Kenya Private Universities Workers Union v Africa Nazarene University (Cause E736 of 2022) [2025] KEELRC 3448 (KLR) (2 December 2025) (Judgment)

Neutral citation: [2025] KEELRC 3448 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E736 OF 2022

HS WASILWA, J

DECEMBER 2, 2025

BETWEEN

KENYA PRIVATE UNIVERSITIES WORKERS UNION ..... CLAIMANT

AND

AFRICA NAZARENE UNIVERSITY ..... RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide an Amended Memorandum of Claim dated 5th February 2025 praying the Court be pleased to order: -

    1. That, the Respondent's decision to declare the Claimant's members redundant be declared unfair and unlawful.

    2. That, the Respondent be compelled to pay the Claimant's their terminal benefits.

    3. That, the cost of this suite be paid by the Respondent.

    4. Interest on 2) and 3) above at court rates from date of filling of suit till payment in full.

Claimant's Case

2. The Claimant union states that it is a duly registered trade union under the provisions of section 19 of the *Labour Relations Act*,2007 with the mandate to represent employees in the Private Universities Sector. Whereas the Respondent is duly registered as a higher educational institution offering degrees up to PHD among other educational programs operating in both Kajiado and Nairobi Counties.

3. The Claimant union states that it visited the Respondent's premises in 2016 wherein it introduced the union to the Respondent's employees who requested the Claimant union to seek permission for them to be educated on trade unions.

4. The Claimant union thus sought the Respondent's permission vide a letter, however, the union was denied permission to carry out trade union education at its premises. This forced the union to file an application under certificate of urgency under cause number 900/2017 where orders dated 30th May 2017 were granted allowing the union to carry out trade union activities within the Respondent's premises which order was served upon the Respondent.

5. It is the Claimant union's case that in a bid to frustrate it, the Respondent started forcing its members to withdraw from the union so as to reduce the membership in in order to avoid signing a Recognition Agreement and a Collective Bargaining Agreement.

6. The Claimant union states that through the Court's intervention vide a court order issued on 4th March 2019, the Respondent agreed to sign a Recognition Agreement.

7. The Claimant union states that in the quest of killing the union, on 4th September 2019, the Respondent served notice to the claimant union intending to declare 63 employees redundant/ restructuring by 15th November 2019.

8. The Claimant union states that after receiving the redundancy notice and letters from its members, it wrote to the Respondent seeking indulgence but the Respondent refused to engage the Claimant union. This forced the Claimant union to file an application under certificate on 11th November 2019 seeking orders to stop the redundancy which orders were granted. However, the Respondent proceeded with the impugned redundancy process in disobedience of the said court order.

9. The Claimant union states that the parties had signed a Recognition Agreement and were in the process of initiating a Collective Bargaining Agreement. This is what prompted the Respondent to carry out the impugned redundancy/restructuring in order to kill or frustrate the Claimant Union by reducing its members.

10. The Claimant union states that the Respondent failed to indulge the grievant as well as the union in the negotiation of the process as had been agreed earlier and as per the Recognition Agreement signed between the Respondent and the Union.

11. The Claimant union states that in 2019, the new Vice Chancellor who had joined the university in 2018, started calling all the employees together for meetings and in one of the meetings in the town campus, the principal mentioned to the staff that there was a possibility of people going home. The Vice Chancellor nevertheless denied the same.

12. The Claimant union states that towards the end of 2019, the meetings became more frequent and could even be on a weekly basis. In September and October, its members were given letters from the University for restructuring and redundancy and concerning voluntary retirement/exit option.

13. The Claimant union stated that on 15th October 2019, its members were served with redundancy letters that their job were restructured. This surprised them as departments like marketing and library were understaffed and overworked thus they believed that the restructuring or redundancy will spare them and they be given more staff.

14. The Claimant union states that whereas some employees were called for interviews, most of the union members were not shortlisted and were issued reject letters on grounds that they had not qualified or met the requirements for the jobs they had been employed to do and have been doing for so many years.

15. The Claimant union states that its members were issued with letters of redundancy dated 5th November 2019 indicating their exit packages and informing them their last date of work as 15th November 2019.

16. It is the Claimant union's case thatdespite having a valid recognition agreement, the Respondent did not seek its indulgency; there was no formula used as most allowed that is last in first out (LIFO) and the redundancy package was paid less liability owed to the Respondent. Further, they were not given certificates of service upon exiting.

17. The Claimant union states that shortly after the conclusion of the purported redundancy exercise, the Respondent hired more employees to take up the vacancies that its members had left and increased salaries in February 2020 by 15% and 20%.

18. The Claimant union states that in 2020, the Respondent sent its members on unpaid leave; in response, the union wrote to Respondent for indulgence, however, the same was denied leading to the filing of cause number 227/2020 and the Claimant union won.

19. Thereafter, the Respondent came up with another redundancy in 2022 thus sending its members home an issue which was negotiated and the number reduced.

20. It is the Claimant union's case that the impugned redundancy targeted its members with the main purpose of significantly reducing its membership.

Respondent's Case

21. In opposition, the Respondent filed an Amended Memorandum of Defence dated 25th April 2025.

22. The Respondent states that it employed the Grievants on various dates to discharge several roles at its institution and the 17th Grievant, Nelson Mboku, is still its employee to date. During the tenure of their respective contracts, the Grievants were expected and agreed to be bound by the Respondent's policies.

23. The Respondent states that its operations are predominantly funded by student tuition fees. Whereas it receives both government-sponsored and self-sponsored students, the tuition fees for government-sponsored students are subsidized by 55%. As such, to ensure continuity of operations and to meet its overhead costs, it has strived to ensure that its ratio of self-sponsored students vis-a-vis government-sponsored students is relatively reasonable

24. The Respondent states that due to changes in regulations and government policies on higher education, it experienced a significant reduction in self-sponsored students and an influx of government-sponsored students. This culminated in significant financial constraints and necessitated a revision of its overall cost structure for future sustainability. As such it had to close its campuses in Kisii, Meru, Eldoret and Machakos, leaving only its main campus in Rongai and the Nairobi Central Business District (CBD) campus. The employees from the said campuses were all absorbed at the Rongai and CBD campuses.

25. However, the Respondentcontinued to suffer significant financial constraints, as such, from October 2018 and May 2019, it conducted an organizational design audit to optimize its essential capabilities, eliminating duplications of roles, driving cost efficiency, and simplifying the organizational complexities related to reporting lines.

26. The Respondent states that it initiated a program viability review which entailed an assessment of the study courses to identify those that could not be sustained in light of the prevailing financial circumstances. Out of 23 programs, 7 were found to be completely non-viable, while another 4 were operating marginally below cost.

27. Additionally, it assessed its human resource structure as its staff costs accounted for over 65% of its income. This was to determine roles that could not be sustained. It also held community meetings with its staff members highlighting the financial challenges experienced and proposed structural changes. Upon the conclusion of the assessment, about 90 staff positions were identified as superfluous, thereby necessitating the implementation of a staff rationalization program.

28. The Respondent states that following the progressive meetings held with its staff, and upon the identification of the positions to be impacted by the process, the Respondent held further meetings with the Federation of Kenyan Employers ("FKE") and the Claimant on 2nd September 2019. The Respondent thereafter issued notices of intention to declare redundancies to the Ministry of Labour (Labour Office), the Claimant and the FKE on 3rd September 2019 referencing the earlier meeting, providing a detailed explanation of its financial position and outlining the steps it sought to undertake to effect the redundancy.

29. It is the Respondent's case that it engaged in consultation with its employees for a period of one month following the issuance of the Redundancy Notices. During this engagement, it was agreed that the staff rationalization exercise would be implemented in phases. The first phase involved the implementation of a Voluntary Early Retirement ("VER") which was to be closed by 25th September 2019 whereas the second phase entailed the implementation of redundancies. The Claimant was not only consulted but even submitted its proposal on the VER for the Respondent's consideration.

30. The Respondent states that noting that several staff positions had been deemed superfluous, it issued an internal vacancies announcement, inviting all qualified internal staff to apply for positions that were available on or before 1st October 2019. The job profiles and responsibilities for the said roles were also shared and the Grievants were at liberty to apply for the said roles, which they failed to do so.

31. The Respondent states that following the VER and the internal vacancies announcement, about 30-35 staff positions were identified for the second phase. The Respondent wrote a letter to the Labour Office, FKE and the Claimant on 15th October 2019 communicating its decision to declare redundancies for the said positions and explained that the employees would be released in batches with the expected final date being set for August 2020. Notices of intended redundancies were also issued to the Grievants on 16th October 2019.

32. It states that the Claimant vide a letter dated 8th November 2019 sought the suspension of the redundancy process and demanded that the Respondent engage in further consultations on the employees' tuition waivers. In response, the Respondent vide a letter dated 13th November 2019 explained that the tuition waivers for its employees' dependents were guided by its internal policies and that the same would be honoured up to August 2020. No further claims were raised by the Claimant subsequent thereto.

33. The Respondent states that following the declaration of redundancies for the Grievants, it proceeded to issue termination letters and/ or confirmation of redundancy letters from 5th November 2019. Their terminal dues were subsequently computed as agreed and paid out to them in November 2019. The Grievants did not raise any concerns about the process and/ or their terminal dues. They even proceeded to sign Discharge Vouchers upon receipt of their respective payments, acknowledging the same as full and final settlement of all dues arising from their employment and termination.

34. It is the Respondent's case that the signing of a recognition agreement and/ or collecting bargaining agreement with the Claimant did not correlate with the said process as alleged.

35. The Respondent states that this Court issued an order in ELRC No. 900 of 2017 (Kenya Private Workers Union v. Africa Nazarene University) allowing it to finalize the redundancy process with effect from 5th December 2019. It therefore acted on the order and issued further letters to the Grievants on the same date confirming their redundancies.

36. The Respondent contends that it was allowed to exercise its managerial prerogative with respect to the process and any claims to the contrary by the Claimant and without basis.

37. The Respondent states that the Grievants' employment contracts were terminated in 2019. Subsequent alleged claims by other employees with respect to other matters have no correlation to the Grievant's employment contracts and/ or the claim.

38. The Respondent states that the Grievants received their salary up to their last working day. Further, they were given more than one month's notice of the intended redundancy and served the notice period from September 2019 to November 2019. Therefore, they are not entitled to any other or further pay in this regard and are put to strict proof of their claims.

39. The Respondent states the Grievants proceeded on paid leave during their tenure of employment and did not discharge any duties for the Respondent on public holidays. Thus, the demands made in this regard are without factual or legal basis.

40. The Respondent states that the redundancy was justified and carried out in accordance with the provisions of the applicable law, therefore, the Grievants are not entitled to compensation for unfair redundancy.

41. It is the Respondent's case that Grievants received severance pay computed at the rate of 15 days' basic salary for each completed year of service, which amounts were indicated in their pay slips as terminal payments. They are not entitled to any further payments in respect thereof.

Evidence in Court

42. The Claimant's witness, Peter Emisembe Owiti (CW1) states that he is the Claimant's General Secretary and adopted his witness statement dated 11th March 2024 and 14th May 2024 as his evidence in chief and produced the union's amended list of documents and further list of documents as his exhibits.

43. During cross examination, CW1 testified that on 5th December 2019, the court allowed the redundancy process.

44. CW1 testified that the University informed them they were experiencing some financial challenges and it even closed its satellite campuses. These challenges mentioned by the management were confirmed in the union's minutes.

45. CW1 testified that the Respondent proposed three measures to deal with the challenges which included VER, redundancy and phasing out certain courses. In the union's response, they thanked the management for contacting it to resolve some pending issue.

46. CW1 testified that as per the union's minutes of 2nd September 2019, the university made their proposal and union also gave its proposal. Additionally, the Respondent disclosed VER and those who opted for the same.

47. CW1 testified that the union in further communication with the University asked if the package could be enriched but the Respondent said they could not afford anything better and gave reasons.

48. CW1 testified that vide a letter dated 15th October 2019, the Respondent informed the union, labour office and FKE that 30-35 staff at levels identified. The staff members were also sent individualised letters notifying them of the redundancy.

49. CW1 testified that each affected employee executed a discharge voucher and secured and received in full and final settlement

50. The Respondent's witness, Charles Ogema (RW1) stated that he is the Respondent's Head of HR Operations and during the redundancy process, he was the Acting Director HRM. He adopted his witness statement dated 28th April 2025 and 29th May 2025 as his evidence in chief and produced the Respondent's bundle of documents dated 25th April 2025 as his exhibits 1-197.

51. RW1 testified that the Respondent did not discriminate against union members. 90 members had been identified for redundancy and the process did not impact union members only. 34 of the employees were impacted and 9 of them were not union members.

52. Upon cross-examination, RW1 testified that Last in First Out did not apply in the redundancy process.

53. RW1 testified that after the redundancy, the Respondent hired about 20 new senior staff.

54. RW1 testified that several employees' salaries were increased including Wanyoike's which increased by 48.6%. He asserts that this was linked to the redundancy but was a decision based on the Respondent's business continuity.

Claimant's Submissions

55. The Claimant submitted that Section 40 of the *Employment Act* stipulates the principles on how an employee has to be handled before being declared redundant and they are to be followed fully and not selectively. From the evidence by the Respondent, nothing was shown that it followed the laid down procedure before declaring the Claimant's members Redundant. No score sheet was produced by the Respondent showing that the Claimant's members scored so poorly as compared to other employees in the same department.

56. The Claimant submitted that the fact that the Respondent only picked on the claimant's members clearly shows that the Claimant's members were targeted for termination by all means. By the time the notice was being issued, their names were on the unwanted list. There was no engagement on how best their positions can be retained and or the redundancy mitigated. Further, the Respondent replaced the claimant's members that were sacked through unfair redundancy and gave the new employees higher salaries.

57. The Claimant submitted that there was neither consultation nor good faith in the process of selecting and declaring its members redundant. It contends that the process was one sided and the outcome was to be achieved whether its members participate or not. This shows that the termination of the Grievants' services was unfair hence unlawful. It cited Aviation and Allied Workers Union v Kenya Airways Limited & 3 others [2012] eKLR.

58. The Claimant submitted that the termination was done more than 3 years ago. Though it was unfair to the Claimant's members, it is challenging to order them back bearing in mind that they were singled out despite being ready to continue serving the Respondent. Therefore, the only remedy is to compensate each of them due to the unfair termination.

Respondent's Submissions

59. The Respondent submitted on three issues: whether the redundancy undertaken was lawful and justified; whether the redundancy process was procedural; and whether the Claimant is entitled to the orders sought.

60. On the first issue, the Respondent submitted that in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR the Court of Appeal the court analyzed the definition of redundancy under two broad aspects i.e. that it has to be non-volitional and secondly that it has to be at no fault of the employee. The Respondent has proved that its decision to declare the Grievants' position redundant was involuntary and had nothing to do with the Grievants and/ or the Union. It was influenced by external factors and therefore based on a genuine belief as provided under Section 43 (2) of the *Employment Act*.

61. The Respondent submitted that changes in regulations and government policies on higher education, it experienced a significant reduction in self-sponsored students and an influx of government-sponsored students whose tuition fees are subsidized by 55%. This culminated in significant financial constraints for the Respondent and necessitated a revision of its overall cost structure for future sustainability.

62. The Respondent submitted that had to close its campuses in Kisii, Meru, Eldoret and Machakos, leaving only its main campus in Rongai and the Nairobi Central Business District (CBD) campus. The employees from the said campuses were all absorbed at the Rongai and CBD campuses. However, continued to suffer significant financial constraints despite the measures taken. As such, from October 2018 and May 2019, the Respondent conducted an organizational design audit to optimize its essential capabilities, eliminating duplications of roles, driving cost efficiency, and simplifying the organizational complexities related to reporting lines.

63. The Respondent submitted that it held meetings with its staff, the FKE and the Claimant on 2nd September 2019. CW1 admitted on cross examination that the said meeting took place at its office and that the reasons for the proposed restructure of the Respondent's operations were discussed. Additionally, the union's own minutes dated 14th October 2022 evidences what was discussed at the meeting.

64. The Respondent further submitted that the Union also recognized in its minutes that an audit from Deloitte was presented at the meeting of 2nd September 2019 that shed light on the Respondent's financial circumstances, which they never challenged. It is trite law that a party cannot approbate and reprobate on the same issue and the Union should not be permitted by this Court to do so at this stage.

65. The Respondent submitted that it is not in dispute that the Union was not only conversant with the reasons for the redundancy but also agreed to work with the Respondent to facilitate ease of the process for its members.

66. It is the Respondent's submission that no two redundancies are alike and thus the evidence required to demonstrate a redundancy would vary depending on the circumstances of each case. In this case, there was need to restructure the university in view of the challenges to remain a going concern. The circumstances necessitating the restructure could only have been determined and/ or assessed by the Respondent. Further, the Respondent has a right, as a business entity, to take up measures it deems necessary to ensure its continuity when faced with adverse economic circumstances. It is for the Respondent to determine whether genuine conditions exist that call for the re-engineering of

its operations. The *Employment Act* does not list specific instances of redundancy and therefore an employer is required to ensure that the reason is based on operational business requirements.

67. The Respondent submitted that whereas the Respondent considered the Union's views as demonstrated, it was not for the Union to determine the commercial viability of the Respondent's business. The decision rests with the employer as held in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (supra). This notwithstanding, no evidence was adduced by the Union to controvert the position as presented by the Respondent with respect to the grounds for the redundancy.

68. The Respondent submitted that the redundancy process was not actuated as a means to frustrate the CBA negotiations and/ or to reduce the Union's membership; and the Claimant union did not produce any evidence to demonstrate this. It asserts that the letters of withdrawal produced by the Union show that employees withdrew from the union for personal reasons over a year before the redundancy took place. There was therefore no correlation between their withdrawal and the redundancy process.

69. The Respondent submitted that it is standard practice in any business environment with similar staff quotas for unions and employers to engage in discussions around recognition and collective bargaining agreements. Such discussions may likely result in disputes that require settlement through the avenues provided under the *Labour Relations Act*. The fact that the Union and the Respondent could not initially agree on mutual terms was not an oddity; it did not amount to bias or any unfair practice by the Respondent as alluded by the Union. There was therefore no nexus between the said standard practice and the highlighted redundancy, and none was proved.

70. On the second issue, the Respondent submitted that following the meetings held on 2nd September 2019, it proceeded to issue notices of intention to declare redundancies to the Labour Office, the Claimant and the FKE on 3rd September 2019 in compliance with Section 40 (1) (a) of the *Employment Act*. Vide the notice, the Respondent referred to the earlier meeting, providing a detailed explanation of its financial position and outlining the steps it sought to undertake to effect the redundancy.

71. It is the Respondent's submission that it also highlighted that approximately 90 staff members at all levels in the university were likely to be impacted by the staff rationalization process. It explained, as highlighted in the initial meeting, that the staff rationalization process would be carried out in 2 phases. The first phase would involve the implementation of the VER, which was expected to take place in the next 3 weeks. The Respondent further stated that it would implement the second phase, i.e. non-voluntary redundancy, if the first phase failed to achieve the expected outcome.

72. The Respondent submitted that with reference to the legal requirement for consultations with employees prior to declaring redundancies, it has proved compliance and that the same were meaningful as provided under Article 13 of the International Labour Organisation Termination of Employment Convention 1982. In particular, the Respondent has demonstrated that it engaged the Union and Grievants in good time with relevant information including the reasons for the contemplated staff rationalization, the number and categories of workers likely to be affected, and the period over which the terminations intend to be carried out and on measures to be taken minimize and/ or mitigate the adverse effects of the potential job loss

73. The Respondent submitted that it engaged in consultations with its employees and the Union from 2nd September to 15th October 2019, a period of over one month, following the issuance of the Notices of Intended Redundancy. In particular, the Respondent had community/ town hall meetings with all its employees on 2nd and 3rd September 2019, wherein it explained the need for staff rationalization, its

discussions with the Union and FKE, and the phases in which the process was to be carried out. This was also confirmed by the Claimant's witnesses', Christone Kagali and Norah Mumbo, statements dated 14th October 2022.

74. The Respondent submitted that the Union was not only notified of the VER process, but that it was also given an opportunity to submit proposals on the VER, which it did on 13th September 2019 demanding ex gratia pay of between one month to 6 months' gross salary. RW1 testified that noting the Respondent's dire financial constraints at the time, it communicated to its employees and the union vide a further memorandum dated 19th September 2019, explaining the challenges it was facing and its inability to enhance the exit package offered. It invited the employees to reconsider the VER, reminding them of the end date as previously communicated.

75. It is the Respondent's submission that the Union, aggrieved by the Respondent's decision, incited its members not to take up the VER. This was stated in the witness statements of Christone Kagali (Grievant No.7) and Norah Atieno Mumbo (Grievant No. 4) that most members of the union refused to apply for the VER.

76. The Respondent submitted that as highlighted by Article 13 of the ILO Convection and by the Court of Appeal in The German School Society & another v Ohany & another [2023] KECA 894 (KLR), consultations are also intended as avenues to avert redundancies. One such avenue that was considered by the Respondent, noting the low VER turnout, was to invite employees to apply for internal positions. The Respondent issued an internal vacancies announcement inviting employees within the university to apply for available roles. A total of 22 positions were highlighted in the advertisement and the role profiles, job specifications and responsibilities were shared for ease of reference and the employees with requisite qualifications were invited to apply.

77. The Respondent submitted that as no suitable candidates were found internally for all the roles, it was left with no recourse but to issue an external advertisement for the remaining vacant roles. RW1 emphasized that these were not the Grievants' roles as alleged by CW1. RW1 also denied the purported salary increments as alluded by CW1, noting that the tabulations shared in the tabulations were fabricated by the Union and were also not reflective of the number of staff hired to fill the 22 roles.

78. The Respondent submitted that most of the external hires were not taking up administrative roles. Furthermore, out of all the Grievants, only Norah Atieno Mumbo applied for a position but was not qualified. The other Grievants failed, neglected and/ or refused to apply for the advertised administrative roles and no evidence to the contrary has been led by the Union. It is therefore dishonest for the Union to allege purported discrimination in the subsequent hiring of external qualified persons in January to February 2020, whereas the Grievants were neither qualified for nor applied to the advertised positions.

79. On selection criteria, the Respondent submitted that following the VER and the above internal vacancies assessment, about 30-35 staff positions were identified for the second phase. This was a significant reduction from the initial anticipated 90 positions, demonstrating considerable efforts by the Respondent to avoid the redundancy. Regrettably, as the staff component was still quite high, the Respondent was left with no recourse but to commence the second phase of the staff rationalization process by declaring redundancies.

80. The Respondent submitted that at the meeting of 2nd September 2019 with the Union and the community meetings of 2nd and 3rd September 2019 with the employees, explained the selection criteria of the second phase was to be implemented. CW1, referring to the union's minutes, admitted that the

Respondent stated that it would consider the suspension of unviable courses and the implementation of the Last In, First Out (LIFO).

81. The Respondent submitted that large staff component, a majority of whom were unionized and/ or unionisable, hence it would not have been strange to note that many had been affected by the restructure. This did not mean that the Respondent was targeting members of the Claimant as alleged or at all. The Claimant also failed to lead any evidence to support this assertion. The Respondent would not have engaged in the very extensive consultation process with the Union it had ulterior motives as alleged.

82. The Respondent submitted that it explained in its notice of redundancy the rationale for the redundancy and measures taken were also reiterated in the letters. It also explained that the impacted employees would be released in batches, with the expected final date being set for August 2020. The Respondent also proceeded to issue the impacted employees with redundancy notices on 16th October 2019 which explained that the impacted employees would continue to discharge their services up to 15th November 2019, thereby giving them one month's notice of the effective termination.

83. The Respondent submitted that over and above the provisions of Section 40 (1)(f), it also proceeded to issue the impacted employees letters dated 5th November 2019 that confirmed their termination of employment. These letters reiterated that the impacted employees' services would be terminated with effect from 15th November 2019, on which date they would receive their terminal dues including severance pay equivalent to 15 days' pay for each completed year of service.

84. The Respondent further submitted that the letters informed the Grievants and their dependants would be retained on the existing medical scheme up to 31st December 2019. Their terminal dues were subsequently computed as agreed and paid out to them in November 2019. The Grievants did not raise any concerns about the process and/ or their terminal dues. They even proceeded to sign Discharge Vouchers upon receipt of their respective payments, acknowledging the same as full and final settlement of all dues arising from their employment and termination.

85. The Respondent submitted that the law on discharges is well settled. Any document executed by a party or parties pursuant to an offer to the effect that it discharges one or more parties from liability constitutes a contract couched in clear and unambiguous terms. It cannot be vitiated by a party, save on grounds that warrant the vitiation of a contract, i.e. fraud, mistake, duress or misrepresentation as affirmed by the Court of Appeal in Trinity Prime Investment Limited v Lion of Kenvya Insurance Company Limited [2015] KECA 793 (KLR) as follows:

> " The execution of the discharge voucher, we agree with the learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other."

86. The Respondent submitted that on 8th November 2019, the Union wrote to the Respondent seeking to suspend the redundancy process demanding that the Respondent engage in further consultations on the employees' tuition waivers. In response, the Respondent wrote to the Union on 13th November 2019 explaining that the tuition waivers for its employees' dependents were guided by its internal policies and that the same would be honoured up to August 2020. No further claims were raised by the Union subsequent thereto.

87. The Respondent submitted that despite the concessions it made, the Union still felt aggrieved without justification. The Union had, prior to the redundancy, filed a claim before this Honourable Court in

ELRC No. 900 of 2017 (Kenya Private Workers Union v. Africa Nazarene University in relation to a dispute on its recognition. Once the final redundancy letters were issued, the Union filed an application in the said matter seeking to stop the redundancy process. The Court, upon hearing the parties inter partes, allowed the Respondent to finalize the redundancy process with effect from 5th December 2019.

88. It is the Respondent's submission that it acted on the order and issued further letters to the Grievants on the same date confirming their redundancies. The Respondent was allowed to exercise its managerial prerogative with respect to the process, contrary to the claims made by CW1. Therefore, the redundancy process was both substantively and procedurally fair.

89. On the third issue, the Respondent submitted that the Union and/ or Grievants are not entitled to the prayers sought in its Claim as they failed to present any evidence before the Court for it to arrive at a finding of substantive or procedural unfairness.

90. The Respondent submitted that Section 47(5) of the *Employment Act* provides inter alia that:

> " For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee..." Further, in Kennedy Maina Mirera v. Barclays Bank of Kenya Limited [2018] eKLR, the court held: "...sections 43(1) and 47(5) of the *Employment Act*, must be construed so as not to nullify the conventional and accepted law on the burden of proof. Therefore, the Plaintiff must adduce prima facie evidence that tends to show that his employment was not terminated for a valid reason and that the employer did not follow a fair procedure in terminating his employment..."

91. It is the Respondent's submission that the Union and/ or Grievants have not proved their claim or discharged their burden of proof under Section 47(5) of the *Employment Act* that their termination was unlawful. They are therefore not entitled to a declaration that the termination on grounds of redundancy was unfair and/ or an award of 12 month's compensation.

92. The Respondent submitted that the Grievants received their respective salaries up until their last working day on 15th December 2019. They are not entitled to any other or further pay in this regard. CW1 also admitted in his testimony that the Grievants received their salaries up to their last date in December 2019. Further, at page 41 of the Claimant's Further List of Documents dated 5th February 2025 reflects the amounts received by each Grievant. This prayer for salary up to 15th November 2019 is therefore without basis.

93. The Respondent submitted that the Grievants are not entitled to one month's pay in lieu of notice. The Grievants were given more than one month's notice of the intended redundancy and they served the notice period from September 2019 to November 2019. They were given adequate termination notice are therefore not entitled to pay in lieu of notice.

94. It was submitted that the Grievants did not have any accrued leave days as at off days, leave allowance and the date of termination of their contracts. They received leave traveling allowance, paid off leave days and leave allowance following the termination of their contracts as per the leave records produced in court by the Respondent. Additionally, they were not entitled to leave travelling allowance. The Grievants had also proceeded on paid leave during their tenure of employment and did not discharge any duties for the Respondent on public holidays.

95. The Respondent submitted that the Grievants received severance pay computed at the rate of 15 days' basic salary for each completed year of service, which amounts were indicated in their pay slips as terminal payments. They are also signed Discharge Vouchers acknowledging receipt of the terminal

benefits which included severance as set out in their termination letters. Any further payments on this limb would amount to unjust enrichment, which is not warranted in the circumstances.

96. I have examined all the evidence and submissions of the parties herein. The main issues raised by the claimants is that they were unfairly declared redundant by the respondents. The claimants aver that their members were issued with redundancy letters and voluntary retirement/exit option. On 15/10/2019 they were now issued with letters indicating that their positions had been restructured and on 5/11/2019 they were now issued with redundancy letters indicating their exit packages and informing them of their last date of work as 15/11/2019.

97. The claimants aver that despite having a valid recognition agreement, the respondents did not seek their indulgence and that the redundancy package was paid less liability owed to the respondent and no certificates of service were issued upon exiting the service.

98. The respondent denied declaring the claimant members redundant unlawfully. The respondents indicated that the redundancy was occasioned by the reduction of students and review of viable courses being offered by the University. They state that they held meetings with FKE and the claimant on 2/9/2019 and thereafter issued the redundancy notices.

99. They also aver that they held consultations with its employees for one month following the issuance of the redundancy notices. From the documents exhibited before court the respondents wrote to the claimant and to the labour offices on 3/9/2019 communicating their desire to restructure staff at the institution.

100. Vide a letter of 13/9/2019, the claimants Secretary General wrote back explaining their position on the intended early retirement. The respondents also wrote a letter to the claimants and to the labour offices dated 15/10/2019. The claimant responded to this letter on 24/10/2019. They raised concern that they had not been informed of the redundancies.

101. In the meantime, the respondents had written to the individuals members of the claimant informing them of the impeding redundancy. The claimants did not refer to the letter from the respondents dated 15/10/2019 which informed them of the pending redundancy. The redundancy was finally effected vide letters of 5/11/2019 which indiatced that the redundancy will be effective on 15/11;/2019. The respondents further stated that in ELRC No 900 of 201,7 the court allowed them to finalise the redundancy with effect from 9th December 2019 and that they acted on this directive and issued the claimants members with termination letters and paid them all their dues.

102. The claimants Secretary General in his evidence in court attested to the matters as raised by the respondents and has admitted that the affected employees executed a discharge voucher and served and received in full and final settlement. The respondents denied discriminating against union members and stated that 34 employees were affected by the redundancy and 9 of them were not union members.

103. From the evidence before court it is however, clear that the redundancy was sanctioned through an order of court. The respondents were however duty bound to follow the law as provided for under section 40 of the *Employment Act* 2007 which states as follows:-

> (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.

104. The respondents allowed the claimant to engage with them through consultation. They also notified the union and the labour officer of he said redundancy. It is however true that the notice period given was 10 days instead of the required 30 days.

105. On this account, I find for the claimants and order the respondents to pay them 20 days salary as notice pay. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2 ND DAY OF DECEMBER 2025.

HELLEN WASILWA

JUDGE