REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E315 OF 2021

NELSON OLUOCH ONYANGO……………………………….CLAIMANT

-VERSUS-

CARE INTERNATIONAL SOMALIA…………………1ST RESPONDENT

CARE EAST, CENTRAL AND SOUTHERN

AFRICAN REGIONAL MANAGEMENT UNIT…….2ND RESPONDENT

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JUDGMENT

Introduction

1. By a Statement of Claim dated 16th February 2021, the Claimant sued the Respondents accusing them of unlawful redundancy, discrimination, unfair labour practices and unfair administrative action. He then prayed for the following reliefs:-

a) A declaration that the termination of the Claimant's employment on account of the purported redundancy was unfair and unlawful.

b) A declaration that the 2nd Respondent unlawfully and illegally interfered with the Claimant's employment by spearheading and effecting the flawed redundancy process.

c) Compensation for unfair, wrongful and unlawful termination of employment on account of the purported redundancy equivalent to Kshs. 80,635.291.80 being paid up to retirement age of 65 years at the monthly rate of Kshs. 329,123.64 for 245 months.

d) Compensation of Kshs. 3,554,535.31 being 20% of the salary for 6 years and 6 months for the work done outside the job description.

e) A declaration that the Respondents violated the Claimants rights to equality and freedom from discrimination, fair labour practice and fair administrative action guaranteed under Articles 27, 41 and 47 of the Constitution.

f) Damages for discriminating against the Claimant in violation of Article 27 of the Constitution.

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g) Damages for breach of the Claimant's right to fair labour practice guaranteed under Article 41 of the Constitution.

h) Damages for breach of the Claimant's right to fair administrative action guaranteed under Article 47 of the Constitution.

i) Damages for breach of the Claimant's legitimate and reasonable expectation.

j) Interest in payment in (b), (d), (c) and (f).

k) ***Costs of this suit.***

2. The Respondents filed a joint Memorandum of Defence dated 21st May 2021 denying the Claimant's allegations including violation of fundamental rights and the prayers sought in his Statement of Claim. They then averred that the redundancy in issue was lawful as it was justified in the circumstances and was carried out in accordance with the law. They further averred that the Claimant was paid all his terminal dues, was issued with certificate of service and his medical insurance cover was extended to 30th June 2019. Therefore they prayed for the suit to be dismissed with costs.

<u>Factual background</u>

3. The Claimant was employed by the 1st Respondent as a Procurement Manager based in Nairobi under an open-ended contract from 26th June 2012 to 31st January 2019 when his

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employment was terminated on account of redundancy. His gross monthly salary as at the time of the exit was Kshs. 329,123.64 and had worked for six years six month.

4. On 9th November 2018, the 1st Respondent held a meeting with the staff and informed them of a directive from the Government of Somalia that the 1st Respondent ought to relocate to Somali by 31st December 2018. Subsequently, an email dated 13th November 2018 was circulated to all the staff informing that the relocation process could result in job losses or relocation to Somalia. The email was for general information to individual employees and it was sent to their individual email address.

5. On 15th January 2019, the 1st Respondent sent notification to the entire workforce indicating the positions that would be affected by redundancy including Procurement Manager. The email invited comments from the staff before a final decision scheduled on 21st January 2019. The final relocation plan was communicated on 21st January 2019 confirming the redundancy of the Claimant as from 31st January 2019 which was his last day at work.

6. Subsequently he was then issued with a letter dated 31st January 2019 informing him that his position would be redundant from 31st March 2019. The reason cited was directive from the Government of Somalia that all international

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NGOs, operating in Somalia with offices in Kenya were to relocate from Nairobi to Somalia by close of the year 2018. However he averred that the redundancy was done in bad faith as such it cannot pass the legal and constitutional muster since it was unjustified.

7. The Claimant averred that the redundancy process aimed at getting rid of him from the organization at all costs after being cleared of misconduct allegation by the Disciplinary Committee. Despite the said clearance, the 2nd Respondent's officers including MCcray continued questioning the same leading to the Claimant's being subjected to Performance Improvement Plan (PIP) from 1st October to 31st December 2018. He maintained that the redundancy process was a weapon to achieve what the disciplinary process and the PIP failed to achieve.

8. The Claimant further averred that his redundancy was not done in accordance with the procedure provided under section 40 of the Employment Act since he was never served with one month notice of the intended redundancy. Besides he was denied the right to consultative participation in the redundancy process in which to express his choice to alternative roles or even relocate to Somalia like other staff. He averred that the redundancy was done in a big hurry before the deadline for relocation which was schedule in September 2019.

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9. In view of the said matters, the Claimant averred that his right to legitimate expectation, right to fair labour practices, right to fair administrative action and freedom from discrimination were violated. He was also exposed to mental anguish, anxiety, financial suffering and embarrassment since during his employment he had taken mortgage of Kshs. 7,800,000/- and a Sacco loan of Kshs. 4,000,000/-. Therefore he prayed for compensatory damages for the said breaches.

10. The Respondent's case on the other want was that the Claimant was indeed employed by the 1st Respondent from June 2012 to 31st January 2019 when he was laid off following directive by the Government of Somalia that all INGOs operating from Kenya should relocate to Somalia by the end of December 2018. Besides, the 1st Respondent was not allowed to employ expatriates where the skills needed were locally available like the position of Procurement Manager.

11. It further averred that the redundancy was done in accordance with section 40 of the Employment Act as the Claimant and the Labour officer were served with sufficient notice of the redundancy, and consultations were done from 9th November 2018. They averred that on 4th December 2018, the 1st Respondent informed all the staff that an independent resource from outside the region had conducted a formal functional analysis process through stakeholder interviews and

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open consultation opportunities and prepared a report with recommendations to be shared with staff on the finalization of the relocation process.

12. They averred that a progress report was shared to the staff on 19th December 2018 via email which promised the staff further consultative discussions and meetings with various staff members in early January 2019. On 15th January 2019, the 1st Respondent shared with the staff a Proposed Relocation Plan for review and comment before 21st January 2019 when final decision was to be made. The email also informed all the staff of short term jobs in other East and Central African Countries in the area of Finance, PS and audit and called for the interested parties to apply.

13. The 1st Respondent averred that it never received any feedback by 21st January 2019 and as such it shared the "care Somalia Nairobi Liaison Office Final Relocation Plan" which outlined the roles to be affected at each phase of the relocation process and the reasons thereof. It further wrote a letter dated 30th January 2019 to the Nairobi County Labour Officer communicating the decision to proceed with redundancies with effect from 31st March 2019. It also shared a list of the employees whose position would be declared redundant at each phase and those who would be relocated to Somalia.

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14. The 1st Respondent averred that, after consultations and sharing of the reports on the intended redundancy, it issued the Claimant with a notice of termination dated 31st January 2019 to take effect from 31st March 2019. However, it opted to pay the Claimant two months salary in lieu of notice to exit immediately. It also paid his terminal dues including severance pay and issued him with a Certificate of Service.

15. During the hearing the Claimant adopted his written statement as his evidence in chief and produces a bundle of documents as exhibits. In cross examination he stated that the Respondents were distinct entities and they operated independently. He contended that he was assigned extra work to do for the 2nd Respondent but he was not paid anything for the same.

16. He admitted that the reason cited for the redundancy was , directive from Somalia Government but contended that such directive did not mean that the Nairobi office would be closed down. He further admitted that the 1st Respondent was reminded on 1st December 2018 of the Government directive to relocate to Somalia. He contended that the Nairobi office still exist and as such his redundancy was unjustified and unlawful. He further admitted that the minutes of the meeting held between INGOs and Somalis made reference to procurement which was to fully relocate to Somalia.

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17. He further stated that the Respondent never followed the right procedure before terminating his services. He contended that there was no Thirty days notice given to individual employees. However he admitted that there was an email dated 13/11/2018 referring to a previous meeting, which also talked about the relocation that could lead to job losses or relocation of some positions. He further admitted that there was another email dated 26th November 2018 on relocation.

18. He also confirmed that there was another email dated 13th January 2019 attaching the Proposed Relocation Plan, and calling for feedback. The Plan indicated that the positions of Procurement Manager and Procurement Officer would be declared redundant and that the position were to be localized. However, he maintained that there was witch hunt against him and the redundancy process was discriminatory. He admitted that he never wrote any protest to the proposed relocation plan.

19. In re exam he contended that the email dated 13th November 2018 was a general email to all staff and it never mentioned his position. He contended that the minutes of the meeting between the Somalia were not signed and they appeared to be a draft. He never received any notice for his relocation to Somalia. He mentioned that it was not mandatory that all the positions were to go to Somalia nationals. He also wondered why he was laid off on 31st January 2019 and his junior colleague on 30th June 2019.

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20. He contended that his position was advertised immediately he left and it was given to a Somalia national based in Somalia. He maintained that his termination was unfair as he was not given sufficient notice and there was no room for consultation or to show that he could work in Somalia.

21. The Respondent called Mr. Iman Abdullahi, 1st Respondent's Country Director as the defence witness. He adopted his written statement dated 11th May 2021 as evidence in chief and produced a bundle of documents as exhibits D1-20 respectively. The stamen enclosed the averments in the Memorandum of Defence.

22. In cross examination, he stated that he was the Country Director in Somalia when the redundancy occurred. He further stated that the Respondent had an office in Nairobi before relocating to Somalia. He confirmed that the Claimant was based in the Nairobi office and his contract was governed by Kenyan law. He further confirmed that the employees were notified of the relocation during a staff meeting held on 9th November 2018 followed by an email on 13th November 2018 about relocation and job losses. Other emails were sent as per page 48 of the Respondent's bundle of documents but at that stage the affected were not mentioned.

23. He stated that he sent the Relocation Plan to the staff on 15th January 2019 asking them to submit their comments by 21st

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January 2019 when final decision would be made. However, he admitted that the decision for the Claimant's redundancy had already been made as at 15th January 2019 because the proposed relocation plan attached to the email indicated that his redundancy was to take effect on 31st January 2019.

24. He stated that he sent a termination notice to the Claimant on 31st January 2019 to take effect on 31st March 2019. He admitted that he served the Labour Officer with a notice after the final decision on the redundancy had already been made but he was free to make comments before 31st March 2019. He contended that the Claimant was served with a notice of intended redundancy dated 31st January 2019 and then he was offered two months salary in lieu of the notice.

25. He contended that there were consultations with the staff and the Claimant was informed of the criteria used for him to exit on 31st January 2019 while his junior continued until 30th June 2019. He further explained that a Somali national was required to fill the position left by the Claimant because he could not speak local Somali language.

26. In re examination Respondent witness 1 stated that there were key roles mentioned by the Somali Government for relocation including Claimant's procurement role. (See Page 27 of Respondent's Bundle). He contended that Government of Somalia indicated that there were enough skills within Somalia and in the Diaspora to replace skills based in Kenya. He

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contended that it was impossible to get work permits for foreigners to serve in the highlighted positions including procurement and therefore it advertised the position and appointed a Somali national to the role of procurement.

27. He contended that other roles were also declared redundancy (See Page 59 of Defence Bundle). He maintained that there were consultations with the staff and the Claimant never said anything even after being served with the redundancy notice. He stated that the redundancy notice to the Labour Officer indicated the reason and the extend of the redundancy.

Submissions

28. After the hearing, both sides filed written submissions which were highlighted by counsel on 22nd October 2025. Ms. Wangong'u adopted her written submissions dated 22nd October 2015 to urge that the termination of the Claimant's employment was not justified. She contended that although the Government of Somalia directed the 1st Respondent to relocate its office to Somalia, the Claimant's position of Procurement Manager did not fall off.

29. She further submitted that there was no notice of intention to declare redundancy as the Claimant was only given a final notice of termination. Besides, the notice to the Labour Officer, was given on 31st January 2019 the same day the Claimant was

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served with the termination letter. In the circumstances, it was submitted that the redundancy notices did not comply with section 40 of the Employment Act.

30. Ms. Wetende, for the Respondent adopted her written submissions dated 21st October 2025 to urge that the redundancy was done in accordance with section 40 of the Act. She submitted that the Respondents have adduced minutes of meeting with Government of Somalia and other correspondences to prove that there was a directive for relocation of the 1st Respondents office to Somalia or else it be deregistered.

31. She further submitted that despite the tight timelines given for the relocation, the Respondents tried their best to comply with Kenyan law including consultations. She contended that the Court of Appeal in **Africa Nazarene University v. David Mutevu & 103 others [2017] eKLR,** overruled its decision in **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR** about mandatory notice and consultations. She urged the Court to dismiss the suit.

32. Having considered the pleadings, evidence and submissions, the following issues fell for determination:-

    a) Whether the redundancy was justified by a valid reason.

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b) Whether the redundancy complied with the procedure under section 40 of the Employment Act.
c) Whether the reliefs sought should be granted.

Justification

33. The Claimant's case was that the termination of his employment on account of redundancy was not justified by a valid reason but the Respondent maintained that there was a valid reason for the redundancy. Redundancy is defined under section 2 of the Employment Act as follows:-

> ***" 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 practice commonly known as abolition of office, job or occupational loss of employment."***

34. The above definition is clear that when it comes to redundancy, the employee is not at any fault. The employer must show that the redundancy is grounded on a valid reason which has rendered the services of the employee superfluous. In other words, the employer must prove that there existed a redundancy situation that forced the employer to lay off the

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employee after all efforts to mitigate or prevent the redundancy failed.

35. In the **Kenya Airways Limited case, supra,** the Court of Appeal held that:-

> ***" thus redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with fair procedure***
>
> ***The decision to declare redundancy has to be that of the employer. In the above New zealand case of G. N. Hale & Son Ltd, it was held that so long as the employer genuinely believed that there was a redundancy situation, then any dismissal was justified, and it was not for the Court, or the union, to substitute their business judgment with that of the employer. The decision to declare redundancy, as I have said, is that of the employer based on purely commercial considerations and not principles such as sustainable development, noble and lofty as it may be."***

36. In this case the employer explained that it was forced to relocate its offices from Kenya to Somalia following a directive

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by the Government of Somalia to relocate to the Country or face deregistration. The said Government also directed that there were skills available locally to take up some of the roles including procurement.

37. It was the Respondent's case that in view of the said directives it was forced to lay off the Claimant among other employees because it would be impossible to get work permits for them. Besides the Claimant was not able to speak Somali language which was a big challenge considering the role he was performing.

38. The Claimant contended that the reason for the redundancy was not genuine but a process meant to achieve a desired end which had failed using previous frivolous disciplinary process. He contended that the directive to relocate did not mean closing of Nairobi office and maintained that the Nairobi office was still in existence. He further contended that his position of Procurement Manager did not fall off and in fact it was filled immediately he exited.

39. I have considered the above views and there can be no doubt that the Government of Somalia gave directive to international NGOs operating in the Country to relocate their offices from Kenya to Somalia by 31st December 2018. There is also no doubt that the said Government indicated a number of roles which it believed its citizens, both locally and abroad possed.

40. The Respondent produced evidence to support the above findings including letters dated 1st September 2018 and 1st December 2018 from the Minister of Planning, Investment and Economic Development and the Permanent Secretary for the same Ministry in the Government of Somalia. In view of the said evidence. I find that the employer has proved on a balance of probability that a redundancy situation occurred following the said Government directive that forced it to lay off the Claimant. The said reason was involuntary and it rendered the Claimant's service superfluous after the relocation of the role to Somalia.

41. The Claimant was not the only employees impacted by the redundancy and his position was not given to a fellow Kenyan but a Somali national, in line with the policy of the Somali Government. The Claimant has also not rebutted the employers evidence that he was not able to speak Somali language. Consequently I find that the termination of employment on account of redundancy was justified by a valid reason and there was no discrimination.

Procedure

42. The Claimant averred that the mandatory procedure set out in section 40 of the Employment Act was not followed. Specifically, he faulted the employer for not serving him with 30 day notice of intention to carry out redundancy, and for not

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giving him any opportunity for consultations towards preventing the redundancy. The Respondents denied that allegation and averred that it fully complied with section 40 of the Act by serving the Claimant and the Labour Officer with notice of intention to carry out redundancy dated 31st January 2018 and also invited the Claimant and all the other staff for consultations.

43. The procedure for carrying out redundancy in Kenya is provided by section 40(1) of the Employment Act as follows:-

> ***" 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 or redundancy;***
>
> ***b) Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour office;***
>
> ***c) The employer has, in the selection of employees to be declared redundant had due regard to***

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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 an 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 pat ay the rate of not less than fifteen days pay for each completed year of service."***

44. The above principles are derived from ILO Convention 158, of 1982 Termination of Employment, specifically Article 13 and 14, and also recommendation 166 paragraph 19-26. The principles include sufficient notice to the employees representatives and the relevant government authority, consultations, selection, mitigation and payment of severance

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pay. The Courts in Kenya have indeed, dealt with all these principles in a legion of decisions.

45. In **Thomas De La Rue v. David Opondo Omutelema [2013]eKLR, Kenya Airways Limited v. Aviation & Allied Workers Union Kenya & 3 others]2014] eKLR** and **African Nazarene University v. David Mutevu & 103 others [2017] eKLR,** the Court of Appeal was consistent in holding that before terminating an employee's employment on account of redundancy, the employer has a mandatory obligation of serving the employee and area Labour Officer with a notice of one month before the date when the intended redundancy is scheduled to take effect.

46. The notice is supposed to indicate the reasons and the extent of the intended redundancy. It is to be served on the employee or his trade union if the employee is a member of a union. I will discuss the purpose of the two notices after I deal with the question, whether or not proper notices were served in this case.

47. There is no dispute that RW1 stated that both the Claimant and the Labour Officer were served with notice of intended redundancy on 31st January 2019. The notice was to take effect on 31st March 2019 but the Claimant was released on 31st January 2019 and offered two months salary in lieu of notice. The foregoing facts were acknowledged in Page 9 of the Respondents submissions at paragraphs 5.1.1. and 5.1.2.

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48. RW1 admitted during cross examination that, when the Claimant was served with the notice of the intended redundancy, a final decision of his termination had already been made. Likewise, the Labour Officer was also served after the final decision to lay off the Claimant had been made.

49. Having considered the evidence and the submissions presented, I find no difficulties in concluding that the purported notice of intended redundancy served on the Claimant and the Labour Officer were not in accordance with the provisions of section 40(1)(a)and (b) of the Employment Act. A notice of redundancy under the Act is not a final notice of termination but of intent. It is supposed to be served at least one month before the date when the redundancy is scheduled to take effect.

50. The said notice is part of a mandatory statutory process and the employer has no discretion to shorten it or ignore it all together like in this case. Nothing in section 40(1)(a) and (b) of the Act entitles an employer to terminate employment on account of redundancy by paying the employee salary in lieu of notice. Redundancy is a special regime which has unique and mandatory procedure both in our local statute and the ILO convention 158 on Termination of Employment and the attendant Recommendation 166.

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51. The purpose of notice of intention to carry out redundancy is not captured by the Employment Act but we can trace the same in the said ILO Convention 158 though not ratified by Kenya. Article 13(1) of the Convention states that:-

> ***" (1) When the employer contemplates termination for reason of an economic, technological, structural or similar nature, the employer shall:***
>
> ***(a) Provide the workers representatives concerned, in good time, with relevant information including the reason for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;***
>
> ***(b) Give, in accordance with national law and practice the workers representatives concerned, as early as possible an opportunity for consultation on measures to be taken to avert or minimize the terminations and measures to mitigate the adverse effects of any termination on the workers concerned such as finding alternative employment."***

52. Article 14 of the convention provides for a similar notice to be given to the competent government authority in accordance with national law and practice as early as possible.

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Under section 40 (1) (a) of the Employment Act, the competent authority is indicated as the Labour Officer of the area where the employee works. The Kenyan statute has further clarified in section 40(1) (b) that where an employee is not a member of a trade union the notification will be given to him/her directly and the area labour officer.

53. The Court of Appeal in **Barclays Bank of Kenya Ltd & another v. Gladys Muthoni & 20 others [2018] eKLR** held:

> ***"We respectfully agree with the views expressed by the two learned Judges. The Constitution in Article 41 is fairly loud on the rights to fair labour practices and we think it accords with the Constitution and international best practices that meaningful consultations be held pre-redundancy. We agree with the trial court that redundancy notices are not mechanical so as to satisfy the motions of the law, and that fair labour practice requires the employer to act in good faith. It is not good faith, for example, to subject innocent employees to making fresh job applications to their employer who was not undergoing a redundancy situation, then vilify them for rejecting the manoeuvre."***

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54. **In Cargill Kenya Ltd v. Mwaka & 3 Others [2021] KECA 115 (KLR),** the Court of Appeal held that:

> ***" The purpose of the notice under Section 40 (1) (a) and (b) of the Employment Act, was to give the parties an opportunity to consider measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment. The consultations were meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it was unavoidable."***

55. In **The Germany School Society v. Helga Ohany [2023] KECA 894 (KLR)** the Court of Appeal held that:

> ***" A notice to the employee/trade union/labour officer opens up the door for a consultative process with the key stakeholders."***

56. In the instant case, the employer did not serve the Claimant and the Labour Officer concerned with a proper notice of the redundancy before the effective date as contemplated in section 40 (1) of the Employment Act. The notice served on the Claimant and the Labour Officer was done merely for information and not to provide any opportunity for consultations. The Claimant was made to exit before

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consultations. The labour officer's notice was mere ticking of the boxes.

57. The Respondent alleged that there were consultations held before the notice of intended redundancy was issued on 31st January 2019 to the Claimant. However, I find that no meaningful consultations were held at that early stage of the process. Consultations can only be, procedurally done after the notice to the employee and the Labour Officer under section 40 (1) of the Act. As admitted by RW1, by the time the said notices were served on the Claimant and the Labour Officer, final decision had already been done including the exit of the Claimant on 31st January 2019.

58. The principle of law emerging from the above precedents and the International Labour Standards in the convention 158 on termination of employment is that, an employer must serve a written notice to the employee affected by intended redundancy and the area Labour Officer. The purpose of the notice is to invoke consultations with the stake holders with a view to avert the redundancy or to mitigate the effects of the redundancy.

59. In this case, the Respondents have not proved on a balance of probability that they engaged the Claimant with a view to redeploying him to other positions within its regional or Country Offices before the abrupt termination. There is

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evidence that the Respondents had alternative jobs, albeit, temporary, but they did not engage the Claimant in meaningful consultations on the same. It follows that the Claimant's lay off was not the last option as there were alternative jobs to mitigate the effects of the redundancy.

60. Accordingly, I find that the failure to serve proper notice, and the failure to give the Claimant an opportunity for meaningful consultations, rendered the procedure followed to lay off the Claimant unfair and not in accordance with mandatory procedure set out in section 40 (1) of the Employment Act.

Reliefs

61. The Claimant prayed for declaration that termination of his employment on account of redundancy was unfair, wrongful and unlawful. Section 45 (2) of the Employment Act provides that:

> ***" A termination of employment by an employer is unfair if the employer fails to prove-***
> ***a) That the reason for the termination is valid;***
> ***b) That the reason for the termination is a fair reason-***
> ***(i) Related to the employees conduct, capacity or compatibility; or***
> ***(ii) Based on the operational requirements of the employer; and***

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c) ***That the employment was terminated in accordance with fair procedure."***

62. In this case I have already made a finding of fact that the procedure followed in the redundancy was not in accordance with the procedure set out in section 40 (1) (a) and (b) of the Act. Consequently, I grant the declaration sought, that the termination was unfair, wrongful and unlawful within the meaning of section 45 of the Act.

63. The Claimant further prayed for payment of Kshs. 80,635,291.80 as compensation for the unfair termination being his expected salary upto the retirement age of 65 years. However, the basis of that computation was not pleaded. Section 49 (1) of the Employment Act provides for a maximum compensation of 12 months salary for unfair termination.

64. In the instant case, the Claimant worked for the 1st Respondent for six and half years and he did not cause or contribute to the termination through misconduct. As per section 2 of the Employment Act, redundancy is the termination of employment for no fault by an employee. Having considered the aforesaid factors and also the unlikelihood of the Claimant securing a comparable alternative job of Procurement Manager in near future, I award him Eight (8) months gross salary as compensation for the unfair termination.

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65. The Claim for discrimination is declined because I have already made a finding of fact that the Claimant was not discriminated against during the redundancy process. I also declined the prayer for damages for breach of right to fair Labour practices and right to fair administrative action under Article 41 and 47 of the Constitution.

66. As far as I understand, the said breaches have been compensated under the section 49 (1) of the Act. Section 40-46 of the Act merely amplies the legal rights under Article 41 and 47 in matters termination of employment through the administrative discretion of the employer.

67. The prayer for damages for breach of the right to legitimate expectation, was not well founded and it has not been proved on a balance of probability.

68. The Claimant prayed for Kshs. 3,554,532.31 being 20% of his salary for 6 years 6 months (245 months) for work done outside the job description. His monthly salary was Kshs. 329,123.64/-. This claim is a blanket claim without any particulars.

69. There is also no evidence to prove that in each of the 245 months concerned, the Claimant did the same work. The burden of prove was upon him to prove how arrived at 20% as the value of the extra work he allegedly performed outside his job description. The said burden has not been discharged on a

balance of probability and therefore the said prayer is declined.

Conclusion

70. I have found that the reason for the redundancy was valid but the procedure followed violated section 40(1) (a) and (b) of the Employment Act and rendered the redundancy unfair, wrongful and unlawful. Finally I have found that the Claimant is entitled to compensation for unfair termination of his employment by dint of section 49 (1) (c) of the Act. Consequently, I enter Judgment for him as follows:

a) The redundancy is declared unfair, wrongful and unlawful.
b) The 1st Respondent is condemned to pay the Claimant Kshs. 2,632,989.12 as compensation for the unfair and unlawful termination.
c) The award is subject to statutory deductions.
d) The Claimant is awarded costs and interest at court rates from the date of this Judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 4TH DAY OF DECEMBER 2025.

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JUDGE

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Appearance:

Wangong'u for the Claimant

Wasonga for Watende for the Respondent

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