



**Kenya Union of Domestic, Hotels, Educational Institutions,
Hospitals and Allied Workers (KUDHEIHA) v Moi University (Cause
E040 of 2025) [2025] KEELRC 3028 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3028 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E040 OF 2025
MA ONYANGO, J
OCTOBER 23, 2025**

BETWEEN

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

AND

MOI UNIVERSITY RESPONDENT

RULING

1. Vide an application dated 1st July, 2025 the Claimant 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: Maasai Nancy Cherotich, Okoth Seth Owiti, Luka Cheron, Oyioka Caroline Moraa, Birgen Lydia Chebet, Ngeno Nicholas, Chebii Truphena Jemutai, Chepngetich Joyce, Maiyo Peter Kipruto, Oduor Fredrick Ochieng, Judith Mwikali Kanune, Maiyo Joyce Cheron, Kurgat Divinah Jepkorir, Oduor Fredrick Ochieng, Simatwa Hellen Chebet, Kawai Hesborn Madaywa, Segu Lenah Jepngetich, Kandie Sylvia Jepchirchir, Anyona Bruce Kobwogo, Jepkoech Evarlyne Jepkoech, Jerobon Jane, Kipkulei Elizabeth Jepkemboi, Kidambi Simon, Komen Laura Cherotich, Tuikong Johnathan Kipkoech, Ochieng Agnes Awino, Leting Eunice Jerotich, Nato Ednah Nanyama, Momanyi Bethsua Nyanchoka, Moiben Dennis Kipchirchir, Kiptum Carolyn Jemutai, Maritim Lavender Isiao, Auma Eunice, Kemei Grace Jebitok, Omwenga Stellah Maganya, Omboga Elizabeth, Koech Teresa Chepchumba, Maitha Anderson Mueni, Boit Eunice Jemutai, Chumba Nicholas Kipchirchir, Jepkosgei Dinah, Magut Jael, Meto Josiah Kisaina, Maego Gladys Mong'are, Mwangani Alice Khasiala,



Owiti Dolly Achieng', Tuitoek Isaac Kibet, Mulwo Asben Kipkoech, Lonyangapuo Naomi Chematui, Lonyangapuo Dorcas Chemosop, Kemboi Nicholas Kiptanui, Chebii David Kimaiyo, Chelule Vincent Kipkirui, Rotich Joseph Kipruto, Muriuki Joylene Kendi, Arusei Milkah Jelimo, Chumo Monica, Waroruwa Mary Wanjiku, Gathungu Samuel Kinuthia, Auma Eunice, Nang'ombe Erick Angolo, Kili Pricilla, Kawai Hosborn, Samoei Lorna Cheruto, Kiptui Kiptala Korir, Mokoit Benson Maghas, Kosgei Lucy Jemurgor, Kibet Susan Jepkosgei, Emily Jemaiyo, Cheruto Dorcas, Serem Faith Jeptoo, Mwangani Josephat Shitemi, Rotich Clotilda Jerop, Kiprop Eliud Korir, Sawe Naomi Chepchumba, Jelagat Lucy Kosgei, Odiyo Miled Achieng', Rotich Joseph Kipruto, Jepchumba Cynthia, Moseti Dennis Ombuna, Onyango Ben Oseno, Rono Phylis Jemaiyo, Bwana Asenath Anyango, Kemei Pius Kipchumba, Okari Zablon Kioga, Chepkosgei Doris, Laktar Charles Onyango, Onyango Wyciliffe Otieno, Mutuko John Silah, Lotunale Johnathan Lokorio.

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: Maasai Nancy Cherotich, Okoth Seth Owiti, Luka Cheron, Oyioka Caroline Moraa, Birgen Lydia Chebet, Ngeno Nicholas, Chebii Truphena Jemutai, Chepngetich Joyce, Maiyo Peter Kipruto, Oduor Fredrick Ochieng, Judith Mwikali Kanune, Maiyo Joyce Cheron, Kurgat Divinah Jepkorir, Oduor Fredrick Ochieng, Simatwa Hellen Chebet, Kawai Hesborn Madaywa, Segu Lenah Jepngetich, Kandie Sylvia Jepchirchir, Anyona Bruce Kobwogo, Jepkoech Evarlyne Jepkoech, Jerobon Jane, Kipkulei Elizabeth Jepkemboi, Kidambi Simon, Komen Laura Cherotich, Tuikong Johnathan Kipkoech, Ochieng Agnes Awino, Leting Eunice Jerotich, Nato Ednah Nanyama, Momanyi Bethsua Nyanchoka, Moiben Dennis Kipchirchir, Kiptum Carolyn Jemutai, Maritim Lavender Isiao, Auma Eunice, Kemei Grace Jebitok, Omwenga Stellah Maganya, Omboga Elizabeth, Koech Teresa Chepchumba, Maitha Anderson Mueni, Boit Eunice Jemutai, Chumba Nicholas Kipchirchir, Jepkosgei Dinah, Magut Jael, Meto Josiah Kisaina, Maego Gladys Mong'are, Mwangani Alice Khasiala, Owiti Dolly Achieng', Tuitoek Isaac Kibet, Mulwo Asben Kipkoech, Lonyangapuo Naomi Chematui, Lonyangapuo Dorcas Chemosop, Kemboi Nicholas Kiptanui, Chebii David Kimaiyo, Chelule Vincent Kipkirui, Rotich Joseph Kipruto, Muriuki Joylene Kendi, Arusei Milkah Jelimo, Chumo Monica, Waroruwa Mary Wanjiku, Gathungu Samuel Kinuthia, Auma Eunice, Nang'ombe Erick Angolo, Kili Pricilla, Kawai Hosborn, Samoei Lorna Cheruto, Kiptui Kiptala Korir, Mokoit Benson Maghas, Kosgei Lucy Jemurgor, Kibet Susan Jepkosgei, Emily Jemaiyo, Cheruto Dorcas, Serem Faith Jeptoo, Mwangani Josephat Shitemi, Rotich Clotilda Jerop, Kiprop Eliud Korir, Sawe Naomi Chepchumba, Jelagat Lucy Kosgei, Odiyo Miled Achieng', Rotich Joseph Kipruto, Jepchumba Cynthia, Moseti Dennis Ombuna, Onyango Ben Oseno, Rono Phylis Jemaiyo, Bwana Asenath Anyango, Kemei Pius Kipchumba, Okari Zablon Kioga, Chepkosgei Doris, Laktar Charles Onyango, Onyango Wyciliffe Otieno, Mutuko John Silah, Lotunale Johnathan Lokorio.

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: Maasai Nancy Cherotich, Okoth Seth Owiti, Luka Cheron, Oyioka Caroline Moraa, Birgen Lydia Chebet, Ngeno Nicholas, Chebii Truphena Jemutai, Chepngetich Joyce, Maiyo Peter Kipruto, Oduor Fredrick Ochieng, Judith Mwikali Kanune, Maiyo Joyce Cheron, Kurgat Divinah Jepkorir, Oduor Fredrick Ochieng, Simatwa Hellen Chebet, Kawai Hesborn Madaywa, Sego Lenah Jepngetich, Kandie Slyvia Jepchirchir, Anyona Bruce Kobwogo, Jepkoech Evarlyne Jepkoech, Jerobon Jane, Kipkulei Elizabeth Jepkemboi, Kidambi Simon, Komen Laura Cherotich, Tuikong Johnathan Kipkoech, Ochieng Agnes Awino, Leting Eunice Jerotich, Nato Ednah Nanyama, Momanyi Bethsua Nyanchoka, Moiben Dennis Kipchirchir, Kiptum Carolyne Jemutai, Maritim Lavender Isiao, Auma Eunice, Kemei Grace Jebitok, Omwenga Stellah Maganya, Omboga Elizabeth, Koekh Teresa Chepchumba, Maitha Anderson Mueni, Boit Eunice Jemutai, Chumba Nicholas Kipchirchir, Jepkosgei Dinah, Magut Jael, Meto Josiah Kisaina, Maego Gladys Mong'are, Mwangani Alice Khasiala, Owiti Dolly Achieng', Tuitoek Isaac Kibet, Mulwo Asben Kipkoech, Lonyangapuo Naomi Chematui, Lonyangapuo Dorcas Chemosop, Kemboi Nicholas Kiptanui, Chebii David Kimaiyo, Chelule Vincent Kipkirui, Rotich Joseph Kipruto, Muriuki Joylene Kendi, Arusei Milkah Jelimo, Chumo Monica, Waroruwa Mary Wanjiku, Gathungu Samuel Kinuthia, Auma Eunice, Nang'ombe Erick Angolo, Kili Pricilla, Kawai Hosborn, Samoei Lorna Cheruto, Kiptui Kiptala Korir, Mokoit Benson Maghas, Kosgei Lucy Jemurgor, Kibet Susan Jepkosgei, Emily Jemaiyo, Cheruto Dorcas, Serem Faith Jeptoo, Mwangani Josephat Shitemi, Rotich Clotilda Jerop, Kiproprop Eliud Korir, Sawe Naomi Chepchumba, Jelagat Lucy Kosgei, Odiyo Miled Achieng', Rotich Joseph Kipruto, Jepchumba Cynthia, Moseti Dennis Ombuna, Onyango Ben Oseno, Rono Phylis Jemaiyo, Bwana Asenath Anyango, Kemei Pius Kipchumba, Okari Zablon Kioga, Chepkosgei Doris, Laktar Charles Onyango, Onyango Wyciliffe Otieno, Mutuko John Silah, Lotunale Johnathan Lokorio.

as communicated in the letters dated 13th and 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 sworn on 1st July, 2025, and specifically that:
 - a. The Applicant/Claimant is a trade union registered under the *Labour Relations Act* (2007). The Claimant represents employment interests of employees employed by the respondent among other sectors within the scope of Claimant/applicant's representation and has a CBA with the respondent dating back to 14th August, 2023 and is still in force.
 - b. The respondent through Letters dated 13th and 20th May, 2025 has declared the members of the claimant Union referred to above redundant.
 - c. The work performed or services offered by the listed claimant Union Members is not superfluous, in fact new recruitments are being carried out to fill their positions as confirmed by the advertisement dated 9th May, 2025.
 - d. The respondent has declared the said Employees redundant without following the due procedure provided for in practice and in law.
 - e. The respondent's ill-intended and wrong actions are, despite that the said members of the claimant who are employees of the respondent undergoes yearly performance appraisal which



has been going on throughout since they were employed and none has been found to be incompetent.

- f. The Productivity of the employees above mentioned who are the claimant Union Members has not been proved to be wanting or below average in any manner.
 - g. The Selection criteria used by the respondent is not objective, but is purely based on improper application of Section 40 of the Employment Act, based on bad faith.
 - h. The respondent has employed un-fair Labour practices and should be stopped by this Honourable Court.
 - i. The claimant was not consulted by the respondent before declaring the mentioned employees redundant, neither was the Claimant nor the employees heard contrary to the right to fair labour practices under Article 41 of the Constitution of Kenya, and/or the Labour Relations Act 2007.
 - j. The selection criteria were faulty. Not based on any grounds at all.
 - k. There was no determinate timeframe within which the targeted employees were evaluated.
 - l. The process was carried out un-fairly and in contravention of the law governing the parties' relationship therefore this Honourable Court should URGENTLY INTERVENE.
 - m. The respondent's actions are illegal and without any justifications at all.
 - n. The respondent has employed un-fair Labour practices and should be stopped by this Honourable Court.
 - o. The actions of the respondent are in total violation of the Labour Laws currently in force and is un-acceptable in a civilized society.
 - p. The actions of the respondent have caused the mentioned employees physical shock, anguish, eroded self-confidence. That unless stayed by this Court, it shall result in loss of source of Livelihood and the applicant's members will be seriously prejudiced resulting in miscarriage of justice.
3. 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.
 4. 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.
 5. 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%.
 6. The Respondent avers that as a result it is currently indebted to the tune of Kshs. 8.7 billion and the redundancy was necessitated by financial constraints.
 7. 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.
8. The Respondent contends that the Union acknowledged partial implementation of the return-to-work formula, an indication that consultations were meaningful and constructive.
 9. 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.
 10. 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.
 11. 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.
 12. The Respondent further asserts that it set aside Kshs. 6.7 billion to settle terminal dues and has acted in good faith.
 13. 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 been undertaken.
 14. 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.
 15. 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.
 16. 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.
 17. In the alternative, the Respondent argues that any loss suffered by the Claimant's members can adequately be compensated by an award of damages.
 18. 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.
 19. The applications were argued orally.
 20. 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.
 21. 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.



22. 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.
23. 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.
24. 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.
25. In the end, the Court was urged to dismiss the Respondent's application and instead allow the Claimant's application on the basis that no grounds had not been adduced to justify the redundancy.
26. 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.
27. 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.
28. Counsel Kigen emphasized that the Respondent's salaries and overhead expenses exceeded its income, and the auditor recommended downsizing of workforce to prevent institutional collapse.
29. The Respondent 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.
30. The Respondent urged the Court to dismiss the Claimant's application and allow the redundancy process to proceed to its logical conclusion.
31. In rejoinder, Counsel Jaoko for the Claimant in response to the Respondent's contention regarding the alleged job advertisements, submitted that the issue had not been raised in the Respondent's reply and was therefore an afterthought.
32. 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.

Determination

33. Having considered the application together with the grounds and affidavit in support thereof, the replying affidavit and the submissions of counsel for the parties, the issue that arises for determination herein is whether the Claimant is entitled to the orders sought in the application.



34. It is not in dispute that the Claimant's members in respect of whom this suit has been filed were all declared redundant by letters dated 13th May, 2025 and that by the time the instant application was filed on 1st July, 2025 the notice period had lapsed and they had left employment.
35. In the Memorandum of Claim they seek a declaration that the redundancy was unlawful and unfair and that the employees laid off be reinstatement.
36. Section 49(3)(a) of the *Employment Act* provides that a court may order reinstatement or re-engagement of an employee upon making a finding that the termination of employment was unfair and after considering the factors laid out in section 49(4).
37. Further, section 12(3)(vii) of the *Employment and Labour Relations Court Act* provides that the court may make an order for reinstatement of an employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law.
38. Rule 53 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides:
 53. Notwithstanding anything contained in this Rule, the Court shall not grant an ex parte order that reinstates into employment an employee whose services have been terminated.
39. All these provisions read together would require that once an employee is out of employment, an order for reinstatement may only be made after hearing the parties and ascertaining that the termination of employment was unfair and that reinstatement is the most appropriate remedy in the circumstances of the case. Reinstatement is thus not an automatic remedy even where the termination is unlawful as section 49 of the *Employment Act* provides for several other remedies besides reinstatement and the factors to be taken into account before determining which of the remedies provided for should be awarded in a particular case.
40. In view of the fact that this case has not yet been heard and evidence taken, the orders sought by the Claimant in the instant application would be premature as the same can only be considered after hearing evidence in the suit.
41. For these reasons I decline to grant the orders of reinstatement as sought in the application dated 1st July 2023. Parties are directed to set the down suit for hearing and determination on the merits.
42. The costs of this application shall be in the cause.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF OCTOBER, 2025.

M. ONYANGO

JUDGE

