



**Mwangani v Standard Chartered Bank Limited (Cause E6540 of 2020)
[2024] KEELRC 1787 (KLR) (10 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1787 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6540 OF 2020**

**JK GAKERI, J
JULY 10, 2024**

BETWEEN

SETH LUMIDI MWANGANI CLAIMANT

AND

STANDARD CHARTERED BANK LIMITED RESPONDENT

JUDGMENT

1. The Claimant commenced the instant suit by a Statement of Claim dated 9th December, 2020 which was amended on 1st September, 2021.
2. It is the Claimant's case that he was employed by the Respondent on 16th June, 1989 as a Clerical Officer and later moved as a Customer Due Diligence (CDD) Validator and on 2nd March, 2012, he was promoted to the position of Validator Manager and served until 25th February, 2016 when he was promoted to Manager Central Cash at Kshs.223,055/= per month.
3. The Claimant avers that on 11th January, 2019, he received an email from Joseph Mburu on his being set up in validation and after his Line Manager, Mr. Eliud Mbugua queried the move, Mr. Laadan Mburu, the Manager Clearing requested the Claimant via email to fill a position in Validation and offer partial support as one member of staff had taken early leave and pending training of new staff and he agreed to assist.
4. That by email dated 19th February, 2019, Mr. Laadan Mburu requested the Claimant to compile his objectives for the year 2019 and when he queried, he was told that a decision had been made for the role change to validator and the Claimant complied.
5. That his computer at Central Cash and documents had been moved and complaints fell on deaf ears and he was not given a new computer.



6. The Claimant avers that on 7th February, 2020, he received an email message to apply for positions in validation but declined as he was in band 8 and validation is in band 9 and received a notice of risk of redundancy on 2nd March, 2020 and employment was to end on 31st March, 2020, on account of redundancy but did not take place.
7. That he applied for a loan in May 2020 and it was granted but insurance declined to cover the loan.
8. That by a call from Mrs Josephine Muiruri, he was notified of termination of employment on 31st May, 2020 at 55 years and a letter of termination on account of redundancy was issued.
9. It is the Claimant's case that the lumpsum reflected in the payslip is less than that stated in the letter of redundancy dated 29th May, 2020 as he was paid Kshs.10,037,479.50 in lieu of Kshs.10,364,728.83.
10. The Claimant maintains that as at the date of termination, he was substantively the Manager Central Cash as opposed to Validation Manager as the certificate of service states.
11. That he was targeted and moved to a junior position earmarked for abolition and the Respondent did not give a proper explanation for the movement.
12. It is the Claimant's case that termination of employment was unfair as the redundancy notice referred to the position of Manager Validation yet he was Manager Central Cash and was thus unlawfully terminated from employment as the position he held was not declared redundant.
13. That he was set up by his line manager vide email dated 11th January, 2019 and the purported redundancy was flawed as he was not notified of the redundancy of the position of Manager Central Cash.
14. The Claimant prays for;
 - a. A declaration that the Respondent's actions towards the Claimant was an act of dishonesty and abuse of trust, breach of confidentiality without regard to his distinguished services to the bank.
 - b. A declaration that he was unfairly and unlawfully declared redundant.
 - c. In the alternative, an order of reinstatement to the position of Manager Central Cash.
 - d. An Order to recall the certificate of service for a new one reflecting his true position.
 - e. 12 months compensation Kshs.2,676,660.00.
 - f. Damages for loss of future earnings Kshs.13,383,300.00.
 - g. Damages for loss of reputation and discrimination Kshs.10,000,000.00.
 - h. Balance of the lumpsum payable as per the redundancy letter Kshs.327,249.33.
 - i. Identification for personal loan paid that was meant to be covered by the Respondent's Credit Assurance Scheme Kshs.693,000.00.
Total Kshs.27,080,209.00
 - j. Interest at court rates from (e), (f), (g), (h) and (i) from date of judgment till payment in full.
 - k. Costs of the suit.
 - l. Any other reliefs as the court deems fit to grant.



Respondent's case

15. The Respondent admits that the Claimant was employed in June 1989 as a Validator in the Clearing and Validation Department and promoted in 2012 as Validator Manager and later to the position of Manager Central Cash.
16. That the Claimant was transferred from Central Cash to Validation Unit as part of staff rotational program and given his experience in the Department and the transfer had no effect on grade or salary.
17. The Respondent avers that in 2018, the Validation Department embarked on implementation of a new clearing system in all branches which was intended to remove manual intervention in the system and was implemented in December 2019.
18. That staff had been advised on the implications of the new system and staff numbers would reduce from 24 to 16. Eight (8) employees were at risk of being declared redundant.
19. That staff were advised of the new structure in February 2020 and Human Resource advertised the new roles, the Claimant was unsuccessful and declined to apply for other open positions.
20. The Respondent avers that on 2nd March, 2020, it gave a 30 days consultative period and opportunity to apply for any available roles and the Claimant's risk period was extended by 2 months and no grievance was raised.
21. That the Claimant signed the redundancy notice accepting the terms of his exit and the revised redundancy letter dated 29th May, 2020 together with the tabulation of final dues were remitted to the Claimant.
22. It is the Respondent's case that as at the date of declaration of redundancy, the Claimant was serving as a Validation Manager and the provisions of Section 40 of the Employment Act were complied with.
23. The Respondent avers that the Notice of Risk of Redundancy was made in good faith and did not target the Claimant as the process was intended to imbue efficiency in bank processes.
24. Finally, the Respondent prays for dismissal of the Claimant's suit with costs.

Claimant's evidence

25. On cross-examination, the Claimant confirmed that he was the Manager Central Cash until 11th January, 2019 when he was sent to Validation and queried whether his role had changed to Validator and although he received the notice of redundancy, he was not offered alternative employment.
26. That he had worked for the Respondent for 30 years and was aware of its operations and policies and interdepartmental movement was accompanied by a letter but in this case it was via email and confirmed having asked for a meeting.
27. It was his testimony that while Central Cash was outsourced, validation was internal and before joining Central Cash, he was a Validation Manager but was not given a letter of demotion and there was no change in salary.
28. The Claimant admitted that he was aware of the changes in the cleaning system and the operational changes happening at the bank and received the email dated 17th December, 2019 and jobs were offered to all staff and was invited to apply but declined and raised a grievance with his line manager.
29. The Claimant admitted that he was paid in lieu of notice, leave earned but not taken, severance pay, ex gratia (6 months) and 25% discount on outstanding loan.



30. It was his testimony that the breakdown in Appendix I was revised by a corrigendum dated 17th June, 2020 after the Claimant had left employment and did not receive it.
31. That he was paid a sum of Kshs.12,776,114.33.
32. The Claimant admitted having signed the Release and discharge and could not sue the bank and had not repaid the money as the bank had not demanded payment.
33. On re-examination, the Claimant testified that he was moved to validation to assist as requested vide email dated 14th January, 2019 but the movement was not discussed with the line manager and appeared secretive and his appointment as Central Cash Manager was not revoked and his line manager was unaware of the change.
34. It was the Claimant's evidence that he was using Fridah's computer who was on leave and an appeal to M/s Kodongo yielded no positive response.
35. The Claimant maintains that he did not receive the letter dated 17th June, 2019 as it was sent vide the office email and he had already left employment.

Respondent's evidence

36. RWI, Mr. Anthony Kilonzo testified that he joined the Respondent on 7th June, 2021 as the Employee Relations Specialist.
37. That the Claimant was informed of the change via email and it was official communication and was unaware of consultations before the Claimant's role was changed.
38. On the staff rotational program, the witness confirmed that he had not provided evidence or the organogram of the department.
39. The witness confirmed that he was unaware of the duties of a validator.
40. The witness further confirmed that neither the Claimant's grade nor the salary changed and he was rated as good in performance.
41. The witness could not tell for how long the Claimant was in validation.
42. It was his testimony that the Respondent requested the Claimant to take over validation on a temporary basis as he was still Central Cash Manager.
43. That the Claimant was officially appointed to the role of Manager Validation and denied that it was a set up by the Respondent.
44. That the position declared redundant was that of the Validation Manager not Manager Central Cash.
45. That he was paid Kshs.10,037,479.50 and the sum of Kshs.850,000/= was deducted as a loan the Claimant had taken but he could not tell when the loan was issued.
46. The witness confirmed that the Claimant was afforded an option to apply for other roles but did not.
47. On re-examination, RWI testified that when the Claimant was declared redundant, he was a Validation Manager and had been in the position for about one (1) year and did not mitigate his loss yet he was aware that his role was at risk of being declared redundant.
48. That the email dated 17th December communicating changes was sent to many employees.
49. Finally, the witness testified that the Claimant did not contest the redundancy.



Claimant's submissions

50. On whether the Claimant was a candidate for redundancy, counsel submits that since the decision to change the Claimant's role was done without prior communication to the Claimant, the Claimant remained the Manager Central Cash and was only a temporary assistant in validation and was thus not a candidate for redundancy.
51. Counsel urges that the Respondent did not provide a letter of transfer or job description as required by Section 10 of the *Employment Act, 2007*.
52. That the alleged job rotation was an unfair labour practice having served as a Central Cash Manager for 3 years only and Validation for 27 years.
53. As to whether the Claimant's employment was wrongfully, unfairly and unlawfully terminated, the Claimant's counsel submits that since the decision to move the Claimant was not communicated prior and the Respondent provided no evidence of challenges or opportunities, the termination was premeditated and malicious and the Respondent moved the Claimant while aware that it was implementing a new system and the role would be phased out.
54. Counsel submits that the transfer to Validation was unlawful, unfair and in breach of the Claimant's right to fair labour practices.
55. That since his salary and grade did not change, the Claimant remained the Manager Central Cash.
56. That the Claimant was set up in validation on a temporary basis in January 2019 only to receive an email from Laadan Mburu to compile his objectives at Clearing and Validation, a move the Claimant queried.
57. According to counsel, the Respondent invoked redundancy to change the office holder by removing the Claimant as the position of Central Cash Manager was not abolished.
58. That the Respondent's conduct was discriminatory as it singled out the Claimant.
59. That Central Cash was not part of validation and clearing.
60. Counsel submits that rotational programs cannot be backward for an employee with good performance as no new skills are likely to be acquired.
61. Reliance was made on the sentiments of the court in Josephine M. Ndung'u & others V Plan International Inc. (2019) eKLR on the effect of Section 47(5) of the *Employment Act, 2007* as were those of the Court of Appeal in Muthaiga Country Club V Kudheiha Workers (2017) eKLR and those of Ndolo J. in Walter Ogal Anuro V Teachers Service Commission (2013) eKLR on the elements of a fair termination of employment.
62. On the reliefs sought, counsel submits that the Claimant received the sum of Kshs.10,037,479.50 in lieu of Kshs.10,364,729.83 as stated in the redundancy letter. That the Respondent's testimony that there was a corrigendum to the redundancy letter failed to demonstrate that it was served on the Claimant.
63. Counsel submits that the certificate of service issued to the Claimant shows that he was performing the role of Validation Manager which is inaccurate as he was Manager Central Cash which could diminish the Claimant's chances of securing comparable employment having served the Respondent for 31 years.



64. Reliance was made on the decisions in Daniel Musinga t/a Musinga & Co. Advocates V Nation Newspapers Ltd (2000) eKLR, Alfred Muthomi & 2 others V National Bank of Kenya Ltd (2018) eKLR, Alphonse Maghanga Mwachanya V Operation 680 Ltd (2013) eKLR, Peter Kamau Mwaura V National Bank of Kenya and Joseph Mwaniki Nganga V United Millers Ltd (2022) eKLR among others to urge the court to award 12 months salary as compensation.
65. On the loan taken by the Claimant, counsel submits that the cover certificate issued by the bank was issued 5 months after the Claimant had insured the loan thus the bank acted maliciously and the Claimant is entitled to the amount spent.
66. In his Supplementary Submissions filed on 26th April, 2024, without leave of the court, the Claimant's counsel addressed the effect of the Release and discharge clause of the Redundancy letter and cited the Court of Appeal decision in Thomas De La Rue (K) Ltd V David Opondo Omutelema (Supra) to urge that the agreement could not absolve the Respondent from a statutory obligation on payment of full terminal dues having paid Kshs.10,037,479.50 instead of Kshs.10,364,728.83.
67. The Claimant's counsel raised other issues addressed in the submissions.
68. Plainly, since the issue arose during cross-examination of the Claimant and was a critical issue, it ought to have been addressed in the submissions to obviate the need to file Supplementary Submissions without leave, which the court ought to ignore.

Respondent's submissions

69. As to whether termination of the Claimant's employment on account of redundancy was unfair and unlawful, counsel submits that the Claimant was at the time serving in the Clearing and Validation Department effective 11th January, 2019 and was notified of the role change on 19th January, 2019.
70. Reliance was made on Mercy Wangari Muchiri V Total Kenya Ltd (2020) eKLR on the definition of redundancy and Walter Ogal Anuro V Teachers Service Commission (2013) eKLR on the requirements of a fair termination of employment.
71. Concerning justification of the redundancy, counsel relied on the sentiments of the court in Aviation & Allied Workers Union V Kenya Airways Ltd & 3 others (2012) eKLR and Tobias Ongaya Auma & 5 others V Kenya Airways Corporation (2007) eKLR on the essence of a redundancy.
72. Counsel submits that implementation of the new clearance system was to ensure compliance with the Guidelines of the Kenya Bankers Association (KBA) and the new structure would lead to reduced staff numbers and staff in Validation had been notified in December 2019.
73. That the employees were accorded time to apply for new roles under the new structure and the Claimant declined notwithstanding the fact that his salary would remain the same.
74. Reliance was made on the sentiments of the court in John K. Otieno V G.E. East Africa Services Ltd (2021) eKLR where an employee declined to take up a better paying offer and received a redundancy package.
75. On procedural fairness, counsel submits that the provisions of Section 40(1) of the *Employment Act, 2007* were complied with as the Respondent gave two notices in consonance with the sentiments of Maraga JA (as he then was) in Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 others (2014) eKLR.



76. That affected employees were given a Notice of Risks of Redundancy in March 2020 and the Claimant's notice was extended and he did not raise any grievance and notices were served on the union and the Labour Officer.
77. That consultations took place as staff in Validation were engaged severally and were aware of the implications of the new system including expression of interest in new roles as advised by the Human Resource team.
78. Counsel urges that termination of the Claimant's employment on account of redundancy was as result of his refusal to apply for the available alternatives.
79. Reliance was made on the sentiments of Abuodha J. in Mohamed Fawzan Chaudhri V CFC Stanbic Bank (2017) eKLR.
80. Counsel further submits that the Respondent paid the Claimant Kshs.14,448,864.33 including a hefty severance pay of 1¹/₂ months' salary for every completed year of service and a 25% rebate of the loan of Kshs.850,000/=.
81. Concerning the effect of the discharge clause in the Redundancy letter, counsel relies on the sentiments of the court in Thomas Otieno Oluoko V Uzuri Foods Ltd (Golden Harvest Millers) (2021) eKLR, Damondar Jihabhai & Co. Ltd & another V Eustace Sisal Estates Ltd (1967) EA 153 and Coastal Bottlers Ltd V Kimathi Mithika (2018) eKLR to submit that the release/discharge form was binding and the Claimant waived his right to pursue any claim and the suit herein is incompetent.
82. Finally, as regards the reliefs sought, counsel urges that reinstatement was not available on account of the 3 years threshold as held in Nelson Ochieng Nyoturu V Telkom Kenya Ltd (2012) eKLR.
83. That no compensation is due as the redundancy was lawful.
84. Counsel urges that the claim for damages for future earnings is unsustainable as there was no guarantee that the Claimant would remain in employment until retirement.
85. Reliance was made on the sentiments of the court in Elizabeth Wakanyi Kibe V Telkom Kenya Ltd (2014) eKLR and Engineer Francis N. Gachuri V Energy Regulatory Commission (2013) eKLR to urge that the claim was unjustifiable.
86. As regards damages for loss of reputation and discrimination, counsel submits that the Claimant adduced no evidence of loss of reputation or discrimination and cited the decision in Swalleh C. Kariuki & another V Viloet Owiso Okuyu (2021) eKLR on the need to prove entitlement to reliefs.
87. Counsel urges that general damages are unavailable in cases of termination of employment as held in Kenya Ports Authority V Edward Otieno Civil Appeal No. 120 of 1997 (unreported) and Sonye V Siaya Teachers Co-operative Savings and Credit Society & another (1999) 2 EA 311.
88. On the claim for Kshs.327,249.33, counsel submits that the total payment was Kshs.12,776,114.33 but the amount eventually paid was Kshs.12,448,864.33 and the change was communicated vide the corrigendum letter dated 17th June, 2020 which explained that severance pay was for every completed year not prorated as he had served for 5 months in May 2020.
89. According to counsel, the prayer lacks merit and is for dismissal.
90. On recall of certificate of service, counsel urges that the Claimant held the position of Validation Manager at the time of termination and the Certificate reflects the correct position.



91. On the claim for Kshs.693,000/=, counsel submits that the Claimant applied for a loan in May 2020 and as it had not attained the maturity period of one (1) month prior to termination, insurance cover was declined.
92. Counsel urges that the Claimant took the loan while aware of the risk of redundancy having received the Risk of Redundancy notice in March 2020 and signed off the Exit Checklist that any outstanding loans be deducted.

Analysis and determination

93. It is common ground that the Claimant was an employee of the Respondent effective 16th June, 1989 to 30th May, 2020, a duration of about 31 years which is a long period of time.
94. It is also not in dispute that the Claimant initially served as a Validator, was promoted to Validator Manager in March 2012 and to Manager Central Cash on 1st April, 2016 and served the Respondent diligently and was rated “good” or exceptional in appraisals by the Respondent. However, matters took a different turn on 11th January, 2019 when Mr. Joseph Murage sent the Claimant an email to which he attached validation module access request forms to be set up in the Validation unit.
95. The email to KE-TSSCTRY SYSTEMS SUPPORT was copied to 6 persons including the Claimant.
96. By an email dated 12th January, 2019, Mr. Eliud Mbugua asked Mr. Murage why the Claimant was being set up in validation yet he was not a validator.
97. In a response dated 14th January, 2019, Mr. Laadan Mbugua explained to Mr. Eliud Mbugua why. He states that Greans had had a discussion with the Claimant and they had agreed he be set up to give partial support as new staff were trained
98. It is evident that the Claimant was set up in Clearing and Validation.
99. Relatedly, by an email dated 6th February, 2019, Mr. Eliud Mbugua forwarded a summary of the RBOPs strategy to help the Claimant and others prepare their objectives for 2019 and drafts were expected by 11th February, 2019 for closure by 18th February, 2019 and by email dated 19th February, 2019 at 14.24, Mr. Laadan Mburu forwarded the set objectives for Clearing and Validation for members of staff to customise the same with their roles and complete the objectives and discussions were scheduled for Thursday morning with the recipients who included the Claimant.
100. By an email on the same day at 16.20 pm to Mr. Eliud Mbugua, the Claimant sought clarification as he had already agreed to set up the 2019 objectives as Manager Central Cash and was working on it.
101. The Claimant sought clarification whether his role had changed to that of a Validator as the agreement with Greans was to assist in validation as new validators were recruited.
102. By an email dated 22nd February, 2019 at 9.33 am, Mr. Eliud Mbugua informed the Claimant that owing to “several challenges and opportunities, a decision had been taken to change the Claimant’s role to that of a validator. Mr. Mbugua informed the Claimant that they could discuss the matter when the Claimant had time and the Claimant promised to meet Mr. Mbugua early morning on 26th February, 2019.
103. It is unclear whether the meeting took place as there was not follow up message and the email from the Claimant to Kodongo dated 4th April, 2019 refers to a different meeting in January 2019.



104. The Claimant sought a session with M/s Kodongo to discuss his being in validation as validators were recruited, change of role/objectives from Central Cash Manager to Validator and personal development growth.
105. M/s Kodongo promised to create time the week after (commencing 8th April, 2019), she also asked the Claimant whether he had held discussions with Laadan Mburu or Josephine on the issues.
106. It is unclear how the discussions ended as no other emails were filed. What is clear however is that the Claimant remained in Clearing and Validation till termination on account of redundancy.
107. The Claimant contests the movement from Manager Central Cash to Validation and Clearing, termination and the amount paid as terminal dues.
108. The issues that commend themselves for determination are;
 - i. Whether the movement of the Claimant from Central Cash to Clearing and Validation was unlawful or an unfair labour practice or malicious.
 - ii. Whether termination of the Claimant's employment on account of redundancy was unfair.
 - iii. Whether the Claimant waived his right to pursue further claims or actions against the Respondent.
 - iv. Whether the Claimant is entitled to the reliefs sought.
109. As regards the movement of the Claimant from Manager Central Cash to Clearing and Validation as adverted to elsewhere in this judgment, matters took a different turn in January 2019 when it appears that a decision had been made to have the Claimant assist in clearing and validation as validators were being recruited.
110. Email communication reveal that the Claimant had had discussions with M/s Kodongo on the matter and the assistance was temporary though no timelines were provided and the Claimant was set up in Clearing and Validation and the movement was validated by Mr. Eliud Mbugua's email to the Claimant dated 22nd February, 2019.
111. As observed elsewhere, it is unclear how discussions on the issue with M/s Kodongo, Laadan Mburu or Josephine ended. What is not in contest is that the Claimant remained in Clearing and Validation on similar terms of employment until the separation in May 2020.
112. While the Respondent argued that the movement was grounded on job rotation at the Respondent bank and the Claimant had worked in the department for many years, the Claimant read mischief in the transfer as no new skill would be acquired and was deliberately and maliciously targeted to be declared redundant.
113. What is not in doubt is that the Claimant had discussed the issue of the movement with M/s Kodongo as revealed by the email from Laadan Mburu to Mr. Eliud Mbugua dated 14th January, 2019 and Mr. Eliud Mbugua confirmed the movement on 22nd February, 2019 and the Claimant had already been asked to prepare objectives in his role as a Validator.
114. Evidently, the Claimant consented to a deal that had no exit clause as the hiring or training of Validators had no timelines and being an experienced hand, he was the best person for the Respondent's processes.
115. There is no evidence to show that any Validator was trained or employed.
116. Was the movement of the Claimant from Manager Central Cash to Clearing and Validation malicious?



117. In the court's view based on the evidence on record, there is no suggestion that the Respondent maliciously targeted the Claimant. What appears evident is that Clearing and Validation needed an extra pair of hands before training or recruitment could take place.
118. Evidently, the Claimant could effectively perform in more than one department which made him amenable to movement.
119. It is trite that movement of employees at the work place is a prerogative of the employer provided the relevant provision of law, policies and procedures are complied with and the employee is in a position to execute the mandate of the new role.
120. The foregoing does not necessarily mean that a movement or transfer cannot be challenged in a court of law.
121. In this case, the Claimant has not placed sufficient material in court to show that the Respondent's action was actuated by malice or he was being targeted for declaration of redundancy which took place more than one (1) year later.
122. The fact that the Respondent was upgrading/automating its Clearing and Validation department and was thus aware that a redundancy could ensue cannot avail the Claimant as exigencies of duty necessitated the movement and how could the Respondent tell how the new system would turn out more than one year earlier and in particular how many roles would be abolished or downgraded.
123. While redundancy was a likely consequence and eminently forceable by the Respondent, the argument the Claimant's movement in January 2019 was targeted to push him out of employment appears to overstretch imagination as it is unsupported by evidence.
124. For instance, the Claimant has not alleged that previous attempts had been made to get rid of him or any of the Respondent's officers including his supervisor had demonstrated an inclination of acting maliciously towards him in which case a redundancy would have been opportune to offload the Claimant.
125. From the foregoing, it is the finding of the court that the Claimant has failed to demonstrate that his movement from Manager Central Cash to Clearing and Validation was a premeditated move to have him declared redundant more than one (1) year later.
126. The court is unable to decipher any evidence of malice, bad faith or victimization of the Claimant by the Respondent.
127. As regards separation of the Claimant and the Respondent, it is common ground that the two separated on account of redundancy.
128. While the Claimant's counsel submits that the Claimant was not a candidate for redundancy, the Respondent's counsel submits that the process was undertaken lawfully and the Claimant was part of the process and did not contest it.
129. The Claimant's contention that he was not a candidate for redundancy is grounded solely on the fact that the movement from Central Cash to Clearing and Validation was temporary and thus retained his position as Central Cash Manager.
130. Notably, the Claimant was set up in Clearing and Validation in Mid-January 2019 and rendered services in that capacity until 30th May, 2020.



131. Clearly, the Claimant, though initially moving to offer partial support, understood the contents of Mr. Eliud Mbugua's email dated 22nd January, 2019, whose effect was that the role had changed and discussed the issue with M/s Kodongo but failed to adduce evidence of what they agreed in April 2019.
132. From the evidence on record, the Claimant appeared to have settled in his new role in Clearing and Validation after April 2019 and served diligently until he was declared redundant in May 2020.
133. Equally, the Claimant tendered no evidence that he retained the previous work space and rendered services as Manager Central Cash at the same time. Such arrangement would have shown that indeed the movement was envisioned as temporary as corrective action was being taken.
134. The argument that the Claimant remained as the Manager Central Cash and was only helping in Validation on a temporary basis sounds unconvincing because one year is rather long to be deemed temporary and as argued elsewhere, the Claimant adduced no evidence that he continued rendering services as Manager Central Cash and thus occupied and discharged two roles for the entire duration.
135. The Claimant faults the termination of employment on the ground of want of substantive justification and procedural fairness captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission (Supra)* as follows;

“... for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”
136. From the documentary evidence on record, it is discernible that the Claimant's employment came to an end on 31st May, 2020 on account of redundancy vide letter dated 29th May, 2020, a fact the Claimant has not contested.
137. It is common ground that the Respondent was since 2018 planning and implementing a new system in Clearing and Validation to reduce manual intervention, a move which appear to have been agreed by members of the KBA as the Respondent's letter to the Kenya Bankers Association dated 16th August, 2018 reveals.
138. Copies of email communication between employees of the Respondent dated November 2018 reveal that the Respondent was implementing system changes in Clearing and Validation and by email from Mandere Morris to Kodongo and other staff including the Claimant dated 17th December, 2019 on update meeting with Clearing and Validation team, Mr. Mandere informed his colleagues about a discussion he had with the team on 12th December, 2019 on the new system going live and expected to stabilize by February 2020 and inter alia that 8 roles would fall off the structure, creating a risk of redundancy.
139. The writer asked the team to continuously look for roles advertised on job watch and could contact him or one Hanna.
140. It is not in dispute that on 7th February, 2020, the Respondent's Human Resource advertised the roles available to all staff in Clearing and Validation, which was followed by an email dated 17th February, 2020 for those who had not submitted applications to do so by 19th February, 2020 by which date the Claimant and 3 others had not applied for any role as Keziah Shako's email to Morris Mandere of even date reveals. Ultimately, only the Claimant and one Joseph Murage did not apply. The roles advertised were G7-2 positions, G8-4 positions and G9-5 positions, a total of 11 positions.



141. By email dated 27th February, 2020, Shelmith Wairimu requested the Claimant to confirm if interested in a clearing role, which the Claimant declined on the ground that it was band 9 as he was in band 8.
142. Would successful applicants have been demoted to band 9?
143. While the email communication provides no answer despite being asked by one Shelmith Wairimu, the Claimant had sufficient time to engage the Respondent's Human Resource on the issue having been a long serving employee and the Respondent appeared determined to retain him.
144. Relatedly, staff in Clearing and Validation had already received the Notice of Risk of Redundancy dated January 2020 and the same was extended vide letter dated 1st April, 2020 sent on email by M/s Kodongo.
145. Clearly, as early as 12th December, 2019, the Claimant was aware that the new system would render 8 out of 24 roles redundant and more significantly the Respondent opened itself for consultations and Mr. Mandere Morris and Hanna were available.
146. From the record, it is evident that it is the Respondent who initiated communication with the Claimant on the impact of the new system and persuaded the Claimant to apply for any of the new roles but he declined without engaging Human Resource on his fears and other alternatives available.
147. Notably, there were 4 positions in G8 and 2 in G7 positions the Claimant could have applied for in light of his enormous experience in the Department.
148. Granted that the Claimant received and acknowledged receipt of letter of redundancy dated 29th May, 2020 on 11th June, 2020, he is by conduct estopped from contending that his separation with the Respondent emanated from other circumstances. However, it is within his remit to challenge the redundancy process for a determination that the termination of employment was unfair and unlawful.
149. Puzzlingly, other than alleging and arguing that he remained the Manager Central Cash which he was unable to demonstrate by evidence of serving in two roles namely, Manager Central Cash and Clearing and Validation for at least one (1) year, and was thus not a candidate for redundancy, the Claimant has not faulted the process in any other manner and as adverted to elsewhere in this judgment, he voluntarily signed and accepted the terms of the redundancy vide letter dated 29th May, 2020.
150. As held by Maraga JA (as he then was) in Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 others (Supra), redundancy is one of the legitimate and legally sanctioned approaches of separation between an employer and employee and may be occasioned by technological changes, as in this case restructuring or reorganization or cost cutting measures.
151. Redundancy is exclusively available to the employer.
152. Needless to underline, the provisions of the Employment Act, 2007 not only define the term redundancy but also prescribe the circumstances in which it can be undertaken lawfully.
153. Section 40(1) of the Employment Act catalogues the mandatory requirements of a fair redundancy process.



154. In *Freight In Time Ltd V Rosebell Wambui Munene* (2018) eKLR, the Court of Appeal stated as follows;
- “In addition, Section 40(1) of the *Employment Act* prohibits in mandatory tone, the termination of a contract of service on account of redundancy unless the employer complies with the following seven conditions, namely; . . .
155. See also *Barclays Bank of Kenya Ltd & another V Gladys Muthoni & 20 others* (2018) eKLR and *Thomas De La Rue (K) Ltd V David Opondo Omutelema* (2013) eKLR.
156. The mandatory conditions include notice to the labour officer and the union if the employee(s) is a member of the union or to the employee and the labour officer if not a member of a union at least one month before the effective date of the redundancy, selection criteria, equity where an employee is or is not a member of a union and the CBA provides for the dues payable, payment of untaken leave days in cash, one month’s salary or pay in lieu of notice and severance pay at 15 days for every completed year of service.
157. Courts have in addition held that consultations are an integral part of the redundancy process as held in *Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 others* (Supra) and *Cargill Kenya Ltd V Mwaka & 3 others* (2021) eKLR.
158. Analogous to any other form of termination of employment, a redundancy must be substantively justifiable and procedurally fair. The Respondent is required to demonstrate the reason(s) for and extent of the redundancy.
159. As far as the number of notices is concerned, the Court of Appeal decision in the *Kenya Airways Ltd* case (Supra) made no specific finding on the second notice.
160. Similarly, in *Africa Nazarene University V David Mutero & 103 others* (2017) eKLR and *Cargill Kenya Ltd V Mwaka & 3 others* (Supra), the Court of Appeal held that the provisions of Section 40(1)(f) of the *Employment Act*, 2007 do not expressly provide for a notice as its focus is payment.
161. The notice to the union and the local labour officer must demonstrate the reason for and extent of the redundancy and be issued at least one (1) month from the effective date of the redundancy.
162. Documentary evidence on record reveals that the Respondent issued notices of redundancy to the Commissioner of Labour, Nairobi and the Banking Insurance & Finance Union dated 16th January, 2020.
163. The notice explains the background of the redundancy as the introduction of a new operating model in retail banking and although 20 employees were affected, not all would or were declared redundant and included both management and unionised, 20 and 5 respectively.
164. The letters capture the reason for and extent of the redundancy.
165. Since the Claimant was part of Management, he received the Notice of Risk of Redundancy dated 2nd March, 2020 which was extended to 30th April, 2020 and finally to 30th May, 2020.
166. The letter dated 2nd March, 2020 explained to the Claimant that his role as Validation Manager may be declared redundant but opened a 30 days consultation period. The letter invited the Claimant to raise any question or views on the potential redundancy of his role and it promised that the Respondent would work with him to look for a suitable alternative role to avoid a redundancy situation.



167. As regards the notice(s) required under Section 40(1)(a) and (b) of the *Employment Act*, 2007, the court is satisfied that the Respondent complied with the requirements of the law and the notices were thus effective.
168. On consultations, the Respondent's Notice of Risk of Redundancy adverted to elsewhere clearly underscores the Respondent's willingness and commitment to engage the Claimant by way of "any questions or views" on the potential redundancy and its readiness to avert such eventuality.
169. It is also notable that the notice was extended by a further 2 months affording the Claimant more time to consult the Respondent on the way forward.
170. Significantly, the Respondent kept employees in Clearing and Validation apprised of the development in the course of implementation of the new system and all were aware of the potential risk of redundancy from as early as 12th December, 2019 before the system went live.
171. The Claimant adduced no evidence to show that the Respondent was unwilling to engage or was unresponsive to his queries or views.
172. What emerges is that the Respondent engaged the Claimant and cajoled him to apply for positions or raise issues or views but the Claimant remained uninterested without giving alternatives or his views.
173. For instance, the Claimant did not explain why he did not apply for positions in G7 and G8 for which he was qualified and having served in G8 he would have competed effectively and probably gotten one of 4 positions. Regrettably, he did not and gave no reason(s).
174. On the selection criteria, since the Claimant was unwilling to apply for the available positions, the Respondent cannot be faulted for having availed necessary information.
175. Finally, the Redundancy letter dated 29th May, 2020 itemised the terminal payments due to the Claimant as follows; pay in lieu of notice, pay in lieu of leave earned but not taken, 1.5 months salary for every completed year of service, additional ex gratia payment of Kshs.1,338,330.40, 25% net discount on outstanding loan and Staff Bank accounts to remain on staff rate for 6 months from the date of separation.
176. Notably, the Claimant did contest of the foregoing except severance pay under the amended Redundancy letter.
177. From the foregoing, it is the finding of the court that the Claimant has failed to prove that his termination of employment on account of redundancy was not conducted in accordance with the provisions of the *Employment Act*, 2007 or was substantively unjustifiable or procedurally unfair.
178. Concerning waiver of the right to pursue further claims or actions against the Respondent, it is common ground that the Claimant signed the Redundancy letter dated 29th May, 2020 on 11th June, 2020 agreeing with the terms of the letter.
179. Under "Acknowledgment", the letter states inter alia;

"I Seth Mwangani acknowledge receipt of this letter and agree to its terms relating to the termination of my employment with the Bank.

I agree that the terms of the letter shall be in full and final settlement of all claims (if any) whether contractual, statutory or otherwise that I have or may have against the bank or



the Group arising out of or in connection with my employment with the Bank and/or its termination”.

180. In addition, a schedule of payment details was attached showing the individual totals and the grand total of Kshs.12,776,114.33 to be paid within one (1) month of termination, with the next payroll run.

181. More significantly, the letter embodied a Release and Discharge clause (g).

182. Under clause 9(a) of the Redundancy letter, the Claimant agreed that;

“By appending your signature to this Agreement, you accept its terms in full and final settlement of action of any kind, whether contractual (including any claim in respect of any profit sharing, bonus or incentive or share option arrangement), statutory or otherwise whether or not they are or could be in the contemplation of the parties at the date of this agreement, and whether having already occurred or arising in the future in any other country in the world, which you have or may have against the bank/or the Group or any of its officers or employees from time to time arising out of or in connection with your contract of employment, your employment or any office or appointment held with the bank and/or the Group and/or termination thereof.

You further agree to waive all and any right to institute any action, both now and in the near future, in any administrative or judicial forum, in any jurisdiction against the bank and/or the Group”.

183. Clause 9(b) of the letter reinforces the above waiver of actions or proceedings by requiring the Claimant to repay severance pay and the ex gratia payment among others.

184. The Claimant confirmed on cross-examination that he signed the redundancy letter and understood that it provided that he could not institute proceedings against the bank.

185. Asked whether he had repaid the sum paid to him as per the agreement, the Claimant retorted that the Respondent bank had not demanded repayment.

186. The principles that govern Release and Discharge clauses or discharge vouchers and settlement agreements are well settled.

187. In *Thomas De La Rue (K) Ltd V David Opondo Omutelema* (Supra), cited by the Claimant’s counsel, Court of Appeal stated as follows;

“We would agree with the trial court that a discharge voucher per se cannot absolve an employer from statutory obligation and that it cannot preclude the Industrial Court from enquiring into the fairness of a termination. That is however, as far as we are prepared to go. The court has in each case to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed, when the employee was seized of all the relevant information and knowledge.”

188. Similarly in *Trinity Prime Investment Ltd V Lion of Kenya Insurance Co. Ltd* (2015) eKLR, the Court of Appeal stated;

“The execution of the discharge voucher, we agree with the learned judge constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant



accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”

189. Similarly, in *Coastal Bottlers Co. Ltd V Kimathi Mithika* (2018) eKLR, the Court of Appeal expressed itself as follows;

“Whether or not, a settlement agreement or a discharge voucher bars a party thereto from making further claims depends on the circumstances of each case. A court faced with such an issue, in our view, should address its mind firstly, on the import of such a discharge/ agreement; and secondly, whether the same was voluntarily executed by the concerned parties . . .

A part from tabulating the Respondent’s entitlement, the settlement agreement also read in part . . .

In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the Respondent’s termination. It is instructive to note that the Respondent never denied signing the said agreement or questioned the veracity of the agreement. Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the Respondent’s part at the time he executed the same. It did not matter that the amount thereunder would be deemed as inadequate.”

190. Having found that the Claimant signed the Redundancy letter voluntarily and understood its import as confirmed on cross-examination, and as the Claimant did not allege any misrepresentation, duress, undue influence or mistake, it is safe to conclude that both parties intended to be bound by the redundancy agreement and cannot escape its consequences.

191. Relatedly, the Claimant’s suit against the Respondent is also assailable under the equitable doctrine of promissory estoppel as exquisitely captured by Lord Denning L.J in *Combe V Combe* (1951) 2 K.B. 215 as follows;

“ . . . Where a party has by his words or conduct, made to the other a promise or assurance which is intended, to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him. He must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word.”

192. The doctrine of promissory or equitable estoppel is availed to the party sued as it is defensive not offensive.

193. Put in the alternative, it can only be relied on as a shield not as a sword. (See *Central London Property Trust Co. Ltd V High Trees House Ltd* (1947) 1 KB 130 and *Century Automobiles Ltd V Hutching Biemer Ltd* (1965) EA 304).

194. By executing the Redundancy letter which embodied the Release and Discharge Clause, the Claimant made a representation or promise or assurance to the Respondent that he would accept the payment in full and final settlement of the employment relationship and termination and additionally waived his right to pursue any other or future claim or action against the Respondent.



195. The Respondent acted on the promise or assurance and paid the amount due believing that it was in full and final settlement and thus altered its legal position in that its liability to the Claimant was discharged and it would be inequitable for the Claimant to act as though he never gave the promise or assurance to the Respondent.
196. He is estopped from filing the instant suit and must accept their legal relations based on the Redundancy letter.
197. He is estopped from filing the instant suit and the court so finds.
198. Notably, the decision of Mbaru J. in Dennis Kipngetch Koech V MKPPA Kenya Ltd delivered on 18th December, 2018 is merely persuasive and cannot be relied upon in light of binding Court of Appeal decisions on the binding nature of the discharge voucher or settlement agreement and the doctrine of promissory estoppel.
199. In the upshot, the Claimant's suit against the Respondent is unsustainable.
200. As to whether the Claimant is entitled to any of the reliefs sought, the court proceeds as follows.
201. Having found and held that the Claimant waived his right to file any claim against the Respondent in Kenya or any other country, the only relief worth considering is the claim that the Respondent paid less than what it ought to have paid the Claimant as per the Redundancy letter dated 29th May, 2020 which the Claimant signed, sum of Kshs.327,249.33.
202. Under Appendix I of the Redundancy letter, the Respondent undertook to pay the Claimant the sum of Kshs.10,364,728.83 but under what the Respondent describes as corrigendum dated 17th June, 2020, the amount payable as severance had reduced to Kshs.10,037,478.75 without any explanation.
203. When asked about it on cross-examination, RWI, Mr. Anthony Kilonzo could not explain the discrepancy and none was provided by the Respondent.
204. Counsel's attempt to fill the void in submissions by massaging the computation could not ameliorate the situation.
205. More significantly, the Claimant testified that he did not receive the document as he had already completed, signed and dispatched the Exit Checklist Form and did not sign the alleged corrigendum which purportedly altered the terms of the Redundancy letter.
206. Having found that the Redundancy letter signed by both parties was a legally binding agreement, the Respondent was bound to fulfil its part of the bargain by paying the amount promised but modified the terms unilaterally which is not acceptable in contractual relationships as they are grounded on the concept of consensus ad idem (meeting of minds).
207. The fact that the Claimant did not sign the corrigendum means that he was not bound by its terms and as he had already signed the redundancy letter whose Appendix I tabulated the amounts payable under various heads, it remained the only binding agreement between the Claimant and the Respondent.
208. In the sum, it is the finding of the court that the Claimant is entitled to the amount not paid, Kshs.327,249.33.
209. Having regard to the circumstances of this case, it is only fair that parties bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 10TH DAY OF JULY 2024



DR. JACOB GAKERI

JUDGE

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 has 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.

DR. JACOB GAKERI

JUDGE

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