



**Shisia v Sbm Bank Kenya Limited (Cause E059 of 2024)
[2025] KEELRC 3136 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3136 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E059 OF 2024
MA ONYANGO, J
NOVEMBER 6, 2025**

BETWEEN

UMI SUMBA SHISIA CLAIMANT

AND

SBM BANK KENYA LIMITED RESPONDENT

JUDGMENT

1. Vide a Memorandum of Claim dated 24th July 2024, the Claimant alleges that the Respondent unlawfully and unfairly terminated her employment on account of redundancy.
2. The Claimant avers that at all material times, she was an employee of the Respondent, serving as the Senior Operations Manager at the Eldoret Branch, earning a gross monthly salary of Kshs. 137,696.
3. The Claimant contends that she diligently served the Respondent throughout her employment until 6th December 2021, when her services were terminated on account of redundancy.
4. The Claimant avers that on 6th December 2021, she was served with a notice declaring her position redundant effective 7th December 2021, thereby giving her only one day's notice in contravention of Section 40 of the *Employment Act*.
5. The Claimant contends that she received an email communication indicating that the Respondent intended to proceed with a redundancy programme following the failure of a Voluntary Early Separation Scheme (VESS) to achieve the anticipated outcomes. She avers that the accompanying memorandum neither listed the names or particulars of the affected employees nor outlined the selection criteria to be applied.
6. The Claimant further avers that on 14th December 2021, she was issued with another letter titled "Termination of employment on account of redundancy" with paragraph 3 thereof indicating that the last working day for the Claimant would be on 15th January 2022.



7. She states that on 14th January 2022, she was issued with a letter titled “Temporary enlargement and extension of last working day” extending her working period to 24th January 2022, a clear indication that the Claimant’s position was still available and her services were still required.
8. The Claimant asserts that the Respondent’s letter to the County Labour Office dated 6th December 2021 was in contravention of section 40 of the Employment Act for the following reasons: -
 - i. The County labour office was not issued with the mandatory initial notice as contemplated under section 40(1)(b) of the Employment Act,
 - ii. As a result of (a) above, failing to invite the Claimant to discuss on possible redundancy situations and explore alternatives and if inevitable form of consensus on how the social impact of the decision may be mitigated,
 - iii. The Claimant averred that she was issued with a notice of redundancy before the County labour office was notified of the said redundancy,
 - iv. The impugned letter addressed to the county labour office by the Respondent did not list the particulars, employment station, employment records and position held by the Claimant.
9. According to the Claimant, the reason advanced by the Respondent for declaring her redundant was a sham, as there was no reorganization, restructuring, or abolition of her position. She contends that the termination was merely intended to remove her from employment while her position remained in existence.
10. The Claimant maintained that the procedure adopted by the Respondent in declaring her position redundant was unlawful, unfair, and contrary to the principles of fair labour practices.
11. Consequently, the Claimant prayed for compensation for unfair termination and payment of her terminal dues as particularized below:
 - i. 12 months’ salary for unlawful redundancy.....Kshs 1,652,351
 - ii. One month salary in lieu of notice..... Kshs 137,696
 - iii. Unpaid house allowance for 52 months.... Kshs 1,074,028
 - Total Kshs 2,964,074
12. The Claimant prayed for judgment against the Respondent as follows:
 - i. A declaration of the Respondent's termination of the Claimant’s employment was illegal, unlawful and unfair,
 - ii. Kshs 2,964,075 as particularized above,
 - iii. Exemplary and Punitive damages,
 - iv. Interest on (iii) above,
 - v. Costs of the suit,
 - vi. Any other relief the court may deem fit and expedient to grant.
13. In its defence, the Respondent filed a Memorandum of Response and Counterclaim dated 22nd October 2024.



14. The Respondent contended that the Claimant was terminated from employment on account of redundancy which was undertaken in strict compliance with the provisions of the *Employment Act*.
15. The Respondent stated that it inherited a large interim organizational structure after acquiring the operations of Fidelity Commercial Bank and Chase Bank (Kenya) Limited, resulting in the absorption of approximately 800 employees from the two defunct banks. That, upon the acquisition, the Respondent immediately commissioned a Job Evaluation Exercise to establish a fit-for-purpose structure.
16. The Respondent avers that due to the heavy organizational structure inherited and the subsequent closure of several branches between 2018 and 2021, it undertook a restructuring exercise towards the end of 2021 to streamline operations which necessitated a redundancy exercise to align its human resource needs with operational demands.
17. It is the Respondent's case that as part of this restructuring, it issued a memo dated 5th October 2021, inviting employees to apply for Voluntary Early Separation Scheme (VESS) and informing them that redundancies would follow if the desired staff reduction was not achieved. That on the same day, 5th October 2021, the Respondent duly notified the Ministry of Labour of the Voluntary Separation Scheme and stated its intention to declare redundancies should the uptake of VESS be insufficient.
18. The Respondent asserted that since the VESS did not yield the targeted numbers, it proceeded to implement a redundancy exercise as communicated earlier.
19. That vide a memo dated 6th December 2021, the Respondent informed all staff of the decision to proceed with redundancies and indicated that affected employees would be notified individually on 7th December 2021. That it also informed the Ministry of Labour and banking regulators that it was proceeding with terminations on account of redundancy in accordance with the prior notices of 5th October 2021.
20. According to the Respondent, a total of 177 employees were affected by the restructuring. Of these, 80 opted for the voluntary separation scheme while 97 were declared redundant. The Respondent asserted that it engaged an external consultant to conduct a Job Evaluation, which developed a scoring matrix to assess employees. Those scoring below 75% were declared redundant including the Claimant who scored 74% in the evaluation, falling below the threshold.
21. The Respondent averred that the Claimant was issued with a notice of termination on account of redundancy effective 6th December 2021, with her last working day being 15th January 2022 and a subsequent formal termination letter dated 14th December 2021, confirming her last working day as 15th January 2022.
22. The Respondent asserted that the terms offered in the redundancy package were superior to the minimum statutory requirements under the *Employment Act*.
23. It was the Respondent's case that the Claimant was issued with a Full and Final Dues Settlement Letter dated 20th December 2021 and was paid a total of Kshs. 861,669.25 as terminal dues, which she acknowledged on 12th January 2022 and even cleared with the Respondent on the same date.
24. The Respondent further sponsored the Claimant for outplacement training between 10th and 12th January 2022 to assist with her career transition.
25. The Respondent denied the Claimant's allegation that she was retained beyond 15th January 2022.



26. The Respondent denied any form of discrimination and maintained that the redundancy process strictly complied with section 40 of the *Employment Act* and its internal Human Resource Policies.
27. The Respondent therefore prayed that the Claimant's claim be dismissed with costs.
28. In its Counterclaim, the Respondent averred that the Claimant defaulted on a staff loan facility extended to her during employment. According to the Respondent, vide a Staff Loan application dated 16th June 2021, the Claimant applied for an unsecured facility of Kshs. 2,100,000, a portion of which was used to offset an existing facility of Kshs. 1,830,750.85 granted on 20th November 2020.
29. The Respondent averred that the facility was approved, and by a letter dated 24th June 2021, the Claimant accepted the loan terms.
30. The Respondent contended that the Claimant fell into arrears and, as at 27th September 2024, the outstanding amount stood at Kshs. 2,345,248.60, exclusive of accruing interest.
31. The Respondent therefore prayed for:
 - i. Judgment in the sum of Kshs. 2,345,248.60 with interest from the date interest was last applied until payment in full
 - ii. Costs of the counterclaim with interest thereon.
32. On 12th May 2025, when the matter came up for hearing, learned counsel Mr. Asule holding brief for Ms. Kwamboka for the Claimant requested that the matter proceeds under Rule 59 of the Employment and Labour Relations Court (Procedure) Rules. Learned counsel Mr. Mutisya, appearing for the Respondent, did not object.
33. Consequently, the Court directed that the claim be disposed of by way of written submissions. The Claimant's submissions are dated 11th June 2025 while the Respondent's submissions are dated 27th June 2025.

The Claimant's submissions

34. In her submissions, the Claimant identified the issues for determination to be:
 - i. Whether the termination of the Claimant by the Respondent on account of redundancy was fair and lawful,
 - ii. If the answer to (a) above is negative, is the Claimant entitled to the prayers in the Claim.
35. On the first issue, the Claimant submitted that the purported decision of the Respondent's Board of Directors to terminate her services and outsource functions to external service providers was unjustified. She contended that contrary to the Respondent's assertion of a restructuring exercise, new staff were recruited to replace her, demonstrating that the alleged redundancy was a pretext to unfairly terminate her employment without consultation.
36. On consultation and dialogue, the Claimant submitted that there was no record of any tripartite consultative meeting involving the Respondent, the relevant trade union, and the Labour Office as required in redundancy procedures.
37. Citing *Williams v Compare Maxam Ltd* (1982) IRLR 83, the Claimant argued that there was no evidence before the Court of any meaningful consultation undertaken prior to her termination. She submitted that her termination was therefore unfair for want of consultations envisaged under Section 40 of the *Employment Act*



38. The Claimant further argued that, while the requirement for consultation is not expressly set out in Section 40, it is implicit in the statutory requirement to issue notices to both the union and affected employees. These notices, she submitted, serve the purpose of facilitating consultation before a final decision on redundancy is made. The Claimant asserted that the Respondent failed to demonstrate that such consultation took place.
39. The Claimant relied on the Court of Appeal's decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & Others* (Civil Appeal No. 46 of 2014) [2014] KECA 403 (KLR), in support of the position that consultations must be real, candid, and aimed at mitigating the adverse effects of redundancy.
40. Based on the foregoing, the Claimant submitted that the Respondent's actions contravened *the Constitution*, the *Employment Act*, and the principles of fair labour practices and natural justice as the Respondent did not give proper notices to the Labour Officer, affected employees, or their union, nor did it hold meaningful consultations.
41. On the second issue, the Claimant submitted that she had proved her termination was unjust, unfair, and unlawful, being in blatant violation of Section 40 of the *Employment Act*. She asserted that she was therefore entitled to the full reliefs sought in her Memorandum of Claim.
42. The Claimant accordingly prayed that judgment be entered in her favor as prayed in her claim.

The Respondent's submissions

43. The Respondent, on its part, identified the following issues for determination:
 - i. Whether due process was followed in declaring redundancy;
 - ii. Whether this Honourable Court has jurisdiction to determine the Respondent's counterclaim; and
 - iii. Whether the Claimant is entitled to the orders sought.
44. On the first issue, the Respondent submitted that the redundancy exercise was justified and conducted in full compliance with the requirements of Section 40 of the *Employment Act*, 2007.
45. According to the Respondent, following the Respondent's acquisition of Fidelity Commercial Bank (2017) and Chase Bank Limited (2018), there was duplication of roles and overstaffing which resulted in a restructuring exercise to streamline its operations and adoption of a "fit-for-purpose" structure that rendered certain positions redundant.
46. The Respondent submitted that it first implemented a Voluntary Early Separation Scheme (VESS), duly communicated to the Ministry of Labour on 5th October 2021, with copies to the Labour Office and the Cabinet Secretary which letters indicated that, should the VESS not achieve the desired staff reduction, the Respondent would proceed with redundancies.
47. The Respondent contended that this correspondence served as a notice of intention to declare redundancy under Section 40(1)(a) and (b) of the *Employment Act* and that as such, the redundancy process was both transparent and compliant with statutory requirements.
48. On procedural fairness, the Respondent submitted that it observed all requirements of Section 40(1) by notifying the Labour Office and affected employees well in advance and giving at least one month's notice. The Respondent relied on *Barclays Bank of Kenya Ltd & Another v Gladys Muthoni & 20 Others* [2018] eKLR and *Cargill Kenya Limited v Mwaka & 3 Others* (Civil Appeal No. 54 of



- 2019) [2021] KECA 115 (KLR), in support of the position that the redundancy notice issued to the Claimant was sufficient.
49. With regard to the requirement for consultation, the Respondent submitted that it engaged the Claimant individually through the Human Resources Department prior to declaring her redundant. That during that meeting, the Claimant was informed of the intended redundancy.
 50. The Respondent further stated that, to facilitate a smooth transition, the Claimant was invited to an outplacement training programme held between 10th and 12th January 2022, fully sponsored by the Respondent.
 51. On selection criteria, it was submitted that in accordance with Section 40(1)(c) of the *Employment Act*, selection was based on seniority, skill, ability and reliability and to ensure objectivity, the Respondent enlisted an independent consultant to conduct a Job Evaluation exercise where staff scoring below 75% were declared redundant including the Claimant who scored 74%. For emphasis the Respondent cited *Thomas De La Rue (K) Limited v David Opondo Omutelema* [2013] eKLR, asserting that the evaluation process was professional and impartial.
 52. The Respondent further submitted that the Claimant was paid all her terminal dues including one and a half months' salary for each completed year of service which exceeded the statutory minimum and that the Claimant acknowledged receipt of these payments.
 53. On the second issue, the Respondent submitted that this Court has jurisdiction to determine its counterclaim, as it arises directly from the employer–employee relationship. Reliance was placed on *Maiyo v Kenya Commercial Bank & Another; William Osiemo t/a William Auctioneers (Interested Party)* (Cause No. 632 of 2019) [2022] KEELRC 36 (KLR) and *Abraham Nyambane Atsiago v Barclays Bank of Kenya* [2013] eKLR.
 54. The Respondent submitted that the Claimant was indebted to it under a staff loan facility and redundancy did not extinguish her repayment obligations. Citing *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] eKLR, the Respondent submitted that the Court cannot rewrite or vary the contractual terms between the parties.
 55. Lastly, on the issue whether the Claimant is entitled to the reliefs she is seeking in her claim, the Respondent contended that the Claimant is not entitled to any of the reliefs as she was paid her notice pay, the redundancy process complied with the law, and that her termination was substantively and procedurally fair.
 56. The Respondent further submitted that, should the Court be inclined to grant compensation, an award equivalent to one month's salary would be sufficient. In support of this position, the case of *Mercy Wangari Muchiri v Total Kenya Limited* [2020] eKLR was cited.
 57. In conclusion, the Respondent prayed that the Claim be dismissed with costs and judgment be entered in its favour on the Counterclaim as pleaded.

Determination

58. Upon considering the pleadings herein, the submissions of the respective parties, I find that the issues that fall for this court's determination are: -
 - i. Whether the termination of the Claimant's employment on account of redundancy was lawful and fair.
 - ii. Whether the Claimant is entitled to the reliefs sought



- iii. Whether the Respondent has proved its counterclaim
- iv. What reliefs should issue?

Whether the termination of the Claimant’s employment on account of redundancy was lawful and fair

59. The Claimant contends that her employment was unfairly terminated under the guise of redundancy. She asserts that the Respondent failed to adhere to the mandatory requirements of Section 40 of the *Employment Act*, 2007, particularly regarding notice to the Labour Officer, consultation, and fair selection criteria.
60. The Respondent on the other hand maintains that the redundancy was lawful and procedurally sound. The Respondent submitted that it undertook a genuine organizational restructuring following the acquisition of two banks and that the process was conducted transparently, with prior notification to employees and the Ministry of Labour.
61. Redundancy is defined under Section 2 of the *Employment Act* as—
- “redundancy” means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;
62. Section 40(1) of the *Employment Act*, 2007, sets out the procedural safeguards that an employer must observe before terminating employment on account of redundancy. It provides: -
40. Termination on account of redundancy
- (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—
- a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of 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.
63. In the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] KECA 404 (KLR) the Court of Appeal emphasized that redundancy must be founded on a genuine operational need and implemented through a transparent and fair process involving proper notice and consultation.
64. Similarly, in *Jane I Khalechi v Oxford University Press E.A. Ltd*[2013] KEELRC 578 (KLR), the Court held that redundancy is not merely a right of the employer but must be exercised in strict compliance with the law and fairness to the affected employee.
65. The Respondent adduced evidence that it undertook a job evaluation exercise, invited employees to apply for a Voluntary Early Separation Scheme (VESS), and later declared redundancies when the targeted numbers were not met. It also produced correspondence to the Labour Office dated 5th October 2021 and 6th December 2021 notifying the Ministry of the intended redundancy.
66. As is evident from the documents filed by the Respondent, the process of reducing staff started with the VESS. In the letter dated 5th October 2021 notifying the Labour officer and staff of the same, the Respondent clearly indicated that should the targeted numbers not be achieved, there would be a redundancy. The letter dated 6th December, 2021 was therefore a reminder of the earlier notification of the intended redundancy.
67. The notice of termination by way of redundancy to the Claimant is dated 14th December 2021. The letter informed the Claimant that her last working day would be 15th January, 2022. It therefore gave her the requisite one-month notification provided for in section 40(1)(b) of the *Employment Act*. The letter further stated that she would also be paid in lieu of notice upon expiry of the notification in accordance with her employment terms.
68. The *Employment Act* does not specifically provide for consultation and as stated by the Court of Appeal in the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others*, it may not be possible to hold consultations with every employee affected in a case where the numbers involved are big, like in the instant case, as opposed to a situation where there is a trade union with whom the employer can engage in consultations. In addition, the Claimant did not demonstrate that she was a member of a trade union which could be consulted on behalf of the workers. Her pay slip does not indicate any deduction of union dues and neither did she allege she was a member of any trade union that was not consulted.
69. Further, in this case the redundancy was a subject that had been ongoing for some time and all employees were sufficiently aware of the same. The Claimant was even taken through training to prepare her for the separation. I therefore find the Claimant's argument that the redundancy was unprocedural to be without merit, taking into account the specific circumstances of this case.
70. With regard to the selection criteria, the Respondent asserts that an independent consultant conducted a job evaluation and that employees scoring below 75% were declared redundant. The Claimant on the other hand insisted that there was no transparent selection criteria as required by the Act. The Respondent on its part asserted that an independent consultant conducted a job evaluation and that employees scoring below 75% were declared redundant.



71. The Claimant did not contest that the Respondent carried out an evaluation. She submitted that there was no report or documentary evidence showing how the Claimant's position compared to others and that without such evidence, the Court cannot verify whether the selection was objective or fairly applied.
72. It is further not contested that the Respondent had legitimate business reasons to restructure or to reduce staff through redundancy. Section 40(1)(c) provides that "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". A job evaluation is a legitimate process to identify skill and ability, which are acceptable grounds for selection of staff to be declared redundant. The Claimant did not raise any issues about her selection at the time of separation. The suit herein was filed in September, 2024, almost 3 years after the redundancy without the Claimant having ever raised any issue about the criteria for her selection for redundancy.
73. Consequently, I find that the redundancy was procedurally fair and in conformity with the provisions of the Act.

Whether the Claimant is entitled to the Reliefs Sought

74. In her Memorandum of Claim, the Claimant prayed for 12 months compensation for unlawful redundancy, one months' salary in lieu of notice and unpaid house allowance for 52 months. These prayers shall be dealt with in separate heads as hereunder.
 - i. One month's salary in lieu of notice

The notice of redundancy was issued to the Claimant dated 6th December 2021 and the termination was to take effect on 14th December 2021. Clearly, the Respondent did give the mandatory one-month notification to the Claimant as required by law as the letter stated that the Claimant's expected last date of employment was 15th January, 2022. In addition, the Claimant was paid one months' salary in lieu of notice. Consequently, the Claimant is not entitled to her prayer for one month's salary in lieu of notice as she was given notice of one month before termination and was paid in lieu of notice.
 - ii. Compensation for unfair termination.

The termination of the Claimant's employment having been through a regular redundancy carried out in accordance with the law, she is not entitled to any compensation for unfair termination.
 - iii. Unpaid house allowance

The Claimant sought payment of unpaid house allowance. However, she did not produce any pay slips or documents to demonstrate that her salary was exclusive of house allowance. The Respondent, on the other hand, produced the Claimant's pay slip and a salary review letter dated 20th January 2025, at page 13 of its list of documents, indicating that the Claimant earned a consolidated gross salary of Kshs. 120,000 per month. The Claimant's appointment letter also expressly stated that her salary was consolidated. The Court is therefore satisfied that the Claimant's salary was inclusive of house allowance as contemplated under Section 31 of the [Employment Act, 2007](#). Accordingly, the claim for unpaid house allowance is declined.
 - iv. All other prayers in the claim were not proved and are dismissed.



Whether the Counterclaim is merited

75. The Respondent counterclaims Kshs. 2,345,248.60 allegedly owed by the Claimant in respect of a staff loan facility.
76. The Claimant filed a response to the counterclaim in which she acknowledged her indebtedness to the Respondent. She did she deny the existence of the loan or her failure to service the same after separation. The Respondent has annexed documentary evidence including the facility letter and a statement of account confirming the outstanding balance.
77. The Court therefore finds that the Respondent has proved its counterclaim on a balance of probabilities.

What reliefs should issue?

78. In light of the foregoing, Judgment is entered in the following terms: -
- i. The Claimant's claim is dismissed.
 - ii. The Counterclaim for Kshs. 2,345,248.60 is allowed and judgment is entered for the Respondent against the Claimant in the said sum of Kshs. 2,345,248.60 with interest as per terms of the loan facility.
 - iii. Each party shall bear their own costs.
79. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 6TH DAY OF NOVEMBER, 2025.

M. ONYANGO

JUDGE

