



**Nyabala v Special Olympics Kenya (Cause E534 of 2023)
[2025] KEELRC 2723 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2723 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E534 OF 2023
SC RUTTO, J
OCTOBER 3, 2025**

BETWEEN

RAPHAEL OGUTU NYABALA CLAIMANT

AND

SPECIAL OLYMPICS KENYA RESPONDENT

JUDGMENT

1. The Claimant avers that he was employed by the Respondent as the National Director/Chief Executive Officer under a five-year fixed-term contract running from 1st August 2020 to 31st July 2025. He asserts that throughout his tenure, he diligently performed his duties, fully complied with all contractual obligations, and consistently demonstrated competence and satisfactory performance. In addition, he successfully secured several grants for the Respondent organization.
2. The record reflects that the Claimant's employment was terminated on account of redundancy. In the Claimant's view, the termination was unjustified and without a valid basis.
3. Arising from the foregoing, the Claimant seeks from the Respondent the sum of Kshs. 13,003,846/= comprising one month's salary in lieu of notice, salary for the unexpired term of the contract, accrued leave, and compensation for unlawful termination. He further prays for a declaration that his termination was unlawful, together with costs of the suit and interest.
4. In its response to the Claim, the Respondent denies that the termination of the Claimant's employment was unjustified, without a valid reason, or wrongful. It further denies breaching the contract and asserts that the termination was carried out in full compliance, both procedurally and substantively, with Section 40 of the *Employment Act*. The Respondent therefore maintains that the Claim is without merit and prays for its dismissal with costs.
5. In reply to the Respondent's Response, the Claimant contended that the letter dated 13th February 2023 was merely intended to sanitize his unlawful and malicious termination. He maintained that he



first learned of the Respondent's intention to terminate his employment from the Board Chairperson and Secretary.

6. The Claimant further asserted that the creation of new positions to perform his duties demonstrated that there was no justification for declaring his position redundant.
7. The matter proceeded for hearing on 17th March 2025 and 28th May 2025, during which both parties called oral evidence in support of their respective cases.

Claimant's Case

8. The Claimant testified in support of his case and for starters, he adopted his witness statement to constitute his evidence in chief. He also produced his initial list and bundle of documents, further list and bundle of documents and second further list and bundle of documents, as his exhibits before the Court.
9. The Claimant stated that on or about 7th March 2023, the Respondent's Board Chairman, Mr. Thuo Cege, and the Board Secretary, Mr. Dennis Ndambo, invited him for lunch, during which they informed him of an ultimatum from the Managing Director (President of the Special Olympics Africa Region). He was told to either resign voluntarily or face termination due to issues concerning the submission of a report to UNICEF, one of the Respondent's donors.
10. When he sought guidance on the reason to give for his resignation, Mr. Cege and Mr. Ndambo advised him to cite personal reasons. According to the Claimant, he was given three days, up to 10th March 2023 at 2:00 p.m., to provide his response.
11. The Claimant averred that on 9th March 2023, he sent an email to Mr. Cege, copying other members of the Respondent's Board, seeking clarification on whether he would be paid his expected salary for the remaining two and a half years of his contractual term, given that his contract was for a period of five years. However, he did not receive any response.
12. It was the Claimant's testimony that on 15th March 2023, he received a letter from the Respondent terminating his employment on grounds of redundancy.
13. The Claimant contended that the Respondent's decision to terminate his employment was in breach of his contract and violated his legitimate expectations.
14. In the Claimant's view, the reason advanced by the Respondent for the redundancy being that it was a matter of strategic direction in programme management was unfounded. According to him, the Respondent never intended to abolish the position of National Director/Chief Executive Officer, as he himself had participated, alongside Ms. Evelyn Saidah, in preparing the organization's structure.
15. The Claimant added that the Respondent failed to formally declare his position as National Director/Chief Executive Officer redundant, contrary to the requirements of the law.
16. The Claimant maintained that his termination was unlawful, malicious, and procedurally unfair, and that it was effected prematurely as his contract still had an unexpired term of two and a half years.

Respondent's Case

17. The Respondent called oral evidence through Mr. Thuo Cege (RW1), who identified himself as the Chairman of the Respondent's Board. Similarly, he adopted his witness statement to constitute his evidence in chief. He proceeded to produce the Respondent's list and bundle of documents, as exhibits before the Court.



18. RW1 denied the Claimant's assertions that the Managing Director/President of Special Olympics Africa Region had issued him with an ultimatum to either resign or face termination, or that the Claimant had been given a three-day deadline.
19. RW1 testified that due diligence was undertaken and that the Respondent carefully complied with the requirements of Section 40 of the *Employment Act* in effecting the Claimant's termination on account of redundancy.
20. He further stated that between July 2022 and January 2023, the Respondent initiated an internal reorganization of its program management operations with a view to enhancing efficiency and aligning its structure to its strategic direction.
21. Prior to the reorganization, the Respondent's staff structure placed the position of National Director at the apex, reporting directly to the Board of Directors. The holder of this office directly supervised the Project Manager, Sports Manager, Project Officer, and Executive Accountant, under whom other personnel operated.
22. RW1 further stated that during the Executive Committee meeting of 20th January 2023, at which the Claimant was present, it was proposed that the Respondent's structure required reorganization to address longstanding duplicity and overlap of roles. It was therefore resolved that certain positions be abolished as redundant.
23. Consequently, the position of National Director was abolished, and its functions redistributed among the pre-existing positions of Sports Manager and Project Manager, as well as two newly created roles, namely Communication & Fundraising Manager and Monitoring & Evaluation Manager.
24. It was RW1's evidence that by a letter dated 13th February 2023, the Respondent personally notified the Claimant of its intention to declare his position of National Director redundant with effect from 24th March 2023. The letter was also copied to the Labour Office.
25. On 15th March 2023, the Respondent issued the Claimant with a letter terminating his employment on account of redundancy.
26. According to RW1, the Respondent complied with the statutory provisions on redundancy and duly paid the Claimant one month's salary in lieu of notice, salary for March up to 24th March 2023, severance pay equivalent to 15 days' salary for each completed year of service, and accrued leave as at 24th March 2023.
27. RW1 was categorical that the redundancy was genuine, that the position of National Director remains abolished to date, and that the Respondent has not sought to recruit anyone to that office. He added that it is not the Respondent's practice to advertise positions on social media or job sites.

Submissions

28. The Claimant submitted that the Respondent failed to demonstrate the criteria applied in determining that his position was redundant. In support of this argument, he relied on the case of *Kenya Union of Domestic, Hotels, Educational Institutions, Hospital and Allied Workers (Kudbeiba) v Nairobi Hospital* [2022] eKLR.
29. He further argued that the Respondent had not shown that the reasons cited for its reorganization and restructuring applied to his role and that, in particular, no evidence was adduced to establish that his duties overlapped with other existing positions.



30. Citing the decision in *Kiliru v Savannah Brands Company Limited* [2023] eKLR, the Claimant contended that the creation of new positions to assume his functions demonstrated that his role had not become superfluous or redundant as alleged.
31. According to the Claimant, it was apparent that the Respondent intended to remove him from the organization and, lacking a lawful basis, invoked redundancy as a pretext to effect an unlawful, baseless, and unfair termination.
32. The Claimant maintained that the Respondent had not proved that its decision to terminate him was valid, fair, and grounded on its operational requirements, as required under Section 45(2)(b)(ii) of the *Employment Act*.
33. On this basis, the Court was urged to find that the Respondent failed to establish a substantive justification for terminating the Claimant's employment on grounds of redundancy.
34. With respect to procedure, the Claimant submitted that he was neither issued with the notice of intended redundancy dated 13th February 2023, nor involved in the restructuring process as alleged. He further contended that he was not accorded a fair hearing prior to his termination.
35. In sum, the Claimant contended that the Respondent's failure to serve him with notice of the intended redundancy, consult him, or consider alternative roles rendered his termination unfair, invalid, and unlawful.
36. On the Respondent's part, it was submitted that it had sufficiently demonstrated the necessity of reorganizing its operations to enhance efficiency and reduce wastage of both financial and human resources; that the prevailing circumstances rendered the Claimant's position superfluous, thereby providing a valid and fair basis for redundancy founded on operational requirements and that the redundancy was not a contrived measure but a genuine organizational necessity.
37. To support this position, the Respondent placed reliance on *Makokha v Deloitte Limited (Employment and Labour Relations* Cause 91 of 2019) [2023] KEELRC 723 (KLR) (23 March 2023) and *Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 20 others* [2018] KECA 718 (KLR).
38. The Respondent further contended that the selection of the Claimant for redundancy was fair and objective. The Respondent pointed out that, as the senior-most employee in the organizational hierarchy, there was no one to fairly compare the Claimant with for purposes of selection.
39. In the Respondent's view, there was no basis to doubt that the redundancy process was conducted in strict compliance with the law.
40. Accordingly, the Respondent maintained that it had proved both substantive justification and procedural fairness, and therefore, the Claim was without merit.

Analysis and Determination

41. Flowing from the record, the Court has identified the following issues for determination:
 - a. Whether the Claimant's termination on account of redundancy was unfair and unlawful;
 - b. Whether the Claimant is entitled to the remedies sought.Unfair and unlawful termination?
42. It is common cause that the Claimant's employment was terminated on grounds of redundancy. The letter of termination indicated that the redundancy arose from the Respondent's reorganization of



its programme management operations, which, it was stated, had affected the Claimant's position of National Director.

43. It is now trite that termination of employment on grounds of redundancy must be both substantively justified and procedurally fair. This position was affirmed by the Court of Appeal in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR.
44. In this respect, substantive justification relates to the reasons underlying the redundancy, while procedural fairness concerns the process adopted in effecting it.
45. As regards substantive justification, the employer bears the burden of proving that the termination was valid, fair, and grounded on its operational requirements. In the absence of such proof, the termination is rendered unfair under Section 45(2)(b)(ii) of the *Employment Act*.
46. In this case, the Respondent attributed the termination of the Claimant's employment to the reorganization of its programme management operations.
47. The Claimant, however, disputed the validity of these reasons. He testified that during a luncheon meeting with the Respondent's Board Chairman (RW1) and Secretary, he was issued with an ultimatum to resign within three days or face termination.
48. In support of this assertion, the Claimant exhibited an email dated 9th March 2023, copied to the Board Chair (RW1) and others, with the subject matter being "Ask to resign or be sacked." In the body of the email, the Claimant reiterated his account of the meeting, expressly stating that he had been asked to resign or, in the alternative, face termination.
49. In view of the Claimant's assertions in the email of 9th March 2023, which cast aspersions on RW1's management and governance style, and considering his position within the Respondent organization, it was reasonably expected that RW1 would have set the record straight if indeed the Claimant had misrepresented the events of the meeting. However, this was not the case.
50. While the Respondent denied issuing the Claimant with any ultimatum to resign, it is noteworthy that neither the Board Chair (RW1) nor the Secretary refuted the Claimant's assertions in his email. Indeed, it was only in these proceedings that the Respondents denied the assertion for the first time.
51. In light of the foregoing, the central issue for determination is whether the Claimant's termination from employment arose from a genuine redundancy or was instead precipitated by the events of the meeting of 7th March 2023.
52. To resolve this issue, it therefore becomes necessary to examine the reason advanced by the Respondent for the termination, namely that the Claimant's position had been declared redundant.
53. In support of its position, the Respondent produced copies of the "current" and "proposed" organizational structures. The current structure reflected the position of National Director, while the proposed structure abolished it with explanatory notes stating that the functions of the said position had been redistributed to the Sports Manager and Project Manager, alongside two newly created positions: Communication & Fundraising Manager and Monitoring & Evaluation Manager.
54. It is also indicated that the proposed organizational structure was adopted on 20th January 2023.
55. To further buttress its position, the Respondent produced minutes of the Executive Committee meeting held on 20th January 2023, which recorded that the Claimant was present when the proposed structure was presented and adopted. Under Minute 5/20-01-2023 – Restructuring of Organogram, the minutes note that duplication of roles was identified and that it was agreed that the position of



- National Director be declared redundant, with the possibility of reassigning the Claimant to another role.
56. The Claimant, however, disputed the authenticity of these minutes, insisting under cross-examination that they did not accurately reflect the discussions held. On re-examination, he reiterated that they were not a true record of what transpired at the meeting.
 57. Further, the Claimant produced his own version of the minutes of the same meeting, which differed materially from those presented by the Respondent. His version, recorded under Minute 4/20-01-2023 – HR Expert Update, states that the Board member in charge of the process requested more time to complete and share the restructuring report with the Executive and that the National Director was advised to pause an ongoing recruitment process.
 58. These conflicting records of the same meeting give rise to further uncertainty, particularly as to whether the position of National Director was indeed declared redundant during the meeting of 20th January 2023.
 59. To resolve this question, the Court turned to the additional evidentiary material on record.
 60. The Claimant produced a series of emails dated 14th February 2023, 28th February 2023, 7th March 2023, 9th March 2023, 16th March 2023, 17th March 2023 and 20th March 2023, in which he corresponded with UNICEF's Elizabeth Waitha on budgetary issues. In all correspondence, the Claimant signed off as the Respondent's National Director. Notably, the Respondent did not contest the Claimant's capacity at the time he sent the emails in question.
 61. One critical issue that comes to the fore is why the Respondent would allow the Claimant to continue discharging duties as National Director and corresponding with donors on financial matters in that capacity if his position had indeed been declared redundant on 20th January 2023?
 62. This inconsistency significantly undermines the Respondent's assertion that the office of National Director was abolished as of 20th January 2023.
 63. Moreover, the Claimant exhibited an advertisement dated 26th July 2024 calling for applications for the position of Chief Executive Officer at Special Olympics Kenya. The Respondent denied issuing the advertisement, with RW1 insisting that it was not their practice to recruit through social media.
 64. A review of the advertisement, however, indicates that it expressly referred to the position of Chief Executive Officer for Special Olympics Kenya, the Respondent entity. There is no evidence of another entity bearing that name.
 65. When cross-examined, RW1 confirmed that the position of National Director was the most senior in the organization and, in effect, the equivalent of Chief Executive Officer, the very position advertised after the Claimant's departure.
 66. In light of the foregoing, the Court is not satisfied that the termination of the Claimant's employment on the basis of redundancy was genuine.
 67. To this end, the Court finds that the Respondent has failed to establish, to the required standard, a valid and fair reason for terminating the Claimant's employment on the basis of its operational requirements.
 68. While the Respondent was entitled to reorganize its operations as it deemed fit, such restructuring had to be undertaken genuinely and, in a manner, consistent with fairness. In this instance, substantive fairness was lacking.



69. I now turn to examine whether the Respondent complied with the procedural requirements for termination of employment on account of redundancy.
70. The procedure governing termination of employment on account of redundancy is set out under Section 40(1) of the *Employment Act*. The provision stipulates the following mandatory 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 the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
 - c. the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
 - d. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
 - e. the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
 - f. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
 - g. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
71. To support its position that it complied with the notice requirement under Section 40(1) (b), the Respondent relied on a letter dated 13th February 2023, referenced "Intention to declare redundancy." The Claimant denied receiving this letter. RW1 testified that he personally handed it to the Claimant, and indeed it bears the endorsement "hand delivery." However, no evidence was produced to confirm that the Claimant acknowledged receipt.
72. Notably, the letter makes no reference to the meeting of 20th January 2023, at which the Respondent claims the decision to abolish the Claimant's position was reached. Equally puzzling is that, despite allegedly receiving the letter, the Claimant continued to discharge his duties as evidenced by his emails dated 14th February 2023, 28th February 2023, 9th March 2023, and 17th March 2023.
73. In the circumstances, the Court finds it doubtful that the Claimant was ever served with the redundancy notice dated 13th February 2023.
74. Accordingly, the Court is not persuaded that the Respondent complied with the requirement under Section 40(1)(b) of the *Employment Act*, which mandates issuance of at least one month's prior notice.
75. Another area of non-compliance in the present case relates to pre-redundancy consultations. The record discloses no evidence that the Respondent engaged the Claimant in such consultations prior to terminating his employment. As the Respondent was categorical that the meeting of 7th March 2023 had no bearing on the proposed redundancy, this confirms that no pre-redundancy consultative process took place.



76. Indeed, there is no evidence that any such consultations took place. Notably, the Respondent's own minutes of the meeting held on 20th January 2023 record that consideration would be given to assigning the Claimant another role. Such an outcome could only have been achieved through meaningful consultations. Nonetheless, no evidence has been adduced to demonstrate that consultations were ever held.
77. The importance of pre-redundancy consultations was underscored in *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others* (supra), where the Court held that consultations are intended to provide an opportunity for parties to discuss alternatives to redundancy, or where inevitable, to negotiate the best means of implementation. The Court was emphatic that such consultations must be meaningful and not cosmetic, and should seek to mitigate the adverse effects of redundancy.
78. In light of the foregoing, it is evident that the Respondent failed to undertake consultations as envisaged under Article 13 of *ILO Convention No. 158* and Recommendation No. 166.
79. Accordingly, the Court finds the Respondent to be at fault in that regard.
80. With respect to Section 40(1)(e), (f) and (g) of the *Employment Act*, the record bears that the Claimant was informed through the termination letter of 15th March 2023 that he would be paid one month's salary in lieu of notice, salary up to 24th March 2023, severance pay, and accrued leave. Indeed, the computation of his terminal dues reflected these components. Under cross-examination, the Claimant admitted having received the payments.
81. Taken as a whole, however, the Respondent did not substantially comply with Section 40(1) of the *Employment Act*. Consequently, the Claimant's termination cannot be deemed procedurally fair.
82. In so finding, the Court is fortified by the holding in *Hesbon Ngaruiya Waigi v Equitorial Commercial Bank Limited* [2013] eKLR, where it was affirmed that failure to follow the procedure under Section 40 renders a termination on account of redundancy unprocedural and unfair.

Reliefs

83. Having found that the Respondent failed to establish that the Claimant's termination by way of redundancy was substantively and procedurally fair, the Court awards the Claimant compensatory damages equivalent to five (5) months of his gross salary. In making this award, the Court has taken into account the duration of the employment relationship as well as the circumstances surrounding the termination.
84. The claim for accrued leave is declined, as the evidence shows that this entitlement was settled alongside the Claimant's final dues.
85. The claim for salary for the unexpired term of the contract is similarly declined, for being anticipatory in nature.

Orders

86. In the final analysis, the Claim succeeds, and Judgment is entered for the Claimant against the Respondent in the following terms:
- a. A declaration is issued that the termination of the Claimant's employment was unfair and unlawful;
 - b. The Claimant is awarded compensatory damages in the sum of Kshs. 1,500,000.00, being the equivalent of five (5) months of his last salary;



- c. The sum in (b) shall attract interest at court rates from the date of judgment until payment in full;
- d. The Claimant is awarded the costs of the suit.

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

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Nkomejimana

For the Respondent Mr. Ndegwa instructed by Mr. Echesa

Court Assistant Millicent

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

