Ngatia & 61 others v Univeristy; University of Eldoret (Third party) (Cause E034 of 2024) [2025] KEELRC 2779 (KLR) (9 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2779 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE E034 OF 2024

MA ONYANGO, J

OCTOBER 9, 2025

BETWEEN

AGNES NGATIA & 61 OTHERS ..... CLAIMANT

AND

MOI UNIVERISTY ..... RESPONDENT

AND

UNIVERSITY OF ELDORET ..... THIRD PARTY

JUDGMENT

1. The Claimants are former employees of the Respondent who instituted this suit vide a plaint dated 8th May 2002 seeking payment of unpaid dues arising from their retrenchment, totaling to Kshs. 31,141,365. The claims are comprised of the value of unsupplied uniforms, unpaid overtime allowance, the balance of the golden handshake, training allowance, transport allowance, unpaid leave allowance, gratuity and severance pay.

2. The Claimants further sought declarations that their retrenchment was unlawful, discriminatory and in violation of their terms of service and prayed for general damages. The Claimants further prayed for costs.

3. The Claimants averred that at all material times they were employed by the Respondent in various cadres on permanent terms under written contracts of service duly executed by both parties.

4. It was their case that by undated letters titled “Notification for Retrenchment”, the Respondent, pursuant to an alleged Staff Retrenchment Program, unlawfully and discriminatorily identified them for retrenchment without prior consultation with them or their trade union.

5. The Claimants contended that the termination of their services on 31st March 2001 was unjustified, illegal and contrary to their contracts of service. They claimed that the Respondent failed to pay their

lawful dues totaling to Kshs. 31,141,365 comprising of the value of unsupplied uniforms, unpaid overtime, golden handshake, training and transport allowances, unpaid leave, gratuity, and severance pay.

6. The Claimants further averred that during the 2001/2002 Budget Speech, the Minister for Finance informed Parliament that Kshs. 7.65 billion had been spent on retrenchment of public servants, including officers from public universities such as themselves. They argued that due to misappropriation of public funds earmarked for the exercise, their benefits were either withheld or underpaid.

7. The Claimants challenged the entire retrenchment program which they alleged was illegal, null and void, alleging violation of *the Constitution*, labour laws, and the Collective Bargaining Agreement (CBA). They further contended that the process induced breach of contract and caused them lasting economic harm and stigmatization due to them being labelled "retrenched."

8. The Respondent in its defence dated 22nd May 2002, denied the claim in its entirety and contended that the retrenchment was a government-led initiative implemented across various public institutions in line with the Civil Service Reform and Retrenchment Program (2000–2002).

9. It was the Respondent's position that the Government of Kenya, being the initiator and financier of the retrenchment program, ought to have been enjoined in the proceedings. The Respondent further stated that allocation of funds in the national budget did not mean that such funds had been received by the Respondent for the purpose of paying retrenchment benefits.

10. The Respondent maintained that the process was lawful, undertaken in the public interest and in accordance with the applicable CBA provisions.

11. It therefore prayed that the suit be dismissed with costs.

12. The Third Party filed its statement of defence dated 12th April 2022, in which it averred that the Third Party Notice issued to it by the Respondent did not disclose any reasonable cause of action against it and was therefore misconceived, untenable, and bad in law.

13. The Third Party further averred that Presidential Legal Notice No. 4 of 2010 established Chepkoilel Campus as a constituent college of Moi University and that all assets and liabilities during that period were under the direct control of the Respondent.

14. It was the Third Party's contention that the Respondent was, at all material times, in effective operational and decisional control of the institution's activities and therefore the Third Party was not privy to, nor responsible for, any claims arising from the Respondent's operational decisions.

15. The Third Party further stated that the claim for contribution and indemnity brought against it was premised on a handover report and agreement dated 15th December 2014 and that the issuance of the Third Party Notice was time-barred by law.

16. It was also averred that there was never any intention to create a legal relationship between the Third Party and the Respondent with respect to the subject matter of this claim.

17. The Third Party maintained that as at the time the cause of action arose, it was not in existence as a corporate entity, having only been granted a charter on 11th February 2013.

18. Accordingly, the Third Party asserted that its joinder in these proceedings was unnecessary, as the Claimants had no direct claim or cause of action against it.

19. The Third Party further contended that any alleged liability arose after the Respondent's liability to the Claimants had already crystallized and therefore no claim for contribution could properly issue against it.

20. In conclusion, the Third Party urged the Court to dismiss the Respondent's claim against it with costs.

The Evidence

21. CW1, Joseph Ng'ang'a Mungai, testified that he was employed at Moi University, Chepkoilel Campus, as a carpenter from October 1990 until March 2001, when he was retrenched vide a letter dated 26th March 2001. The letter indicated the amount payable to him, but he stated that he was not paid the full package, hence his claim for various unpaid dues amounting to Kshs. 31,000 for uniform, leave allowance of Kshs. 2,102, golden handshake of Kshs. 225,252, training allowance of Kshs. 40,000, transport allowance of Kshs. 30,500, severance pay of Kshs. 98,910, and gratuity of Kshs. 98,910.

22. On cross-examination, he stated that he was a member of the trade union and that his salary and allowances were negotiated between the union and the Respondent. He maintained that the terms of the Collective Bargaining Agreement (CBA) should have been applied.

23. He further testified that his leave application was rejected, though he did not retain a copy of the application. He stated that the retrenchment training was meant to take place before the exercise but was never conducted. The issue of training, he noted, was neither mentioned in the retrenchment letter nor provided for in the CBA. He added that transport allowance was not included in the CBA, save for baggage and luggage allowance. Similarly, the golden handshake was not provided for under the CBA. He explained that under clause 42 of the CBA, gratuity was provided at 20 days for each completed year of service, while severance pay was pegged at 25 days per year.

24. CW2, John Sikuku Mutoro, testified that he was employed in 1996 as a Laboratory Assistant and served until March 2001. He stated that in February 2001, they were informed of the impending retrenchment and were later issued with letters to that effect. He was paid severance, one month's basic salary for every year worked amounting to Kshs. 20,160, gratuity of Kshs. 20,160, three months' salary in lieu of notice of Kshs. 17,280, passage and baggage allowance of Kshs. 4,465, and a golden handshake of Kshs. 45,000. He stated that the payment was unsatisfactory and thus claimed additional dues, including compensation for uniform and protective clothing of Kshs. 11,360, training allowance of Kshs. 40,000, leave allowance of Kshs. 1,886, unpaid handshake of Kshs. 225,252, transport allowance of Kshs. 30,000, gratuity of Kshs. 30,240, and severance pay of Kshs. 30,240, totaling Kshs. 368,978.

25. On cross-examination, he confirmed that he signed an appointment letter and admitted that he had not provided evidence of how he arrived at the claimed figures for uniform, leave and training allowances. He acknowledged that training was not provided for in the Memorandum of Agreement, which only reflected provisions under the Civil Service Reform Plan that did not specify monetary payments. He conceded that the golden handshake was not part of the CBA and was essentially an employer's goodwill payment. He also admitted that his claim for transport allowance was not based on any contractual or CBA provision. Regarding gratuity, he stated that clause 42 of the CBA provided for the same for employees engaged prior to 1st April 1966 (or 1st July 1997 for female employees), which did not apply to him.

26. He contended that his letter of appointment and the Memorandum of Agreement did not provide for severance pay and his computation of the same was based solely on the retrenchment plan, which was not incorporated into his contract of employment.

27. Francis Kemboi Tiony (CW3) testified that he was employed by the Respondent on 1st September 1990 as a cleaner and later rose to the position of acting Stores Clerk at the time he left employment on 27th March 2001. He produced his letter of appointment issued by Dr. J.K. Sang, the Chief Administrative Officer, which indicated that his terms of service entitled him to work until the age of fifty-five (55) years. However, he stated that he was retrenched at the age of forty-four (44) years, having served the Respondent for a period of eleven (11) years.

28. CW3 testified that the Claimants only learnt of the impending retrenchment through newspapers and word of mouth from other persons. He stated that he was a member and official of the KUDHEIHA Union. On 27th March 2001, he was summoned by the Finance Officer and issued with a retrenchment letter without prior consultation or notice.

29. He maintained that neither he nor other union members participated in any consultative meeting regarding the retrenchment and that no notice was issued to the union. He asserted that the entire process was irregular, unlawful and contrary to the procedure set out in the Collective Bargaining Agreement (CBA).

30. According to him, the CBA provided that employees were to serve until the age of 55 years and where early retirement was to be effected, the employees were required to be notified and sensitized beforehand.

31. He further testified that following the retrenchment, their advocate issued a demand letter to the Respondent, to which Dr. Sang responded stating that the employees had been declared redundant, not retrenched. CW3 maintained that the legal basis for the benefits sought in this suit is derived from the CBA, the terms of service, the retrenchment guidelines, the *Employment Act* and Moi University's internal procedures which, according to him, were not followed by the Respondent.

32. He averred that the Golden Handshake was provided for in the 2000/2001 budget, which indicated that each retrenchee was to be paid Kshs. 240,000. However, the amount awarded by the Respondent was less. He therefore urged the Court to grant the reliefs sought in the Plaint.

33. Upon cross-examination, CW3 stated that they were not personally notified of the retrenchment. However, as members of the union, they were informed of the retrenchment program between the World Bank and the Government of Kenya. He further stated that, as indicated in his witness statement, he had given his proposal based on the "last in, first out" principle provided for under the CBA, but that principle was not followed.

34. He testified that his letter of termination indicated the amount paid to him. He further stated that they are claiming payment for unsupplied uniforms to which they are entitled under the CBA. He added that they also claimed unpaid overtime allowances but could not specify when each of them worked overtime, as all employment records are in the custody of the Respondent. He conceded that neither the appointment letter nor the CBA provided for a Golden Handshake. He also conceded that there is no express provision for training allowance in the CBA, although it provides for training sensitization without specifying the amount payable. He noted that transport allowance is provided for under clause 11 of the terms of service.

35. He further testified that they claimed unpaid leave dues, as there were certain years in which they did not proceed on leave.

36. Upon re-examination, CW3 maintained that he did not participate in the retrenchment process. He stated that when they first heard about the retrenchment, they went to the administrative offices and were informed that they would be called when the issue arose, but they were never called.

37. He added that the modalities of the retrenchment were never discussed and that the budget speech on Public Sector Reform indicated that the retrenchment package was expected to be approximately Kshs. 240,000.

38. The Respondent called Emily Veronica Kiboss, its Deputy Registrar and Head of Human Resources, who testified as RW1. She adopted her witness statement dated 5th April 2024 as her evidence-in-chief and relied on the list of documents filed by the Respondent on 7th June 2025 as part of her evidence.

39. Upon cross-examination by Counsel Anditi, RW1 stated that she was not aware of any Transfer of Assets Agreement between Moi University and the University of Eldoret dated 15th December 2014. She further testified that she was not the officer in charge of Human Resources at the time the retrenchment exercise was undertaken. She clarified that the retrenchment was conducted when Chepkoilel was still a campus of Moi University and that all administrative functions at the time were vested in Moi University. She confirmed that as at the time of retrenchment, all affected staff were employees of Moi University.

40. She further testified that in 2013, there was a reorganization occasioned by the enactment of the *Universities Act*, which necessitated the re-chartering of universities. She explained that Moi University operated under a charter and that the Moi University Charter facilitated the transfer of assets from Moi University (1985) to Moi University (2013).

41. She added that, pursuant to clause 5.3.3 of the Moi University Charter, 2013, all assets and liabilities of Moi University (1985) were transferred to Moi University (2013).

42. RW1 reiterated that the retrenched staff were employees of Moi University up to the time Chepkoilel Campus attained university status. She clarified that all letters relating to the retrenchment process were issued by Moi University and that at the time of retrenchment, the University of Eldoret did not exist as a separate legal entity, as Chepkoilel was still a constituent campus of Moi University.

43. She further stated that meetings were held to deliberate on the handover of assets and liabilities, as evidenced by the minutes of a meeting held on 9th July 2014 at Moi University, produced as Document No. 2 in the Third Party's List of Documents dated 21st September 2023. She clarified that in the said minutes, the representatives of Moi University and the University of Eldoret were duly designated, but there was no mention of staff being categorized as part of the assets and liabilities to be transferred.

44. On cross-examination by Counsel Andama, RW1 maintained that she was involved in implementing the Collective Bargaining Agreement (CBA) and that she participated as one of the negotiators. She stated that the retrenchment was carried out in compliance with a government directive and that members of KUDHEIHA were both sensitized and actively involved in the process. RW1 further explained that the selection of employees for retrenchment followed the "last in, first out" principle.

45. RW1 confirmed that notice was provided prior to retrenchment and that affected employees were paid three months' salary in lieu of notice. She reiterated that the retrenchment was a government initiative, and that the university received a specific allocation of funds for this purpose. RW1 detailed that the retrenchment benefits included a "golden handshake" of Kshs 45,000, severance pay calculated at 20 days per year of service, and gratuity. She added that Moi University provided uniforms to the retrenched employees and granted days off in lieu of overtime worked. Regarding training allowances, RW1 stated that KUDHEIHA members were not entitled to payment of the same as they were not required to attend any training. Finally, she indicated that she was not aware that each employee was supposed to receive Kshs. 240,000 as per the budget speech of Hon. Okemo, beyond the amounts that were actually paid.

46. On re-examination, RW1 confirmed that at the time of the retrenchment, Chepkoilel Campus was part of Moi University and that the retrenched employees were staff of Moi University stationed at Chepkoilel Campus. She further stated that all employees retrenched both at Chepkoilel Campus and the main campus were paid a golden handshake.

47. CPA Elga Samoei, the Respondent's Acting Chief Accountant, testified as RW2. She adopted her witness statement recorded on 5th April 2024 as her evidence in chief.

48. On cross-examination by Counsel Anditi, RW2 stated that Moi University and the University of Eldoret are completely separate entities. She explained that Moi University was chartered in 2013 and that all assets of the former Moi University (established in 1985) were transferred to Moi University under the 2013 Charter. She further stated that the University of Eldoret was also chartered in 2013 and that there were no provisions relating to the transfer of assets and liabilities between the two institutions. According to her, section 33 of the transition provisions made no reference to financial liabilities, as the charter only addressed the transfer of students who were completing their courses. She added that the handing-over agreement between Moi University and the University of Eldoret did not mention retrenchment costs as either assets or liabilities.

49. On cross-examination by Counsel Wahome, RW2 stated that the retrenched employees were paid funds received from the government amounting to Kshs. 36,275,101. She confirmed that there were no payments made for uniforms or overtime.

50. The Interested Party called its Head of Council Secretariat, Joyce Kipkemboi Maina, who testified as RW3. She adopted her witness statement recorded on 21st September 2023 as her evidence in chief and relied on the documents filed by the Interested Party in support of its case.

51. RW3 testified that she was familiar with the partial handing-over agreement between Moi University and the University of Eldoret. She stated that the agreement made no reference to liabilities or to any responsibility for retrenched employees. When referred to the minutes of the meeting held on 9th July 2014, RW3 stated that she did not recall any mention or agreement regarding the retrenchees of Moi University. She further testified that the University of Eldoret Charter, produced as Exhibit 3 in the Interested Party's list of documents made no reference to the transfer of liabilities and that the transition clause only addressed the transfer of students.

52. On cross-examination by Counsel Odwa, RW3 stated that there existed an agreement between Moi University and the University of Eldoret which had not been rescinded. She added that the University of Eldoret had agreed to take over assets and liabilities handed over by Moi University. She confirmed that she attended the handover meeting, but this case was not among the issues discussed during that meeting.

53. During cross-examination by Counsel Waweru, RW3 stated that from the minutes of the handover meeting, the current case was not mentioned and the issue of retrenchment was not discussed as a liability.

54. After the parties closed their respective cases, the Court directed them to file written submissions. The Claimants, the Respondent, and the Interested Party duly complied and filed their submissions as directed.

The Claimants' submissions

55. In their submissions, the Claimants identified the issues for determination to be: -

    i. Whether the staff retrenchment program conducted by the Respondent violated the law

ii. Whether the Claimants ought to be granted the reliefs sought

iii. Who should have the costs of the suit

56. On the first issue, the Claimants submitted that the Government had initiated an ambitious plan known as the Public Universities Reform Program, 2001, whose objective was to ensure that the civil service became leaner and more efficient. This objective was to be achieved through a Staff Retrenchment Program targeting certain categories of civil servants. The Claimants contended that the retrenchment exercise undertaken by the Respondent did not conform to the provisions or objectives of the Public Universities Reform Program, 2001, notwithstanding that it was already in force prior to the retrenchment of the Claimants.

57. The Claimants submitted that the Respondent conducted the retrenchment exercise in bad faith by failing to consult or give proper notice to the Claimants. They asserted that the Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA), their recognized trade union, was not consulted as required under the Collective Bargaining Agreement (CBA) between the parties. They further referred to Chapter Four of the Guidelines for Retrenchment in Public Universities, which outlines the procedural steps to be followed during such exercises. Step No. 2 specifically requires that affected employees be sensitized through training, issuance of circulars, meetings, seminars, and workshops before retrenchment, and that their safety-net benefits be paid. The Claimants argued that no such sensitization or preparatory measures were undertaken, making their transition from public service to unemployment abrupt and unduly harsh.

58. It was the Claimants' further submission that the retrenchment process was expected to be logical, transparent, objective, and methodical. However, the Respondent failed, neglected, or refused to disclose the criteria used in identifying the Claimants for retrenchment. Apart from the general denials contained in its Defence dated 22nd May 2002, no credible evidence was adduced to justify the selection process. The Respondent failed to demonstrate the method applied in identifying the retrenchees, leading to the conclusion that the Claimants were unfairly targeted, victimized, and discriminated against. The Claimants argued that the Respondent was required to consider employees' skill, merit, ability, and reliability, as set out in the Memorandum of Understanding between the Respondent and the Claimants' trade union. The Respondent's failure to do so, they contended, rendered the entire process arbitrary and unlawful.

59. The Claimants maintained that since the retrenchment program would result in loss of employment, they were entitled to a fair opportunity to participate in the process through consultations with their trade union. Instead, the Respondent made a unilateral decision without involving the Claimants or their representatives and thereafter imposed strict timelines for compliance. They submitted that such conduct was insensitive and in blatant violation of the rules of natural justice, particularly the audi alteram partem principle.

60. The Claimants further submitted that the process was marred by a lack of transparency. They referred the Court to the Budget Speech for the fiscal year 2001–2002 by the then Minister for Finance, which indicated that Kshs. 7.65 billion had been allocated for retrenchment in public universities. A copy of the said speech was produced in their bundle of documents. They argued that the fact that they were not fully and properly paid their entitlements points to mismanagement and/or embezzlement of the funds allocated for the exercise.

61. They urged the court to find and declare that the retrenchment of the Claimants by the Respondent University was fundamentally flawed, unlawful, and void ab initio. They further urged the Court to

convert the retrenchment into normal termination of employment for those Claimants who had not attained the mandatory retirement age and to order adjustment of their dues accordingly.

62. On whether the Claimants are entitled to the reliefs sought, it was submitted that the documentary and oral evidence presented in Court sufficiently established that the Claimants were employees of the Respondent; that their contracts of service were unlawfully terminated; and that the retrenchment exercise failed to comply with the applicable laws, regulations, and labour policies. Consequently, the Respondent's actions caused the Claimants unwarranted economic hardship and violated their rights under the CBA and general labour law.

63. The Claimants maintained that there was a complete failure on the part of the Respondent to cushion them from the economic and social hardships that were foreseeable consequences of the retrenchment exercise. They therefore urged the Court to hold the Respondent liable for the loss and suffering occasioned to them.

64. In conclusion, the Claimants urged the Court to find in their favour and to award them the reliefs sought in the Plaint.

The Respondent's submissions

65. The Respondent in its submissions dated 7th February 2025 framed the issues for determination to be: -

    i. Whether the termination of the Claimant's employment was unlawful

    ii. Whether the Claimant is entitled to the relief sought

    iii. Whether the third party should be called upon to settle any award made against the Respondent

66. The Respondent submitted that the Claimants' termination was lawful, procedural, and justified, having arisen from a Government-initiated retrenchment program rather than a unilateral decision by the Respondent.

67. It was the Respondent's contention that the Claimants' letters of appointment and the Moi University Terms of Service expressly allowed termination by either party upon issuance of notice or payment in lieu thereof. A similar provision existed in the Memorandum of Agreement between Moi University and KUDHEIHA.

68. The Respondent argued that the retrenchment exercise was implemented pursuant to a government directive aimed at reducing the public sector wage bill through restructuring of public institutions. Consequently, the Respondent merely executed this national policy and did not act independently.

69. The Respondent averred that prior to implementing the retrenchment, it held consultative meetings with the Claimants and their union representatives in line with section 16A of the repealed *Employment Act* (Cap 226). The Respondent maintained that the meetings and the public announcements made by Government sufficiently satisfied the statutory requirement for notice.

70. It was further submitted that in carrying out the retrenchment, the Respondent applied the "last in, first out" principle in accordance with the Memorandum of Agreement between the Respondent and the Claimants' union.

71. The Respondent stated that it exercised its discretion to pay the Claimants three (3) months' salary in lieu of notice, which was over and above the two months' notice provided in both the Terms of Service and the collective agreement with KUDHEIHA.

72. In addition, the Claimants were paid severance pay at the rate of one month's salary for each completed year of service, which exceeded the minimum fifteen (15) days' pay per year of service provided under section 16A(1)(f) of the repealed *Employment Act*.

73. Accordingly, the Respondent maintained that the reasons for termination were valid, the process followed was lawful and fair, and the allegations of illegality or discrimination were unsubstantiated.

74. On that basis, the Respondent urged that the Claimants' claims for unlawful termination and discrimination should fail in their entirety.

75. The Respondent further submitted that the claims in respect of deceased Claimants had abated, as no substitution had been made by duly appointed legal representatives.

76. It was also contended that only three (3) out of over fifty (50) Claimants testified, while the rest failed to adduce any evidence in support of their claims, and thus, they are not entitled to any relief.

The Third Party Submissions

77. In its submissions dated 25th March 2025, the Third Party submitted that the Respondent's alleged right to seek contribution from it arose when the Claimants instituted these proceedings against the Respondent in May 2002. The Respondent filed its defence on 22nd May 2002 but did not seek to serve a Third Party Notice upon the Third Party until 7th December 2021 approximately nineteen (19) years later.

78. The Third Party contended that there is nowhere in the Transfer of Assets and Liabilities Agreement where the Respondent and the Third Party agreed that the Third Party would assume liability for obligations arising from the retrenchment exercise.

79. According to the Third Party, a perusal of the said agreement between Moi University and the University of Eldoret reveals that the issue of retrenched staff did not feature, and as such, no agreement existed between the two institutions in respect of the retrenchees.

80. The Third Party further submitted that the indemnity sought by the Respondent is contractual in nature since it is premised on the alleged agreement between Moi University and the University of Eldoret dated 15th December 2014. Consequently, the Third Party argued that the Respondent's claim cannot be sustained after the expiry of the six-year limitation period prescribed for enforcement of contractual obligations under the *Limitation of Actions Act*. It was therefore the Third Party's submission that the Respondent's claim against it is statute-barred by reason of effluxion of time.

81. The Third Party further contended that it received its Charter on 11th February 2013 and by that time, the subject litigation was already in existence and squarely concerned the Respondent. None of the sixty-one (61) Claimants were handed over to the Third Party since they had exited employment long before the Third Party was chartered in 2013.

82. The Third Party maintained that the Respondent exercised direct control and authority over the retrenchment process conducted in 2001. It noted that the Chepkoilel University College Order, 2010 made Chepkoilel Campus a constituent college of Moi University, with all assets and liabilities remaining under the control of Moi University.

83. It was the Third Party's submission that all the Claimants were employees of Moi University and that the employer contemplated in law was Moi University. The employment records of the Claimants were, and still are, in the custody of Moi University.

84. The Third Party emphasized that the University of Eldoret has never had employment contracts with any of the Claimants, nor has there been any contractual relationship between Moi University and the University of Eldoret concerning the Claimants or any liabilities arising from their employment. The University of Eldoret Charter, which established the University in 2013, contains transitional provisions which clearly indicate that the University of Eldoret was a new legal entity de-linked from Chepkoilel University College.

85. In conclusion, the Third Party submitted that the dispute arises from a retrenchment exercise carried out by the Respondent (Moi University) against the Claimants in March 2001 at a time when the University of Eldoret was not in existence. The Third Party therefore urged the Court to find that it bears no liability for the Respondent's actions.

Determination

86. Having carefully considered the pleadings, the evidence adduced by the parties, the submissions on record, and the applicable law, the following issues arise for determination: -

    i. Whether the retrenchment of the Claimants by the Respondent was unlawful, unfair, or discriminatory;

    ii. Whether the Claimants are entitled to the reliefs sought;

    iii. Whether the Third Party, University of Eldoret, bears any liability or contribution in this matter; and

    iv. Who should bear the costs of the suit.

Whether the retrenchment of the Claimants by the Respondent was unlawful, unfair, or discriminatory;

87. The Claimants alleged that the retrenchment was unlawful, discriminatory and contrary to the Collective Bargaining Agreement (CBA) and the *Employment Act*. Their contention was that there was no prior consultation or notice to the affected employees or their union, KUDHEIHA. They further argued that the process was not transparent and that the selection criteria were unfair.

88. The Respondent on the other hand maintained that the retrenchment was a government-led initiative implemented across all public institutions under the Civil Service Reform and Retrenchment Program (2000–2002). It was the Respondent's case that the process was carried out lawfully, in consultation with the relevant stakeholders, and in line with the prevailing government directive and CBA provisions.

89. From the evidence, it is not disputed that the retrenchment was initiated by the Government of Kenya and implemented through the Respondent, Moi University. RW1 confirmed that the retrenchment was a government directive and that the university merely executed the policy. She also testified that members of KUDHEIHA were sensitized and involved, and that selection followed the "last in, first out" principle.

90. However, CW3's testimony contradicts this position. He asserted that neither the employees nor the union were consulted and that they only learned of the retrenchment through media reports and third parties. No documentary evidence was produced by the Respondent to show minutes of consultative meetings with KUDHEIHA prior to the retrenchment, nor notices served to individual employees or the union.

91. In redundancy or retrenchment situations, section 16A of the repealed *Employment Act* (Cap. 226) and the principles later codified under section 40 of the *Employment Act*, 2007, require that the employer gives due notice to the employee, the relevant union and the local Labour Officer. Further, that the selection criteria complies with the Act, being last in first out, ability, reliability and performance.

92. The third party in its list of documents dated 21st September 2023 attached a bundle of retrenchment letters addressed to some of the Respondent's employees.

93. Although the Respondent asserted that the retrenchment was conducted in accordance with the Government's Civil Service Reform Program, the evidence on record does not demonstrate compliance with the procedural requirements of section 16A of the repealed *Employment Act* (Cap. 226).

94. In particular, there was no evidence that the Respondent issued a formal written notification to the employees' union, KUDHEIHA, or to the local labour officer, outlining the reasons for and the extent of the intended retrenchment. The requirement for prior consultation and notice to the union was mandatory, and absence of proof of such notification rendered the process procedurally defective.

95. Moreover, the retrenchment letters produced in court were undated, casting doubt on whether proper notice was ever issued to the affected employees. The absence of clear dates also undermines the Respondent's claim that the Claimants were accorded adequate notice or that consultations were properly undertaken before termination.

96. In the circumstances, while the reason for retrenchment may have been genuine, being a government-initiated cost reduction exercise, the procedure adopted by the Respondent fell short of the statutory requirements.

97. The failure to involve the union or to issue proper notice renders the retrenchment process irregular.

Whether the Claimants are entitled to the reliefs sought

98. The Claimants sought payment of Kshs. 31,141,365 being alleged unpaid dues arising from the retrenchment exercise. The specific components claimed include the value of unsupplied uniforms, unpaid overtime, golden handshake, training and transport allowances, unpaid leave, gratuity, and severance pay.

99. The Respondent stated that it made payments to the retrenched employees which they maintained were in accordance with government guidelines and the Collective Bargaining Agreement (CBA). RW1 testified that each retrenched employee received a golden handshake of Kshs. 45,000, severance pay calculated at 20 days pay for every completed year of service, gratuity and three months' salary in lieu of notice.

100. On the claim for value of unsupplied uniforms, the Claimants sought payment for the value of uniforms allegedly not supplied prior to retrenchment. However, no documentary evidence, requisition records, or procurement correspondence was produced to support the alleged entitlement. In the absence of credible proof of entitlement or quantification, the claim for the value of unsupplied uniforms is unsubstantiated and fails.

101. On the claim for unpaid overtime allowances, the Claimants alleged that they worked beyond normal hours without compensation. However, no overtime sheets, duty rosters, or approvals from supervisors were produced to verify that overtime was worked and unpaid. The Court reiterates that the burden of proof lies on the employee under section 107 of the *Evidence Act*. The Court finds that the claim for Kshs. 29,210 as unpaid overtime is not proved and is dismissed.

102. The Claimants also sought to be paid the balance of retrenchment package being golden handshake, training allowances and transport allowances.

103. On the claim for golden handshake, the Claimants contended that during the 2001/2002 National Budget Speech, the then Minister for Finance, Hon. Chris Okemo, informed Parliament that the Government had allocated Kshs. 7.65 billion towards the cost of retrenchment of public servants, including those in public universities under the Civil Service Reform and Retrenchment Program (2000–2002).

104. They asserted that according to the said speech, each retrenched employee under the Public Universities Reform Program was to receive approximately Kshs. 240,000 as golden handshake. CW1, CW2 and CW3 testified that they were each paid Kshs. 45,000, leaving an unpaid balance which they sought to recover under the head of "balance of retrenchment package and golden handshake" amounting to Kshs. 13,289,868.

105. The Respondent did not dispute the existence of the Budget Speech but maintained that it was not aware that each employee was supposed to receive Kshs. 240,000 as per the budget speech of Hon. Okemo, beyond the amounts that were actually paid.

106. The only evidence relied upon by the Claimants was the Budget Speech for the fiscal year 2001–2002 by Hon. Chris Okemo, which allocated Kshs. 7.65 billion for retrenchment of public servants. No evidence was adduced by the Claimants that the funds were actually disbursed to the Respondent or that there was a decision to pay the golden handshake at the rate of 240,000 and not Kshs. 45,000 that was paid. I find that this prayer was not proved.

107. On the issue of training and transport allowances, the CW1, CW2 and CW3 conceded during cross-examination that the CBA did not expressly provide for such payments.

108. With respect to the alleged unpaid leave allowances, CW3 conceded that he could not specify the exact periods during which each employee failed to proceed on leave. In the absence of employment records or any other documentary evidence substantiating these claims, the Court is unable to verify or quantify such entitlements.

109. As regards severance pay and gratuity the safety net benefits cheque release schedule annexed to the Claimant's trial bundle at page 493 to 494 confirm that these payments were made to all affected employees. The Claimants did not provide contrary evidence to demonstrate underpayment or non-payment.

110. Consequently, although the Court has found that the retrenchment process was procedurally flawed, the Claimants have not proved, on a balance of probabilities, that they were not paid the benefits due to them under the retrenchment package. Their claim for Kshs. 31,141,365 is therefore unsubstantiated.

111. However, given the Court's finding that the retrenchment procedure was defective for want of prior notice and consultation with the union, the termination by way of retrenchment amounted to an unfair termination of employment. The Claimants are consequently entitled to compensation for unfair termination. The procedural unfairness vitiates what would otherwise have been a lawful redundancy or retrenchment.

112. In assessing appropriate relief, the Court is guided by the principle that where redundancy or retrenchment is substantively justified but procedurally unfair, compensation rather than reinstatement is the most suitable remedy. (See Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR and Kenya Plantation & Agricultural Workers Union v James Finlay (K) Ltd [2018] eKLR).

113. Considering that the retrenchment arose from a government policy and affected multiple public institutions, and further that the Respondent paid substantial terminal dues, the Court finds that an award equivalent to four (4) months' consolidated salary (basic salary plus house allowance) for each Claimant would constitute fair and reasonable compensation for the procedural unfairness. The court accordingly awards the same to each Claimant.

114. The Claimants also sought general damages for alleged emotional distress, loss of dignity, and stigmatization arising from the retrenchment. While the Court has found that the retrenchment procedure was procedurally flawed for want of notice to the union, there is no evidence to prove that the Claimants suffered any emotional distress, loss of dignity or stigmatization as a direct consequence of the retrenchment. The Claimants further did not address the issue whether such loss or damage is compensable under employment contractual remedies or how such damages have been computed.

115. In the absence of such evidence, the Court is unable to award general damages. The prayer for general damages is therefore declined.

Whether the Third Party, University of Eldoret, bears any liability or contribution in this matter

116. The Third Party, University of Eldoret, was joined to these proceedings on account of the alleged transfer of assets and liabilities from the Respondent following the Presidential Legal Notice No. 125 of 2010, which established Chepkoilel University College as a constituent college of Moi University, and the subsequent Charter granted on 11th February 2013.

117. The Court has examined the Partial Handing Over of Assets and Liabilities Agreement dated 15th December 2014 between Moi University and the University of Eldoret. There is no clause or reference therein assigning to the Third Party any liability relating to employees retrenched in 2001, nor any indication that the Third Party assumed responsibility for employment-related obligations that had accrued prior to its establishment.

118. It is therefore clear that the retrenchment having occurred in March 2001, more than a decade before the Third Party's incorporation as a chartered university, the liability in respect of the retrenchees remained squarely with the Respondent, Moi University. The Third Party could not in law or equity be held accountable for actions or liabilities arising before its existence as a legal entity.

119. Consequently, the Court finds that the claim for contribution or indemnity against the Third Party is misconceived, without legal foundation, and unsustainable. The Third-Party notice dated 7th December 2021 is accordingly dismissed with no orders as to costs.

120. In view of the foregoing, the Court makes the following orders: -

    i. A declaration is hereby made that the retrenchment of the Claimants by the Respondent was procedurally unfair for want of notice to the employees, employees' union and Labour Officer.

    ii. The Respondent shall pay each of the sixty-two (62) Claimants compensation equivalent to four (4) months' consolidated salary based on their last rate of pay for the procedural unfairness in the retrenchment process.

    iii. The prayer for payment of golden handshake at Kshs. 240,000 was not proved and is dismissed.

    iv. All other claims, including for uniforms, training, transport allowances, leave dues and overtime allowance are dismissed for want of proof.

    v. ach party shall bear its own costs.

DATED, DELIVERED AND SIGNED THIS 9TH DAY OF OCTOBER, 2025.

M. ONYANGO

JUDGE