



**Kenya Union of Domestic, Hotels, Educational Institutions,
Hospitals and Allied Workers (KUDHEIHA) v Moi University (Cause
E032 of 2025) [2025] KEELRC 2725 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2725 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E032 OF 2025
MA ONYANGO, J
OCTOBER 3, 2025**

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA) CLAIMANT**

AND

MOI UNIVERSITY RESPONDENT

RULING

1. Before this Court for determination are two applications. The first application is dated 9th June 2025 and is filed by the Claimant. The application seeks the following orders:
 - i. Spent
 - ii. That pending the hearing and determination of this Application inter-partes, this Honourable Court be pleased to make a temporary order staying the ongoing process of staff rationalization exercise/redundancy by Moi University against the following claimant Union Members; Lorna Cheruto Samoei, (Messenger Cleaner- Grade 1/II), Mildred Achieng Odiyo (Dining Hall Attendant -Grade 1/II) Lenah Jepngetich Sego (Clerk Grade 1/II), (Slyvia Jepchirchir Kandie(Clerk), Samuel Kinuthia Githungu(Electrician Grade II), Beatrice Ngina Muema (Sanitary Attendant), Anderson Mweni Maitha (Security Guard) Judah Jebiwot Kipyego(officer Assistant Grade II), Rotich Clotilda Jerop(Marketing Logistics),David M. Simiyu (Security Guard Grade 1/II), Abraham Snag (Security Guard -Grade I), Cynthia Jepchumba (Assistant Cateress Grade -IV), Nehemiah, J. A Odera (Sweeper -Garde I/II), Luka Cherono (Security Guard -Grade II) as communicated in the letters dated 20th May, 2025.



- iii. That pending the hearing and determination of this Application inter-partes, this Honourable Court be pleased to make a temporary order that the affected employees mentioned at paragraph 2 above are reinstated to their employment positions immediately.
 - iv. That upon hearing and determination of this Application inter-partes, this Honourable Court be pleased to make a temporary order staying the ongoing process of staff rationalization exercise/redundancy by the Moi University against the following claimant Union Members; Lorna Cheruto Samoei (Messenger/Cleaner-Grade 1/11), Mildred Achieng Odiyo(Dining Hall Attendant-Grade 1/II),Lenah Jepngetich Sego (Clerk Grade 1/II),(Slyvia Jepchirchir Kandie(Clerk),Samuel Kinuthia Githungu(Electrician Grade II), Beatrice Ngina Muema (Sanitary Attendant), Anderson Mweni Maitha (Security Guard) Judah Jebiwot Kipyego(officer Assistant Grade II), Rotich Clotilda Jerop (Marketing Logistics),David M. Simiyu (Security Guard- Grade 1/II), Abraham Snag (Security Guard-Grade I), Cynthia Jepchumba (Assistant Cateress Grade -IV), Nehemiah J. A. Odera (Sweeper -Grade I/II), Luka Cheron (Security Guard -Grade II) as communicated in the letters dated 20th May,2025.
 - v. That Pending hearing and determination of the main suit, this Honorable Court be pleased to make a temporary order staying the ongoing process of staff rationalization exercise/redundancy by the Moi University against the following Claimant Union members; process of staff rationalization exercise/redundancy by the Moi University against the following claimant Union Members; Lorna Cheruto Samoei, (Messenger/Cleaner-Grade 1/II), Mildred Achieng Odiyo(Dining Hall Attendant - Grade1/II) Lenah Jepngetich Sego (Clerk Grade 1/11), (Slyvia Jepchirchir Kandie (Clerk), Samuel Kinuthia Githungu (Electrician Grade II), Beatrice Ngina Security Guard) Judah Jebiwot Kipyego (Officer Assistant Grade II), Rotich Clotilda Jerop (Marketing Logistics), David M. Simiyu (Security Guard - Grade 1/II), Abraham Snag (Security Guard-Grade I), Cynthia Jepchumba (Assistant Cateress Grade -IV), Nehemiah J. A Odera (Sweeper-Grade I/II), Luka Cheron (Security Guard-Grade II) as communicated in the letters dated 20th May, 2025.
 - vi. That the costs of this application be in the cause.
2. The Notice of Motion is founded on the grounds set out at the foot of the application and in the supporting affidavit of Albert Njeru Obed, the Claimant's Secretary General.
 3. In brief, the Claimant contends that it represents the employment interests of the affected employees under a Collective Bargaining Agreement (CBA) with the Respondent dated 14th August 2023, which remains in force. It is argued that by letters dated 20th May 2025, the Respondent declared certain union members redundant, notwithstanding that the services performed by the said employees were not superfluous. The Claimant avers that the Respondent was in fact undertaking new recruitments to fill the same positions.
 4. The Claimant further avers that the redundancy was undertaken without due procedure, in bad faith, and without consultation, contrary to section 40 of the *Employment Act* and Article 41 of the *Constitution*. It is contended that the affected employees had undergone annual performance appraisals and had not been found incompetent. The Claimant also avers that the selection criteria applied by the Respondent was not objective. It is contended that unless the orders sought are granted, the Claimant's members will suffer prejudice resulting in a miscarriage of justice.
 5. The application is opposed. The Respondent filed grounds of opposition dated 26th June 2025, maintaining that the redundancy process was carried out in accordance with section 40 of the *Employment Act*.



6. The Respondent avers that notice of intention to declare redundancy was issued on 2nd April 2025, and a subsequent letter dated 13th May 2025 notified the Claimant of the redundancy, thereby commencing the statutory one-month notice period.
7. It is the Respondent's position that it has long struggled with salary obligations owing to dwindling government support, reduced student enrolment from approximately 50,000 to 20,000, and closure of several campuses. As a result, 72% of its income is consumed by employee emoluments, contrary to the statutory threshold of 35%.
8. The Respondent therefore avers that it is currently indebted to the tune of Kshs. 8.7 billion and the redundancy was necessitated by financial constraints.
9. It is contended that consultations were duly held with the Claimant, including a meeting on 23rd April 2025, during which the Respondent provided financial diagnostics and discussed possible alternatives to redundancy. According to the Respondent, in that meeting, views were exchanged and inquiries by the Union were satisfactorily responded to.
10. The Respondent contends that the Union acknowledged partial implementation of the return-to-work formula, an indication that consultations were meaningful and constructive.
11. The Respondent further avers that it engaged the services of PKF, an international audit firm, as an independent consultant to identify objective criteria for redundancy based on staff demographics, financial analysis, and productivity.
12. The Respondent avers that the criteria applied was a standard score analysis, objectively classifying staff for redundancy, and this was demonstrated to the Union on the meeting held on 23rd April 2025, that on 13th May 2025, redundancy letters were issued to 236 affected employees, with the Claimant acknowledging receipt on 14th May 2025.
13. The Respondent maintains that the redundancy complied with the statutory requirement of at least one month's notice and that employees were entitled to severance pay, salary in lieu of notice, payment for accrued leave, and other benefits.
14. The Respondent further asserts that it set aside Kshs. 6.7 billion to settle terminal dues and has acted in good faith.
15. It is argued that the conservatory orders issued by the Court suspend a lawful process and expose the Respondent to undue hardship, including continuing to pay salaries and remitting statutory deductions despite its financial incapacity.
16. The Respondent states that the orders were sought belatedly on 17th June 2025 after the expiry of the statutory notice period and after the redundancy process had already commenced.
17. It is contended that reversing the process would be impractical as the affected employees' dues have already been processed, and the exercise involves bureaucratic procedures relating to public funds.
18. The Respondent therefore submits that the Claimant's suit has minimal chances of success given that the Respondent adhered to all statutory and procedural requirements.
19. It is the Respondent's case that public interest demands that the redundancy be allowed to proceed so as to salvage the institution from its dire financial position. The Respondent further submits that no prejudice shall be suffered by the affected employees as they have been awarded their full terminal dues as required by law.



20. In the alternative, the Respondent argues that any loss suffered by the Claimant's members can adequately be compensated by an award of damages.
21. On the basis of the foregoing, the Respondent prays for the lifting of the conservatory orders issued by the Court and for the application by the Claimant to be dismissed.
22. The second application before the Court is the Respondent's Notice of Motion dated 26th June 2025, in which the following orders are sought:
 - i. Spent
 - ii. That an order be issued lifting, vacating, varying and/or setting aside the conservatory orders made by this Court on 25th June 2025.
 - iii. That the main suit be fixed for hearing at the earliest date possible before the Court proceeds for annual leave, owing to the sensitivity and delicacy of the matter.
 - iv. That the costs of the application be provided for.
23. The application is supported by an affidavit sworn on 26th June 2025 by Dorcas Mengich, the Respondent's Legal Officer which sets out the grounds relied upon. The Respondent's case is that the conservatory orders issued on 25th June 2025 were obtained on the basis of non-disclosure of material facts by the Claimant.
24. It is contended that the redundancy exercise had already been concluded on 13th June 2025 when the redundancy notices expired and that upon expiry of the one-month redundancy notice, the Claimant's members began the clearance process and were removed from the payroll, with their redundancy packages having been processed and being due for payment. The Respondent therefore argued that the subsisting conservatory orders, having been premised on material non-disclosure, are without basis and should be set aside.
25. The Claimant opposed the application vide the Replying Affidavit sworn on 9th July 2025 by Albert Njeru Obed, the Respondent's Secretary General where he deposes that the application lacks merit and should be dismissed with costs. According to the Claimant, the Respondent having been served physically on 18th June 2025 for the hearing scheduled on 25th June 2025 squandered the chance and as such the instant application is an afterthought.
26. The Claimant contends that the Respondent having been served knowingly and intentionally avoided proceeding with this case, and has failed to demonstrate sufficient cause for the setting aside of the orders given in their presence.
27. It is the Claimant's case that if the orders given on 25th June 2025 are lifted or set aside or vacated, the affected employees will lose their jobs immediately resulting in prejudice and further, that the services offered by the affected Claimant's members is not superfluous.
28. The applications were argued orally.
29. Learned Counsel Jaoko for the Claimant submitted that the redundancy process was fundamentally flawed both in law and procedure. According to the Claimant, the Respondent failed to consult with the Union as required under clause 10 of the Collective Bargaining Agreement (CBA) between the parties. He submitted that the CBA mandates two months' notice before any redundancy takes place, requires consultation with the Union, and stipulates that consensus must be reached before implementation.



30. It was further argued that clause 10(b) of the CBA provides that redundancy should be implemented in accordance with the principle of “last in, first out.” Counsel contended that this principle was not adhered to in the Respondent’s exercise, thereby rendering the process unlawful.
31. Counsel also contended that there was general non-compliance with section 40 of the *Employment Act*, and therefore the redundancy exercise was unlawful and ought to be nullified.
32. Counsel Jaoko submitted that although the Respondent’s audit report concluded that the Respondent was financially incapable of sustaining the affected employees, the auditor expressly indicated that the documents provided could not be relied upon for completeness or accuracy. On this basis, the Claimant averred that the audit report undermines the Respondent’s justification for the redundancy exercise.
33. Counsel further relied on the Respondent’s list of documents dated 21st June 2025 and submitted that an advertisement dated 9th May 2025 showed that the Respondent had invited applications for the same positions for which the affected Claimant’s members had been declared redundant, demonstrating bad faith on the part of the Respondent.
34. In the end, the Court was urged to dismiss the Respondent’s application and instead allow the Claimant’s application on the basis that the grounds to justify the redundancy had not been proved.
35. Learned Counsel Kigen, appearing for the Respondent, submitted that the procedure for redundancy was duly followed. He contended that the Claimant’s application dated 9th June 2025 was filed outside the statutory notice period, noting that the notice of intention to declare redundancy was issued to the Claimant on 2nd April 2025.
36. Counsel further submitted that, in compliance with section 40 of the *Employment Act*, the Claimant was invited to a consultative meeting on 23rd April 2025, which it attended and actively participated in. Counsel relied on the meeting minutes, arguing that the Claimant had the opportunity to propose alternative criteria but declined to do so, leading to the expiry of the notice and the eventual declaration of redundancy.
37. Counsel Kigen emphasized that the Respondent’s salaries and overhead expenses exceeded its income, and the auditor recommended downsizing the workforce to prevent institutional collapse.
38. The Respondent also denied the Claimant’s allegation that the positions declared redundant were subsequently advertised, asserting that the documents relied upon by the Claimant were not obtained from the official university website and were therefore unreliable. Counsel further argued that the Claimant’s application had been overtaken by events, as the affected employees had already been removed from the payroll and their terminal dues processed pending disbursement.
39. The Respondent thus urged the Court to dismiss the Claimant’s application and allow the redundancy process to proceed to its logical conclusion.
40. In rejoinder, Counsel Jaoko for the Claimant responded to the Respondent’s contention regarding the alleged job advertisements, submitting that the issue had not been raised in the Respondent’s reply and was therefore an afterthought.
41. With respect to the allegation that the affected employees had been removed from the payroll, the Claimant’s counsel maintained that no evidence had been placed before the Court to prove this assertion, and that the said employees remained in employment.



42. The redundancies that are the subject of this suit were also the subject matter in Elrc Cause No. E018 Of 2025 *Universities Academic Staff Union (uasu) V Moi University* And Elrc Cause No. E020 Of 2025 *Kenya Universities Staff Union (KUSU) V Moi University and Others.*
43. The decision therein was that the redundancies were not carried out in accordance with the law and the court quashed the same, directing the Respondent to commence the process afresh in compliance with the law.
44. Specifically the court held as follows:
145. From the foregoing it is my finding that although there is valid reason to carry out redundancies, the process has been flawed. There were no proper consultations with the Claimants and the letters issued by the Respondent to the affected employees were done prematurely before setting out an objective criteria for identification of the employees and sharing the same with all the affected parties.
146. Throughout the hearing the Respondent has not articulated what criteria was used other than pointing the court to PKF report. The report does not contain any information on the actual selection. There has been no demonstration by the Respondent that the selection was done in compliance with the provisions of section 40 of the Act.
147. The letters were also issued on after the assurance of counsel for the Respondent that the Respondent was not going to issue the letters until after the consultations directed by the court had been held. As I have already pointed out, this reflects bad faith on the part of the Respondents as the letters were dated 13th May, 2025 while the assurance was made to the court on 14th may, 2025, a day before the court session and issued immediately after the court session.
148. For the forgoing reasons I make orders as follows:
- i. The letters of termination of employment due to Financial Challenges Across All Departments dated 13th May, 2025 issued to the members of the Claimants are hereby withdrawn;
 - ii. The Respondent is free to immediately commence the redundancy process afresh in strict compliance with section 40(1) of the *Employment Act*;
 - iii. The employees to be released on redundancy are to be paid their redundancy dues in the manner provided in section 40(1) of the *Employment Act*.
145. Each party shall bear its costs.
- Orders accordingly.
45. In view of the fact that the redundancies herein arose from the same set of circumstances, as in the said suits, the employees herein are employees of the Respondent as in the other suit, the only difference being that the employees herein are represented by the Claimant union herein due to the job categories in which they worked, it is the view of this court that there is no justification in treating the employees herein differently or in spending the court's scarce time and resources hearing the parties herein when the same subject matter has already been determined in the cases referred to. The court therefore orders that the judgment and orders in ELRC Cause No. E018 of 2025 *Universities Academic Staff Union (UASU) v Moi University* as consolidated with ELRC Cause No. E020 of 2025 *Kenya Universities Staff Union (KUSU) v Moi University and Others* shall apply to this suit.

DATED, DELIVERED AND SIGNED THIS 3RD DAY OF OCTOBER, 2025.



M. ONYANGO
JUDGE

