



REPUBLIC OF KENYA



KENYA LAW
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**Githengi v Isat Africa Kenya Ltd (Cause 530 of 2019)
[2025] KEELRC 3286 (KLR) (21 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3286 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 530 OF 2019
S RADIDO, J
NOVEMBER 21, 2025**

BETWEEN

JANE NDATA GITHENGI CLAIMANT

AND

ISAT AFRICA KENYA LTD RESPONDENT

JUDGMENT

1. Jane Nduta Githengi (the Claimant) sued Isat Africa Kenya Ltd (Respondent) on 14 August 2019, alleging unfair termination of employment.
2. The Respondent filed a Response and Counterclaim on 9 October 2019 and on 27 October 2025, the parties proposed that the Cause be determined on the basis of the record and submissions to be filed.
3. The Claimant had filed her submissions on 3 October 2025, and the Respondent on 25 October 2025.
4. The parties filed a consent on 3 November 2025, confirming that they intended to proceed without leading evidence.
5. The Court has considered the record and submissions.

Evidentiary standard: Burden and standard of proof

6. The Claimant proposed or opted and the Respondent agreed to proceed by way of the record.
7. Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024 envisage determination of disputes on the basis of the pleadings, documents, affidavits and submissions.
8. Under the *Evidence Act*, documents can only be introduced into evidence either through viva voce testimony or affidavits.



9. In the scenario obtaining before the Court, the parties did not file any affidavits to introduce the documents which were filed. The mere filing and exchange of documents does not convert documents into evidence.
10. As it is, none of the parties placed any formal evidence before the Court, and on this account, the Court would have been minded to dismiss the Cause and the Counterclaim.
11. But on the assumption that it is wrong on the above conclusion, the Court will now examine the merits of the parties' claims.

Unfair termination of employment

12. On or around 18 June 2018, the Respondent notified the Claimant of a decision to send her to Malawi to streamline financial processes for 2 months.
13. On 6 August 2018, the Respondent gave the Claimant notice of redundancy and this was followed on 28 September 2018 with termination of employment on account of redundancy.
14. Before the Court, the Claimant contended that the process did not comply with the requirements of section 40(1) of the *Employment Act, 2007* in that the letter of 6 August 2018 did not inform her that her position would be affected, a notice was not issued to the Labour Officer, there was no pre-selection criteria and that she was not consulted.
15. The Respondent on the other hand contended that the Claimant, an Accountant was responsible for its Malawi operations but from Nairobi and that at some point it became untenable to run the operations from Nairobi.
16. Accordingly, the Respondent requested the Claimant to relocate to Malawi temporarily around 25 April 2018 but after discussions she declined to relocate.
17. The Respondent also contended that it needed to restructure its business and it notified all the staff on 31 July 2018 and the Labour Office on 1 August 2018.
18. And that the Claimant was served with a redundancy notice on 6 August 2018 and that consultative kamkunjis were held throughout August 2018, and 51 employees were affected.
19. The Claimant did not deny that she was responsible for the Malawi financial operations of the Respondent or that the Respondent instructed her to relocate to Malawi as part of the streamlining of operations but she opted not to take up the offer.
20. It is also not disputed that on 31 July 2018, the Respondent issued a communique to all staff on business integration.
21. The Respondent followed the communique with a notice to the Ministry of Labour on 1 August 2018 on intended redundancies. On 3 August 2018, the Respondent notified all the staff about the redundancies of some positions.
22. The Claimant did not deny receiving the Respondent's notice of intended redundancy dated 6 August 2018, which notice put her on notice that the affected positions would be disclosed in due course.
23. The Claimant did not also deny that the Respondent held consultative kamkunjis over August 2018.
24. On the state of the record, the Court finds that the Respondent issued a notice of relocation to Malawi to the Claimant but she declined to relocate; issued a notice on restructuring to the staff; issued a



notice of intended redundancy to the staff and Labour Office and issued a notice to the Claimant of termination on account of redundancy.

25. The Court further finds that since the Claimant was not ready to relocate to Malawi despite being responsible for the financial processes in Malawi, the Respondent was within its powers as a business to declare her position redundant.
26. The Respondent had valid and fair reasons to act as it did.

Counterclaim

27. The Respondent informed the Court on 27 October 2025 that it wished to abandon the Counterclaim.
28. The Court marks the Counterclaim as withdrawn with no order on costs
29. Before concluding, the Court must put parties on notice and more so where advocates are involved that it is a perilous endeavour to opt to proceed by way of the record and submissions, purportedly under Rule 59 of the Employment and Labour Relations Court (Procedure) Rules, 2024 without considering the legal juxtaposition between the Rule and the substantive provisions of the [Evidence Act](#).

Orders

30. The Cause and Counterclaim are dismissed.
31. No order on costs since both parties have not succeeded in their claims.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 21ST DAY OF NOVEMBER 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Gitau Mathu & Associates LLP

For Respondent Kamotho Njomo & Co. Advocates

Court Assistant Wangu

