856/=
 - b. Unpaid leave days Kshs 76,845/=
 - c. Unpaid gratuity Kshs 258,107/=
 - d. Compensation for unlawful termination equal to twelve (12) months gross pay as at the time of dismissal $(176,214 \times 12) = 2,114,568$.
2. The Respondent opposed the Amended Claim through its Amended Statement of Defence dated 19th October 2023. In its Defence, the Respondent has admitted the employment relationship and contends that the Claimant was promoted to Procurement Officer and not as Head of Procurement. That the Claimant's position was declared redundant and that all due procedures were followed as per the requirements of Section 40 of the *Employment Act*. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.



3. The matter proceeded for hearing on 20th February 2024, with each side calling oral evidence.

Claimant's Case

4. At the outset, the Claimant sought to rely on her witness statement and supplementary witness statement to constitute her evidence in chief. She further produced the list and bundle of documents filed on her behalf as exhibits before Court. This was with the exception of the Respondent's income statement for January 2020 to September 2020 whose production was successfully objected to by the Respondent's Advocate.
5. It was her evidence that the redundancy was unlawful and unfair as she was never summoned for a consultative meeting and no notice declaring her and/or other employees redundant was ever served upon the Labour Officer. She further contended that no lawful process for the declaration of redundancy was undertaken as per the [Employment Act](#).
6. The Claimant further stated that the Respondent used redundancy as an excuse to terminate her, yet the procurement functions were taken up by another person.
7. That prior to termination of her employment, she was subjected to unpaid leave and reduction of salary, all of which were not only unlawful but forced down on her in a bid to pressure her to leave employment.
8. That she was paid half salary in April 2020, June 2020, July to November 2020 and was fully unpaid in May 2020.
9. She further averred that at some point in the course of the employment, she suffered a work-related injury and she believes that that was the major reason why she was unlawfully terminated.
10. The Claimant further averred that by dint of the illegal, unlawful and/ or unconstitutional conduct, she was paid terminal dues that were wrongly computed based on a salary of Kshs. 150,000/= yet she was earning Kshs. 176,214/=.
11. In her supplementary witness statement, the Claimant stated that on 21st October 2020, she received a text from one Lucy Ndirangu inviting her for a meeting on 22nd October 2020 but she was unable to attend as she was sick.
12. She went to the Respondent's offices on 26th October 2020, and she received a letter dated 21st October 2020 informing her of their intention to declare her position redundant.
13. After she received the letter on 26th October 2020, she was never invited for any meeting or given any reasons for the intention of being declared redundant and neither was she given any chance to ask any questions and/or seek clarification on what criteria was used.
14. That after she received the aforesaid letter, she was ordered to go home and report back on 3rd November 2020 where she met Lucy Ndirangu, who requested her to handover to Humphrey and Martin who were her juniors. She was then ordered to work away from the office unless when needed.
15. According to the Claimant, the letter did not indicate any valid reasons for declaring her position redundant nor did she get to know why she was ordered to hand over to her juniors, yet she had worked with the organization for sixteen years.
16. She is aware that the procurement position she was holding was actually taken by one Humphrey Macharia who she had personally trained and therefore it is clear the intention was to terminate employment and not as a result of the COVID-19 pandemic.



17. It was her further contention that the Respondent calculated her terminal dues but her leave days were not fully accounted for as they only compensated her for 14 unpaid leave days instead of 25.

Respondent's Case

18. Ms. Dorcas Njeri Ndegwa who testified as RW1, identified herself as the Respondent's Head of Human Resources. Similarly, she adopted her witness statement to constitute her evidence in chief. She further produced the initial list and bundle of documents and supplementary list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
19. RW1 described the Respondent as a Wildlife Conservancy carrying out the business of tourism and conservancy, situated in Isiolo County.
20. It was her evidence that 70% of the Respondent's budget relies on donations and 30% on tourism to run. That the shutdown of the tourism sector due to the COVID-19 pandemic left the Respondent without 30% of its revenue.
21. She averred that tourism revenue caters for approximately 70% of the staff costs. That at the time, tourists cancelled their bookings, resulting in the lodges closing and an immediate cut in one of the Respondent's revenue streams. The management decided to reduce operations and only concentrate on what was critical - wildlife conservation, healthcare, and the agricultural programme.
22. According to RW1, the most significant proportion of the Respondent's budget went to the payment of salaries. That as a result of the adverse effects of COVID-19 on the Respondent's business, its management resolved to reduce its workforce through reduced business running costs, salary cuts and unpaid leave.
23. That some members of staff proceeded home on unpaid leave from April 2020 and resumed in August 2020 on a reduced salary. There was a rotation on salaries of staff members where they would be paid for three months and then proceed on a one month unpaid leave. That for every three months, there would be a month where the salary was not paid to staff.
24. It was RW1's evidence that the Claimant worked during this period in the months of April, June, July, August, September, October and November. She went on unpaid leave in May of 2020 and was paid for the days that she had earned, prorated leave days and a stipend of Kshs 10,000. That the prorated leave days were computed to her basic salary and she was also paid house allowance.
25. RW1 further stated that the budget that was approved by the Board at the beginning of 2020 had to be revised because of the pandemic. The approved budget was based on estimates that the Respondent had hoped to collect in terms of donations and tourism revenue. The revised budget was drastically reduced to less than half of the approved budget in order for the operations of the Respondent to stay afloat.
26. She further averred that salary cuts were mutually agreed upon by the management as a 60% out for the senior management, 50% for the middle management and 30% for the unionisable staff. All this was an effort to try to keep the Respondent afloat during this period.
27. The Respondent thereafter relied on a redundancy exercise owing to the reduction of donor funding and loss of tourism revenue.
28. With respect to the Claimant's averments on unpaid leave and salary reduction, RW1 averred that she (Claimant) was invited for a consultative staff meeting on COVID-19 and its impact on the Respondent's business via an email dated 17th March 2023.



29. That during the meeting, the Respondent informed all employees of the impact of COVID-19 on its business revenue hence the need to reduce its expenditure to ensure business sustainability.
30. After the consultative meeting with all staff, it was mutually agreed that all employees would take a salary cut and some would proceed on unpaid leave in a bid to reduce the Respondent's operating costs.
31. That a notice dated March 24, 2020, was issued to the Claimant following the staff meeting, informing her that she would take a 50% salary cut and proceed on one month unpaid leave every three months as previously agreed.
32. As such, in April 2020, the Respondent ended up with 95 staff proceeding on unpaid leave and resumed in August 2020, and those who were left behind were subjected to salary cuts. The donations revenue stream was also affected and the Respondent closed some of its programmes due to lack of funds.
33. RW1 further stated that the Respondent reduced and eventually stopped the employment of casual workers in order to reduce operational costs.
34. That the Claimant was not sent home during this period but was engaged on a rotational basis at the Conservancy.
35. That the Respondent also introduced work-from-home in order to reduce operational costs.
36. It was RW1's assertion that the Respondent declared redundancies in October 2020 and this affected all departments apart from the security and healthcare departments and positions across all levels. This process saw 30 positions either being declared redundant or vacant positions not being filled and contracts not being renewed.
37. RW1 further averred that the Claimant had a meeting with the Chief Executive Officer and the Chief Administrative Officer in October in order to notify her of the intention to declare her position redundant.
38. That on 21st October 2020, the Respondent declared the Claimant's position redundant and she was issued with a letter notifying her of the Respondent's intention to declare redundancies effective 30th November 2020.
39. On 27th October 2020, the Respondent sent a letter to the County Labour Office at Meru, notifying the office of its intention to declare redundancies.
40. The Claimant cleared with the Respondent upon which all her terminal dues were computed and the same paid to her.
41. According to RW1, the Claimant's terminal dues were calculated less statutory deductions, her allowances that were due, severance pay, notice pay in lieu of notice and untaken leave days.

Submissions

42. The Claimant submitted that the notice issued to her was not a redundancy notice but a termination notice and was therefore irregular. In support of this position, the Claimant placed reliance on the cases of *Cargill Kenya Limited vs Mwaka & 3 others (Civil Appeal 54 of 2019)* (2021) KECA 115 (KLR) and *Thomas De La Rue (K) Ltd vs David Opondo Omutelema* (2013) eKLR.
43. It was the Claimant's further submission that she was informed of the intention to declare her position redundant through a letter dated 21st October 2020 and through the same letter, she was informed that



her last working day would be 30th November 2020. That thereafter, the Respondent did not engage her in any consultative meeting to consider other possible avenues in light of the redundancy.

44. Citing the case of *The German School Society & another vs Obany & another (Civil Appeal 325 & 342 of 2018)* (consolidated) [2023] KECA 894 (KLR), the Claimant submitted that lack of consultations between herself, the Respondent and the labour officer interfered with the fairness of the process.
45. The Claimant stated in further submission that the Respondent did not exhibit the tools and procedure of an objective criteria in invoking or applying the parameters as envisaged in law. In this regard, the Claimant placed reliance on the case of *Kenya Plantation and Agricultural Workers Union vs Harvest Limited (2014) eKLR*.
46. It was the Claimant's position that as she was the head of the procurement department, the Respondent ought to have applied the Last In First Out principle.
47. On its part, the Respondent submitted that the redundancy was its last resort, having taken various measures including salary cuts for staff and unpaid leave due to the reduction of operations and a total standstill of the tourism business.
48. The Respondent further submitted that the Claimant was involved and personally informed of all measures it was taking and contemplating to take since March 2020. The Respondent further posited that the letter dated 21st October 2020 giving the Claimant notice to declare her position redundant was issued to her following prior communication, and all possible measures having been taken to alleviate the redundancy, which was a last resort and no surprise to the Claimant. In support of this argument, the Respondent placed reliance on the case of *Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR*.
49. In further submission, the Respondent stated that the Claimant was issued with the requisite redundancy notice clearly detailing all the measures it had taken prior, the reasons for the redundancy and her redundancy package.
50. The Respondent further submitted that the Claimant's position was a sole position and therefore with the abolishment of her position, there were no other procurement officers to compare seniority and skill with and therefore no applicability for a selection criteria.
51. It was further submitted by the Respondent that the Claimant's position was abolished entirely and not replaced and therefore in this case, it was not a matter of seniority in skill and reliability, but rather, downscaling the Respondent's operations, by abolishing several positions in the organization, due to lack of business leading to severe financial constraints.
52. The Respondent further argued that the abolition of the Claimant's position was well within the auspices of the *Employment Act* and was determined fairly given the circumstances leading to the redundancy.
53. In the Respondent's view, the redundancy exercise was entirely lawful and was conducted fairly and in good faith.

Analysis and Determination

54. Flowing from the pleadings, the evidentiary material before me and the submissions on record, the following issues can be singled out for determination:-
 - i. Whether the Claimant's termination by way of redundancy was fair and lawful.



ii. Whether the Claimant is entitled to the reliefs sought.

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

55. In the case of *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR, it was held that "for any termination of employment under redundancy to be lawful, it must be both substantially justified and procedurally fair".
56. In this regard, substantive justification refers to the reasons for which the redundancy was effected, while procedural fairness relates to the procedure applied in effecting the redundancy. I will proceed to address the two elements under separate heads.

i. Substantive justification

57. In the instant case, the reasons for which the redundancy was effected can be drawn from the Notice of Intention to Declare Redundancies dated 21st October 2020, addressed to the Claimant. In the said Notice, the Respondent made reference to the COVID-19 pandemic and the effect it had had on the operations of many companies globally. The Notice further stated that the Respondent's primary sources of income being tourism revenue and donations, had been adversely affected. Specifically, the Respondent cited the fact that it had lost \$2,500,000 in tourism revenue that year and had a reduction in donor funding.
58. Further, the Notice stated that the Respondent was getting 2021 booking cancellations following the resurgence of the COVID-19 pandemic in the UK and the US from where most tourism came from.
59. The Notice further cited the measures the Respondent had undertaken in the wake of the COVID-19 pandemic including reduced operations by about 70%, salary cuts and unpaid leave for 95 employees from April to July 2020.
60. It is a matter of public notoriety that the outbreak of COVID-19 which was declared a global pandemic by the World Health Organization (WHO) sometime in March 2020, caused massive disruptions in business operations not only in Kenya but in most parts of the world.
61. It is also common knowledge that following the outbreak of COVID-19, drastic measures were taken worldwide to curb its spread. In Kenya, the Government adopted drastic response measures to contain the spread of the pandemic. Some of these measures included but not limited to travel restrictions within and out of the country.
62. In its Amended Statement of Defence, the Respondent has described itself as a wildlife conservancy carrying out the business of tourism and conservancy. Notably, the Claimant has admitted this averment in her Reply to the Statement of Defence.
63. In light of the foregoing observations, it follows that at the onset of the COVID-19 pandemic and in the period that followed, the Respondent was not undertaking its normal operations. Indeed, this Court takes judicial notice of the effect of the COVID-19 pandemic on many sectors of the economy including the tourism industry.
64. Accordingly, the Court has no reason to doubt that the Respondent's streams of income were adversely affected by the COVID-19 pandemic as well as the measures imposed by the Government on travel restrictions.
65. Therefore, it is this Court's finding that the reason given by the Respondent to declare a redundancy, was fair, valid and based on its operational requirements hence was in line with the requirements of



Section 45(2) (b) (ii) of the Employment Act. As such, the Court is unable to find that the Claimant's termination was not substantively justified.

66. That said, was the Claimant's redundancy procedurally undertaken?

(ii) Procedural fairness

67. The procedure to be applied in effecting a redundancy is stipulated under section 40(1) of the Act. Under the said provision, the following conditions must precede a redundancy: -

- 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.

68. In this case, the Claimant was issued with a Notice of Intention to Declare Redundancies dated 21st October 2020. This was the same Notice that communicated the Respondent's decision to terminate the Claimant's employment on account of redundancy. It is thus evident that in as much the notice period given to the Claimant was for more than one month, the decision to terminate her employment had already been made.

69. It is this Court's view that the notice contemplated under Section 40 (1) (b) is an "intention to declare a redundancy". It is issued before the redundancy itself. As stated herein, the said notice was issued to the Claimant after her position had already been declared redundant.

70. In addressing this issue, I find useful guidance in the determination by Maraga JA, (as he then was) where he opined as follows in the case of *Kenya Airways vs Aviation & Allied Workers Union Kenya & 3 Others* (supra): -

"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,"

71. Applying the above determination to the case herein, it is therefore apparent that the Respondent did not substantially comply with the statutory requirement under Section 40 (1) (b) of the Act.



72. With regards to consultations, the Claimant stated that she was not invited to a consultative meeting upon being issued with the notice to declare her position redundant.
73. On the other hand, RW1 stated in her testimony that the Claimant had a meeting with the Respondent's Chief Executive Officer and the Chief Administrative Officer in October to notify her of the intention to declare her position redundant.
74. It is worth pointing out that no evidence was adduced by the Respondent to support this assertion. As a matter of fact, the specific date when the said consultative meeting was ostensibly held was not provided by RW1.
75. In as much as the *Employment Act* does not expressly provide for consultations before a redundancy, Article 13, Convention No. 158 - Recommendation No. 166 of the International Labour Organisation (ILO) convention does.
76. In the case of *Kenya Airways vs Aviation & Allied Workers Union Kenya & 3 Others* (supra) Maraga JA (as he then was) expressed himself as follows on the issue: -

“Although it also does not expressly provide for consultation between the employer and the employees or their trade unions before the final decision on redundancy is made, on my part I find the requirement of consultation provided for in our law and implicit in the *Employment Act* itself. By dint of Article 2(6) of *the Constitution*, the treaties and conventions ratified by Kenya are now part of the law of Kenya. The Kenya Constitution, 2010 was promulgated on 27th August, 2010...The notices under this provision are not merely for information. Read together with Part VIII of the *Labour Relations Act*, 2007 which provides for reference to the Minister for Labour of trade disputes, including those related to redundancy (see Section 62(4)) for conciliation, I am of the firm view that the requirement of consultations implicit in these provisions.”

77. This position was reiterated by the Court of Appeal in the case of *Barclays Bank of Kenya Ltd & another vs Gladys Muthoni & 20 others* [2018] eKLR and *Cargill Kenya Limited vs Mwaka & 3 others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR).
78. To this end, I am persuaded that pre-redundancy consultations are a key requirement in a redundancy exercise. It should also be appreciated that in terms of Article 13 of the ILO Convention No. 158, the consultations should be aimed at averting and minimizing the terminations arising from the redundancies or mitigating the adverse effects of any terminations on the employees concerned.
79. Once again, I subscribe to the position taken by Maraga JA (as he then was) in the *Kenya Airways vs Aviation & Allied Workers Union Kenya & 3 Others* (supra), thus: -

“The consultations are therefore meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable. This means that if parties put their heads together, chances are that they could avert or at least minimize the terminations resulting from the employer's proposed redundancy. If redundancy is inevitable, measures should to be taken to ensure that as little hardship as possible is caused to the affected employees. In the circumstances, I agree with counsel for the 1st respondent that consultation is an imperative requirement under our law.”



80. And further, in the case of Barclays Bank of Kenya Ltd & another vs Gladys Muthoni & 20 others [supra] the learned Judges of Appeal reckoned thus: -
- “ 44. *The Constitution* in Article 41 is fairly loud on the rights to fair labour practices and we think it accords with *the Constitution* and international best practices that meaningful consultations be held pre-redundancy.”
81. As such, the consultations should not be cosmetic but rather meaningful and should be geared towards mitigating the adverse effects of the redundancy.
82. As I have found that there was no evidence of consultations between the parties in the instant case, I return that the Respondent is at fault to that extent.
83. Turning to the selection criteria stipulated under Section 40(1) (c) of the Act, it is notable that the Respondent did not indicate the criteria it applied in declaring the Claimant redundant.
84. Notably, the Respondent has submitted that the selection criteria was not applicable as the Claimant was the sole holder of her position.
85. During cross-examination, RW1 testified that the procurement department where the Claimant was serving prior to her termination, had three officers. She further stated that the department is still existing and currently has two officers.
86. As stated herein, the Respondent did not lead evidence to demonstrate the manner in which it narrowed down on the Claimant and resolved that she was the one to go. For instance, there was no evidence of an evaluation exercise undertaken based on the criteria provided for under Section 40(1) (c) of the Act. Such evidence would have proved the reasons why the Claimant was selected for redundancy as opposed to the other two officers. After all, they were all officers in the same procurement department hence there must have been a criteria applied to determine that the Claimant was the one to go.
87. Indeed, the lack of evidence demonstrating the manner in which the Respondent applied the selection criteria under the Act, casts doubt as to whether the selection of the Claimant for purposes of redundancy, was undertaken objectively.
88. It is my respectful view that the selection criteria stipulated under Section 40(1) (c), is not a mere procedural requirement. Indeed, the said requirement is so significant, seeing that in the end, it is the application of the selection criteria that determines which employee goes and which employee is retained. Needless to say, the criteria ought to be applied objectively and fairly against all employees affected.
89. In light of the foregoing, I cannot help but find that the Respondent has failed to prove that it complied with the statutory requirement under Section 40(1) (c) of the Act.
90. With respect to the requirement for payments under Sections 40(1) (e), (f) and (g), the Court finds that the Respondent complied in principle since the letter issued to the Claimant on 21st October 2020, stated that she was to be paid salary up to the last day worked, notice pay, severance pay, any leave/ off days earned but not taken and pension contribution. The question regarding computation is a different issue altogether which I will address later in this Judgment.
91. The total sum of my consideration is that the Respondent substantially failed to comply with the provisions of Section 40 (1) of the *Employment Act* hence termination of the Claimant’s employment on account of redundancy was not procedurally effected.



92. As was held by the Court in the case of *Hesbon Ngaruiya Waigi vs Equitorial Commercial Bank Limited* (2013) eKLR, where redundancy is declared by an employer, the procedure to follow is as set out under the provisions of Section 40 of the *Employment Act* and where not followed, any termination, as a result, will be deemed unprocedural and unfair. The Court proceeded to hold that any termination of an employee following a declaration of redundancy must be based on the law otherwise the same becomes wrong and if the grounds used to identify the affected employees are not as per the law, the same becomes unfair.
93. In sum, although the Respondent was justified in terminating the Claimant's employment on account of redundancy, the same was undertaken in an unprocedural manner hence was unlawful within the meaning of Section 40 (1) of the Act.

Remedies?

94. As the Court has found that the Claimant's redundancy was procedurally flawed, she is awarded compensatory damages equivalent to five (5) months of her gross salary. This award takes into account among other factors, the length of the employment relationship as well as the circumstances leading to the redundancy.
95. The Claimant has further sought to be paid withheld salary to the tune of Kshs 694,856/=. It is the Claimant's contention that her salary for the months of April, June, July, August, September, and October 2020, was only paid in half while in the month of May, she was paid a stipend of Kshs 10,000.00.
96. In its Defence, the Respondent stated that after a consultative meeting, it was mutually agreed that all employees would take a salary cut and some would proceed on unpaid leave in a bid to reduce operating costs.
97. In support of its case, the Respondent exhibited a copy of a letter dated 24th March 2020, in which the Claimant was advised of the salary cut and the need to take unpaid leave due to the COVID-19 pandemic.
98. Notably, the Claimant signed off the letter acknowledging that she had voluntarily accepted to take a salary cut and one month's unpaid leave every three months.
99. Cross-examined, the Claimant admitted that there was a discussion on salary reduction on 24th March 2020 and that she signed the letter acknowledging the reduction of her salary. She however contended that she was forced to sign the said letter or face termination. She further admitted during cross-examination that it was the first time she was raising the issue of coercion with respect to the said letter.
100. On this issue, I must point out that the Claimant did not indicate in her pleadings that she was forced to sign the said letter. As it were, she only raised the issue under cross-examination hence her averment that she was forced to sign the letter, comes across as an afterthought. In any event, such a plea ought to have been accompanied by particulars.
101. As was held in the case of *Wenslaus Oduki Odinga vs Kenyatta National Hospital Board* [2013] eKLR:

“Apart from the general claim of duress, the Claimant did not adduce any particulars. An employee alleging duress or inducement to sign a document in a non-custodial environment must provide details of such duress or inducement. It is not enough to say “I was forced or I was confused.” The Claimant failed to provide any such details and his claim that he was



forced to sign the admission is therefore rejected. This in effect means that the Respondent had a substantive justification for terminating the Claimant's employment.”

102. In the circumstances, I am persuaded that the Claimant signed the letter acknowledging the reduction of her salary, voluntarily.
103. With regards to unpaid leave, the Claimant has stated that her terminal dues were wrongly computed as she was only paid for 14 days as opposed to 25 days. On the other hand, the Respondent argues that the leave days were prorated. From the Claimant's employment contract, it is clear that she was entitled to 25 leave days annually. As she was declared redundant with effect from 30th November 2020, it follows that as of then, her prorated leave days were 22. Therefore, she is entitled to 8 unpaid leave days as the evidence on record reveals that she was compensated for 14 leave days.
104. With regards to unpaid gratuity, the Claimant did not indicate how she arrived at the figure of Kshs 258,107/= which she claims. Being a specific claim, the Claimant ought to have demonstrated the manner in which she arrived at the said figure to allow the Court make a reasoned determination on the issue.

Orders

105. In the final analysis, the Claim is allowed and Judgment is entered in favour of the Claimant against the Respondent and she is awarded: -
- **a. Compensatory damages in the sum of Kshs 881,070.00 which sum is equivalent to five (5) months of her gross salary.**
 - **b. Unpaid eight (8) leave days being Kshs46,990.40**
 - **c. The total award is Kshs 928,060.00.**
 - **d. Interest on the amount in (c) at court rates from the date of Judgment until payment in full.**
 - **e. The Claimant shall have the costs of the suit.**

DATED, SIGNED and DELIVERED at NAIROBI this 21st day of June, 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Kioko instructed by Mr. Gachoka

For the Respondent Ms. Wairimu instructed by Ms. Wachira

Court assistant Millicent Kibet

ORDER

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



right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of **Section 1B** of the *Civil Procedure Act* (**Chapter 21 of the Laws of Kenya**) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

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