



**Muthoka v Kiri Consult Limited (Cause E873 of 2022)  
[2025] KEELRC 2760 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2760 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E873 OF 2022  
L NDOLO, J  
OCTOBER 9, 2025**

**BETWEEN**

**WILLIAM KYALO MUTHOKA ..... CLAIMANT**

**AND**

**KIRI CONSULT LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By his Statement of Claim dated 24<sup>th</sup> November 2022, the Claimant seeks a declaration that the termination of his employment, on account of redundancy was unlawful and unfair.
2. The Respondent filed a Response dated 21<sup>st</sup> December 2022, to which the Claimant joins issue.
3. The matter travelled a winding litigation route; on 28<sup>th</sup> November 2023, I took the Claimant's testimony and scheduled the defence hearing for 17<sup>th</sup> April 2024.
4. In the intervening period however, the Claimant filed an interlocutory application, seeking leave to re-open his case, so as to produce a letter dated 16<sup>th</sup> November 2022, authored by the Respondent. By a ruling delivered on 30<sup>th</sup> May 2024, I allowed the Claimant's plea and admitted the letter dated 16<sup>th</sup> November 2022.
5. The Claimant testified on his own behalf and the Respondent called its Managing Director, Engineer Mungeria Kirimania.

**The Claimant's Case**

6. The Claimant was employed by the Respondent on 1<sup>st</sup> August 2011 as a CAD Technician. At the time of separation on 1<sup>st</sup> August 2022, he held the position of Professional Engineer, earning a monthly salary of Kshs. 150,100.



7. The Claimant accuses the Respondent of underpaying him for the months of January 2022 to September 2022. He states that he was registered as a Professional Engineer in September 2021 and in January 2022, he asked for a salary increment, in line with the permanent staff salary scale 2021-2023.
8. According to the Claimant, the Managing Director promised to review his salary in mid- 2022 with arrears dating back to January 2022. The Claimant alleges that instead of his salary being reviewed, his employment was maliciously terminated, under the guise of redundancy.
9. The Claimant avers that although his employment was terminated allegedly due to persistent low workload and poor cash inflows, the Respondent went ahead to recruit personnel to replace him.
10. The Claimant's case is that the termination of his services on account of redundancy amounted to unlawful and unfair termination. He cites the following particulars in this regard:
  - a. Terminating the Claimant's services without any lawful cause or justification;
  - b. Terminating the Claimant's services without following redundancy procedures, such as giving the Claimant and the Labour Office notice of intended redundancy, having regard to seniority and payment of severance pay;
  - c. Employing personnel to replace the Claimant;
  - d. Underpaying the Claimant for the months of January 2022 to September 2022.
11. The Claimant seeks the following remedies:
  - a. Unpaid salaries for January to September 2022.....Kshs. 449,100
  - b. Severance pay for 11 years.....1,100,000
  - c. 12 months' salary in compensation.....2,400,000
  - d. Costs plus interest

### **The Respondent's Case**

12. In its Response dated 21<sup>st</sup> December 2022, the Respondent admits the Claimant's employment status, as pleaded in the Statement of Claim.
13. The Respondent however denies the Claimant's claim that his employment was unlawfully terminated. The Respondent states that the termination was occasioned by persistent low workload and poor cash inflows, due to general business downturn in the Structural Department, where the Claimant was employed to serve.
14. The Respondent avers that through its letter dated 27<sup>th</sup> July 2022, under the reference 'Notice of Termination of Employment' it clearly outlined the reasons for termination, on grounds of redundancy.
15. The Respondent denies that the Claimant was underpaid and states that he did not meet the required qualifications under the permanent staff salary scale (2021-2013).
16. The Respondent further denies having employed any other employee in the Claimant's Department. The Respondent defends its decision as one made in good faith and in compliance with due process.

### **Findings and Determination**

17. There are two (2) issues for determination in this case:



- a. Whether the termination of the Claimant’s employment was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

### **The Termination**

18. The Claimant’s employment was terminated by letter dated 27<sup>th</sup> July 2022, stating thus:

“Dear William

Re: Notice To Terminate Employment

As discussed in our meeting held on 28<sup>th</sup> June 2022, the firm is unable to retain you in employment due to the persistent low work load in the structural Department and the poor cash inflows due to the general business downturn.

As informed in the above meeting, we hereby give a two months employment termination notice effective 1<sup>st</sup> August 2022. You are therefore expected to continue working up to end of September, 2022.

Yours faithfully,

(signed)

Eng. Mungeria Kirimania

Managing Director”

19. Section 2 of the *Employment Act* and the corresponding provision in the *Labour Relations Act*, define redundancy as:

“the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

20. While the law recognises redundancy as a legitimate separation mode, it sets stringent conditions to be met by every employer considering redundancy. These conditions are codified in Section 40 of the *Employment Act* as follows:

“ 40.

- (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
  - (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 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 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."

21. The first 2 conditions under Section 40 require every employer declaring redundancy to issue a one-month notice of intention to the affected employee(s), their union (where applicable) and the local Labour Officer. By definition, this notice should set out the reasons for and the extent of the intended redundancy.
22. It is now settled that the redundancy notice contemplated by Section 40(1) (a) and (b) is separate and distinct from the termination notice required under Section 40(1)(f) (see *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR and *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR).
23. It is also settled that consultation with the parties to be affected by the intended redundancy, is a critical ingredient of the redundancy notice.
24. In the *Kenya Airways Case* (supra) Maraga JA (as he then was) stated the following:

“The purpose of the notice under Section 40(1) (a) and (b) of the *Employment Act*, as is also provided for in....ILO Convention No. 158-Termination of Employment Convention, 1982, is to give the parties an opportunity to consider ‘measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.’ 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.”



25. The requirement for consultation was reiterated by the Court of Appeal in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) in the following terms:

“In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.”

26. Further, Article 13 of ILO Convention No. 158-Termination of Employment Convention, 1982 provides as follows:

1. When the employer contemplates termination for reasons of an economic or technological, structural or similar nature, the employer shall;
  - a. Provide the workers’ representatives concerned in good time with relevant information including the reasons for the termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
  - b. Give, in accordance with national law and practice, the workers’ representatives concerned, as early as possible an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

27. Regarding the redundancy notice, the Respondent alleges to have held a consultative meeting, which the Claimant attended. There was however no record of this meeting and the Claimant denied attending any such meeting. Ultimately, the Court did not find any evidence of a redundancy notice issued to the Claimant as required by law.

28. Section 40(1)(c) of the *Employment Act* requires an employer declaring redundancy to apply an objective selection criterion from a pool of employees. In his final submissions dated 7<sup>th</sup> June 2025, the Claimant referred to Article 15 of the Supplementary Provisions to the ILO Recommendation No 119 (1) which provides as follows:

1. The selection of workers to be affected by a reduction of the work force should be made according to precise criteria, which it is desirable should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

29. In its decision in *Gargill Kenya Limited v Mwaka & 3 others* [2021] KECA 115 (KLR) the Court of Appeal stated as follows:

“Section 40(1)(c)...requires the employer to have 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, in selecting the employees to be declared redundant...If an employer adopts criteria other than last in first out for redundancy selection, however, he must be able to show both the criteria adopted are reasonable and that he has applied those criteria rationally and objectively and, where large numbers are involved, on a reasonably structured and comparative basis.”

30. Apart from its unverified statement that there was low workload in the Structural Department, the Respondent did not explain the basis upon which the Claimant was selected for redundancy. The Respondent therefore failed the section criteria test as well.



31. In view of the foregoing, I find and hold that the termination of the Claimant's employment was unlawful and unfair.

### **Remedies**

32. I therefore award the Claimant eight (8) months' salary in compensation. In making this award, I have considered the Claimant's long service, moderated by the fact that he was paid his terminal dues, including severance pay.

33. The claim for salary arrears was not proved and is disallowed.

34. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 1,200,800 being eight (8) months' salary in compensation for unlawful and unfair termination of employment.

35. This amount is subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.

36. The Claimant will have the costs of the case.

37. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Anyonje for the Claimant

Ms. Kithinzi for the Respondent

