

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E936 OF 2023

ACHIENG ARENDE

M.....CLAIMANT

VERSUS

GE EAST AFRICA SERVICES

LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This suit was lodged by way of a Memorandum of Claim dated 9th November, 2023, wherein the Claimant seeks the following reliefs as against the Respondent:-
 - i. A declaration that the Respondent's actions in relation to the Claimant constituted unfair labour practices
 - ii. A declaration that the termination of the Claimant's employment was discriminatory and constituted an illegal, unlawful, and unfair termination of the Claimant's employment;
 - iii. Unpaid pension amounting to KES. 185,393.09, being the employer's and employee portion of the Claimant's pension contribution for part of March 2023 and the month of April 2023;

- iv. Compensation amounting to KES. 17,696,670.92, being an amount equivalent to the Claimant's salary for 12 months at the rate of KES. 1,473,305.91 per month, for the illegal, unlawful, and unfair termination of the Claimant's employment;
 - v. General damages for discrimination;
 - vi. General damages for unfair labour practices and the resulting mental anguish;
 - vii. Costs of this suit and interests thereon.
2. The Respondent entered an appearance dated 20th March, 2024, and filed a Response to the Memorandum of Claim of even date, denying the Claimant's claim. The Claimant filed a reply to the Response to the claim dated 28th May, 2024.
3. The Claimant's case was heard on 9th December, 2024, and 18th December, 2024. The Claimant testified in support of her case, adopted her witness statement, and produced the documents filed as exhibits in support of her case. She also presented Gordon Pejic and Gunter Arda, who testified in support of her case as CW2 and CW3, respectively. Both witnesses adopted their witness statements as evidence in support of the Claimant's case.
4. The Respondent's case was heard on 20th May, 2025. Artkinson Andrew, and Ribeiro Ussene testified in support of the Respondent's case. The witnesses adopted their respective witness statements, and RW1 produced the list and bundle of documents filed as exhibits in support of the

Respondent's case.

5. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

6. The Claimant's case is that she was employed by the Respondent as a Wind Sales Engineer for Sub-Saharan Africa, from 16th June 2014 under a written contract dated 12th June 2014.
7. The Claimant states that she was to work within the GE Power & Water, Renewable business as a Wind Sales Engineer for Sub-Saharan Africa, a role classified under the Lead Professional Band.
8. It is her case that her principal place of work was the Respondent's Nairobi office, with the possibility of assignment to other company or third-party locations in Kenya or other jurisdictions upon notice. She avers that any changes to her contract terms were to be effective only if communicated to her in writing.
9. The Claimant states that during her employment, she provided exemplary and dedicated service to the Respondent, demonstrating outstanding performance and skills, resulting in her being selected for GE's prestigious Experience Leadership Program (XLP) in 2016. She states that she served in multiple capacities, including both Sales and Commercial leadership roles, and supported GE's

Onshore Wind business across several global locations, including a posting in London and short-term assignments in Denmark and Sweden.

10. It is her case that during her employment, the Respondent underwent multiple global restructurings and reorganization exercises that shifted work toward borderless, regional, and global roles. She further states that as a result, her organizational structure, position, and responsibilities changed several times, resulting in her progressing from Wind Sales Engineer, Sub-Saharan Africa to various other roles.
11. The Claimant states that although the 2020 and 2021 role changes were communicated by email, no formal written statements of changes to her employment particulars were issued, contrary to prior practice during her 8.8 years of employment.
12. The Claimant states that the August 2021 organizational and team structure changes were only formally confirmed to her in November 2021. She states that the changes led to the creation of the EEMEA region, her transition to a Commercial Leader within the EEMEA Sales and Commercial Team, and a new reporting line to the Commercial Director, EEMEA. She avers that she remained employed under this structure until her unfair and unlawful termination on 24th April 2023.

13. It is her case that in May 2022, during an EEMEA Sales and Commercial Team meeting held in Istanbul, which she attended virtually, significant workloads covering multiple Eastern European regions were assigned to her. She further avers that due to team attrition, she had become the most senior Commercial Leader in the EEMEA region by May 2022.
14. The Claimant states that due to increased workload and seniority within the EEMEA Sales and Commercial Team, the need arose for an additional Commercial Leader, leading to the creation of a new role. It is her case that in August 2022, this position was filled by Przemyslaw Nosek.
15. The Claimant avers that in October 2022, the Respondent's Onshore Wind CEO announced restructuring plans affecting North America, LATAM, and MENAT, with possible future impacts in Europe. The Claimant states that despite her role not falling within the announced scope, the Respondent initiated an unreasonable, unfair, unlawful, and discriminatory process that ultimately led to her termination. She contends that her inclusion in the redundancy was improper, as the announced restructuring was limited to other regions and not her EEMEA role.
16. The Claimant contends that her role and reporting structure fell within the EEMEA region, which was not among the regions identified in the Respondent's October, 2022 restructuring announcement. She maintains that despite

this, the Respondent resolved in October 2022 to make her role redundant, repeatedly informed her of this decision, issued a notice of proposed redundancy, and consistently maintained that her role was impacted. She avers that her employment was ultimately terminated on 24th April 2023 on the grounds of redundancy.

17. The Claimant further states that the Respondent failed to comply with the mandatory requirements of Section 40 of the Employment Act, 2007, on the premise that the redundancy decision was made before issuing proper statutory notices, consulting her, notifying the County Labour Officer, or applying an objective selection criterion such as seniority, skill, and reliability.
18. It is her case that she was pre-selected for redundancy, and the Respondent then attempted to retrospectively justify the process. The Claimant states that even when an internal compliance investigation found that she had not been afforded due process, the Respondent nevertheless proceeded with the redundancy.
19. The Claimant states that the Respondent advanced inconsistent, conflicting, and invalid reasons for selecting her role for redundancy. She avers that initially, she was told that the redundancy was due to GE's Onshore Wind Business not intending to operate in Kenya or surrounding countries, a rationale she successfully challenged by demonstrating that her work was regional (EEMEA),

borderless in nature, and focused on active projects in the Baltics and Balkans, a position confirmed by her supervisor.

20. It is her case that subsequently, the Respondent changed its justification, stating that it no longer required a Commercial Leader located in Sub-Saharan Africa, despite the borderless work model applied across the team. It is her position that later, in the formal Notice of Proposed Restructuring and Potential Redundancy, the Respondent cited broader business volatility and global headcount reduction as the basis for redundancy, which reasons materially different from those previously given.
21. She avers that the Notice also mischaracterized her role as that of Commercial Leader SSA instead of EEMEA.
22. The Claimant states that she challenged these inconsistencies in writing, but received unclear and inadequate responses. She further avers that internal email correspondence inadvertently copied to her revealed that the Respondent's representatives lacked knowledge of her actual role, team, region, and the rationale for her redundancy, which underscores the arbitrariness of the decision.
23. The Claimant states that following her complaints, further virtual meetings were held in December 2022 during which the Respondent advanced new and different explanations, including assertions that she belonged to the SSA sales team, that EEMEA work had merely been allocated to her

due to lack of SSA deals, and that GE's transformation strategy required EEMEA roles to be supported from within the region and eliminated roles located in geographies GE was exiting.

24. The Claimant states that these explanations differed materially from those set out in the Notice of Proposed Restructuring and Potential Redundancy, a discrepancy later summarized by the Respondent in an email of 26th December 2022.
25. The Claimant further contends that the Respondent communicated a decision to terminate her employment in late December 2022 without complying with the mandatory requirements of Section 40 of the Employment Act, 2007. She states that at that time, and even by the eventual termination date of 24th April 2023, no lawful consultations had taken place, no objective selection criteria had been applied, her substantive questions on the rationale for redundancy remained unanswered, and no proper notice had been issued to the Nairobi County Labour Officer.
26. The Claimant avers that genuine consultations should have involved verification of the validity of the reasons for the redundancy, assessment of workload within the EEMEA team, demonstration of how her redundancy would achieve the stated business objectives, consideration of alternatives such as redeployment to another jurisdiction, and evaluation of the continued need for Commercial Leaders within GE and

the EEMEA region. She avers that none of these matters was considered, rendering the redundancy process unlawful and procedurally unfair.

27. The Claimant avers that no lawful selection process was undertaken prior to her redundancy, as the Respondent failed to consider mandatory criteria, including her seniority, skills, ability, and reliability in comparison with other members of the EEMEA Sales and Commercial Team. She reiterates that the Respondent proceeded with the redundancy despite its own internal compliance investigation finding that she had been denied due process.
28. The Claimant further alleges that the decision to make her role redundant was discriminatory, based on her gender, African nationality, and physical location in Nairobi, which was perceived as a cheaper and easier jurisdiction for termination, despite her role being regional (EEMEA). She states that there was no reduction in her workload and that GE continued recruiting Commercial Leaders before, during, and after her termination.
29. The Claimant further states that the Respondent subjected her to unfair labour practices, including implementing material changes to her role, reporting line, and employment terms in 2020 and 2021 without issuing formal statements of change, removing her from projects and reassigning them to colleagues while she was still employed, prematurely initiating offboarding and

termination processes without a termination letter, withdrawing her access to work systems while requiring her continued participation in work activities, and mishandling consultations, including meetings where she was unable to participate effectively due to lack of system access and inadequate preparation.

30. The Claimant avers that as a direct result of the Respondent's actions, including the unfair redundancy process, discriminatory treatment, and improper handling of her employment, she suffered mental anguish, stress, and ultimately loss of employment.
31. The Claimant finally concludes that the redundancy and termination process was unlawful, procedurally flawed, and discriminatory, and that she is seeking both remedies for unfair termination and relief from any financial obligations arising from the disputed period.
32. On cross-examination, the Claimant told the court that she transitioned from commercial leader SSA to commercial leader EEMEA, but does not have a letter indicating such a transition. She further confirmed that she could not answer as to how many countries she was in charge of as the commercial leader for SSA.
33. It is her testimony that she could not tell how many orders the Respondent received between 2019 and 2023, since she

worked at the back office. She told the court that she knows the challenges that the Respondent was facing, including supply chain, inflation-related issues, quality concerns, technology and limited resource availability.

34. The Claimant confirmed that other employees of the Respondent were also affected by the redundancy. She further confirmed that she attended a meeting held on 12th October, 2022 on the restructuring. She further confirmed that her supervisor, Ms. Maureen informed her of the restructuring, the expected closure, and the redundancy proposal should things not change.
35. It is the Claimant's testimony on cross-examination that the Respondent's business was loss making. The Claimant further told the court that at this meeting with her supervisor, her position was clarified to be that of Commercial Leader, SSA, but she could take extended roles.
36. She further confirmed that she attended a follow-up meeting on 25th October, 2022 to that of 12th October, 2022, where the context of the restructuring was explained. She told the court that the criteria that eliminated the need for a commercial leader/representative for SSA was explained by Andrew and the grounds for the restructuring.
37. It is the Claimant's evidence that she was informed that the position of Commercial Leader SSA was being considered for redundancy and that she did write a letter in respect of the redundancy.

38. The Claimant confirmed that an explanation was given in respect of the balance and months for which severance pay was applicable. She told the court that her questions on the rationale for the redundancy were not answered.
39. It is her further testimony that in yet another meeting held on 14th December, 2022, Andrew explained why the Respondent's company did not need representation in SSA. She further admitted that Ussene explained the process of redundancy per Kenyan law.
40. The Claimant told the court that there was no meeting on 13th January, 2023, and 19th January, 2023, since she was on sick leave. She avers that she did communicate that she was unwell, but did not have the communication before the court.
41. She further confirmed that she was informed that her position would be declared redundant. She admitted seeing a letter to the Ministry of Labour, which is stamped, and further admitted receipt of her terminal dues.
42. CW2, on his part, told the court that the Claimant was the commercial leader SSA based in Nairobi. He confirmed that it was not true that the Claimant could work in other regions. He admitted that there were no documents before the court indicating that she was in EEMEA region.

43. It is CW1's testimony that Zembekile, who was based in South Africa, Musa, who was based in Turkey, and Ada Garda, who was also in Istanbul, were all affected by the redundancy.
44. It is CW2's testimony that he did not know the rationale for the persons declared redundant.
45. CW3 told the court that he was familiar with an email sent by Vic since he also received the email. He further told the court that he served in the Sales team and that the business was facing challenges. He admitted that he was aware of the restructuring, was informed of the rationale for the restructuring, was affected by the restructuring, and that he did not challenge the redundancy.
46. In re-examination, CW3 told the court that the rationale for the restructuring, as explained to him, was that the company was experiencing challenges and had to exit some markets.
47. It is her prayer that her claim be allowed.

The Respondent's Case

48. The Respondent states that it employed the Claimant as a Wind Sales Engineer, Sub-Saharan Africa, within the GE Power & Water - Renewables Business, starting from 16th June 2014.

49. It avers that its principal place of business was the office in Nairobi, Kenya, but the Claimant could be required, with prior notice, to work in other offices in Nairobi or other jurisdictions.
50. The Respondent avers that it is part of the General Electric (GE) group of companies, a US-headquartered global organization operating internationally, including in Kenya. It avers that this establishes the Claimant's role, reporting location, and the multinational nature of the employer, which is relevant to the disputes regarding regional assignments, redundancy, and compliance with local employment laws.
51. The Respondent avers that the Claimant was responsible for driving profitable growth in GE's Onshore Wind (ONW) business by identifying, evaluating, optimizing, and executing opportunities for the sale of GE wind turbines. Specifically, the Claimant's responsibilities included market assessment, strategy development, customer portfolio, sales process management, and market development.
52. The Respondent avers that these roles clearly frame her role as a commercial and strategic sales position with both regional and operational responsibilities across SSA.
53. The Respondent avers that the employment contract allowed either party to terminate the contract with one month's written notice or payment of one month's salary in lieu of notice.

54. It avers that the Claimant's roles progressed over time as XLP, Sales and Marketing, XLP, Commercial Leader, and Commercial Leader SSA, Onshore Wind, effective 1st August 2018. It states that her final position was commercial leader, SSA, which is the position she held at the time of leaving employment.
55. The Respondent states that the Claimant's duties and Responsibilities in the final role include preparation of proposals/bids, contract negotiation, and ensuring compliance with contract commitments, commercial risk assessment, delivery on commercial strategy, presentation of risk profiles, and obtaining approvals to bid within the SSA region. The Respondent states that it essentially frames the Claimant's role as commercially strategic and operationally responsible, focused on SSA markets, with contractual protections regarding termination.
56. It is the Respondent's case that due to the fact that there were no new deals in SSA, the Claimant was temporarily assigned responsibilities in the EEMEA region to support that broader area. It avers that this was not a restructuring or creation of a "borderless/global role," but redeployment due to insufficient SSA workload.
57. The Respondent maintains that the Claimant was never appointed as Commercial Leader in the ONW Growth Initiatives Organization or Commercial Leader EEMEA, and that at the time of leaving, her official designation remained

Commercial Leader SSA -Onshore Wind. The Respondent asserts that the Claimant was fully informed of her role.

58. The Respondent states that any involvement of the Claimant in EEMEA, including meetings in Istanbul, Turkey, was supportive, stemming from SSA workload shortfall, and not a formal EEMEA appointment.
59. The Respondent contends that the Claimant's EEMEA involvement was temporary, supportive, and not a change of designation.
60. The Respondent states that it faced significant internal and external challenges affecting sales and profitability, and that the global Covid-19 pandemic contributed further to business volatility. It is its case that on 9th November 2021, it announced plans to form three separate global companies focused on aviation, healthcare, and energy. It avers that GE Renewable Energy, GE Power, and GE Digital all combined into one Local Impact in Kenya.
61. It is the Respondent's case that both the corporate and global challenges meant that GE's Kenya operations needed to review profit and loss, and consequently, it had to reduce headcount to match shrinking business needs.
62. The Respondent asserts that the redundancy was a necessary business decision driven by global restructuring, reduced profitability, and local operational needs, rather than any individual's performance issue.

63. The Respondent states that as part of its global Onshore Wind (ONW) restructuring following the 9th November 2021 announcement, it decided to exit the SSA market due to a lack of new deals over several years. It avers further that headcount reductions targeted roles originally based in regions being exited, consistent with its strategy in LATAM and ASEAN. It avers that the Claimant's position fell within this category.
64. The Respondent states that the Claimant was temporarily assigned responsibilities in the EEMEA region (East Europe, Middle East, SSA) under Clause 2 of her contract. It states further that the restructuring required that each sub-region's support come from within that sub-region, making it impractical for someone based in SSA to support other sub-regions.
65. It is the Respondent's position that EEMEA sales fell sharply in 2022, achieving USD 147 million against a target of USD 552 million, which was less than 27 per cent of the quota, which prompted it to restructure broader EEMEA operations and reduce headcount in other sub-regions as well.
66. It is its case that in July 2022, it informed ONW staff in EEMEA about challenges, including inflation, supply chain issues, quality problems, and declining unit volumes. It states further that despite prior attempts to mitigate these challenges through cost reduction measures, these efforts

were unsuccessful, leaving headcount reduction as the only feasible option.

67. The Respondent avers that in October 2022, it informed staff that it would launch region-by-region restructuring plans starting with North America, LATAM, and MENAT, and subsequently progressing to other regions, including SSA and the broader EEMEA region.
68. It avers that the restructuring in Europe involved sharing proposals with European Works Council and local employee representatives. It avers that on 25th October 2022, the Claimant was formally notified of the proposed restructuring and potential redundancy, which included her position, and further informed that the redundancy was due to significant business volatility and challenges, and that a redundancy package was proposed covering salary up to termination date, Severance pay (one month's base pay + housing allowance per completed year of service), accrued leave pay, and pension.
69. The Respondent states that the Claimant was invited to raise questions or suggestions regarding the process, and that she responded on 31st October 2022, raising concerns about the decision. The Respondent states that it replied to the Claimant on 24th November 2022, addressing her issues and explaining options for applying to other roles.
70. It is the Respondent's case that a consultation meeting was held on 13th December 2022, where it explained the

business status and the intended restructuring. It avers that during the meeting, the Claimant raised questions and requested clarifications regarding the redundancy package, including severance pay.

71. The Respondent further states that it engaged in multiple consultation meetings with the Claimant regarding her proposed redundancy and severance package, including meetings on 12th October, 25th October, 13th & 14th December 2022, 13th & 19th January 2023, and finally on 22nd March 2023.
72. The Respondent states that some of the Claimant's requests were fully or partially accommodated, with explanations provided for those that could not be granted. It states further that the Claimant refused to engage in more consultations and took sick leave from 13th January to 8th March 2023, which absence delayed the process.
73. The Respondent states that after the consultations were frustrated, it proceeded to issue the termination notice dated 24th March 2023, which was effective 24th April 2023, providing a full redundancy package and additional benefits such as a 3 months medical cover, and a Certificate of Service.
74. The Respondent avers that the redundancy was not pre-determined or opportunistic, and that decisions were made based on the business needs. It maintains that the mandatory legal procedures under the Employment Act

were followed, including notices to the Claimant and the labour office.

75. It is the Respondent's case that the redundancy affected many employees across regions, and not just the Claimant, consistent with its exit from SSA and other low activity regions. It further states that the Claimant's role was impacted because SSA had no deals, and policy required regional support to come from regions with active deals.
76. The Respondent asserts that the selection criteria based on seniority, skill, ability, and reliability could not apply as all SSA Onshore Wind roles were declared redundant.
77. The Respondent denies the allegation of discrimination, arguing that the redundancies affected 1,111 of 8,124 employees globally, including 3 of 23 in Africa. It avers further that any recruitment in the affected regions was open for application.
78. The Respondent further denies the Claimant's allegation of unfair labour practices, maintaining that the Claimant's role and responsibilities were clearly communicated, and supportive EEMEA duties were within her assignment. It maintains that the redundancy process was lawful, fair, and compliant, and any procedural irregularities were remedied by additional consultations.

79. The Respondent denies that the Claimant is entitled to payment of pension benefits, and asserts that all dues were paid.
80. The Respondent finally contends that the redundancy was lawful, fair, and justified based on business needs, with full compliance with legal and contractual obligations.
81. On cross-examination, RW1 told this court that the rationale for the Claimant's termination was that she was in sales and in 5 years, SSA had not sold any of the Respondent's products, hence an indication that the Respondent did not need a person in SSA.
82. It is RW1's position that the decision that the Claimant's role was no longer needed was reached in November, 2022. He confirmed that he did not participate in activities leading to the final termination of the Claimant.
83. RW1 confirmed that he did not have evidence showing that the Respondent's policy on redundancy was communicated to the Claimant.
84. RW2 on her part, told the court that the Claimant's role was in Sub-Saharan Africa SSA, but she was assigned extended roles in other locations, and that her primary role was in Kenya.
85. RW2 further testified that consultations were had, but alternatives to her position was not found, hence the

declaration of redundancy. It is her position that the Claimant was not discriminated against as alleged as a female South African was also affected by the redundancy. She avers that Latin America, North America, and SSA were equally affected by the redundancy.

86. On cross-examination, RW2 told the court that due to insufficient duties in SSA, the Claimant was allocated additional roles, but had not documents supporting this position.
87. It is RW2's evidence that the Claimant did not accept the explanation given on the redundancy which resulted in disagreement. She confirmed that notice of redundancy was issued to the Claimant on 26th October, 2022. She confirmed that the notice letter did not mention that the Respondent no longer needed commercial leader SSA based in Africa.
88. RW2 stated that she did not have the notice sent to the labour officer in Nairobi.
89. The Respondent prays that the Claimant's claim be dismissed with costs.

Analysis and Determination

90. I have considered the pleadings, the witnesses' testimonies, the evidence adduced, and the rival submissions. The Court isolates the following issues for determination:
 - i. Whether the Claimant's termination on account of redundancy is lawful and fair.

- ii. Whether the Claimant has proved discrimination and unfair labour practices.
- iii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's termination on account of redundancy is lawful and fair

91. The Employment Act, at its Section 40(1) provides seven steps that an employer must adhere to in declaring an employee redundant, 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 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."

92. The general rule is that redundancy is a legitimate ground to terminate employment, and all an employer needs to show is that actual redundancy was the reason for the termination, as well as strict compliance with the

redundancy procedure spelt out under Section 40 and spelt out above. (See **Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR (Supreme Court)**).

93. Further, in **Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR**, the Court of Appeal held that:-

“The employer has the managerial prerogative to restructure its business, but such prerogative must be exercised lawfully and fairly.”

94. Sections 43(1), 45(2)(a), 46, and 47(5) of the Employment Act further demand that an employer show that the termination is premised on valid, fair, and justified grounds. In **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, the Court held:-

“For a termination to pass the fairness test, it must be both substantively justified and procedurally fair.”

95. The question then is whether the Claimant’s redundancy met the twin requirements of procedural fairness and the test of reasonableness.

96. In respect of procedure, Section 40 requires, in mandatory terms, that one month’s written notice to the employee is issued simultaneously with one month’s written notice to the local labour officer. It further demands consultation with the affected employee as well as application of an objective criterion, and payment of severance pay and all other accrued dues.

97. The record shows that the Claimant received a notice of proposed redundancy on 26th October 2022 and that multiple meetings were held on 12th October, 25th October, 13th & 14th December 2022, and in March 2023. It is also not disputed that the Claimant actively engaged the Respondent, raising objections and receiving responses on the various questions she sought answers to.
98. In ***Kenya Airways Limited vs. Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR*** the Court of Appeal held that when an employer contemplates redundancy, he should first give a general notice of that intention to the employees likely to be affected or their union.
99. Although RW2 conceded that she did not have a copy of the labour officer's notice, the court record confirms that the Labour officer was notified of the redundancy vide a letter dated 6th December, 2022, which letter bears a receiving stamp of even date, and which confirms that indeed notice of the intended redundancy was issued. The Claimant further confirmed to this court on cross examination that she saw the notice to the labour office and further confirmed that the said notice bears a receiving stamp.
100. Further, in yet another letter dated 24th March, 2023, the Labour Office was again notified that the Claimant had been terminated on the ground of redundancy.

101. It is also evident from the court record that a redundancy package was explained, paid, and the Claimant acknowledged receipt of the full payment.
102. In light of the foregoing, I find and hold that the Respondent complied with Section 40 of the Employment Act in declaring the Claimant redundant, hence the termination on account of redundancy is procedurally lawful and fair.
103. On whether the Respondent had valid and fair grounds to declare the Claimant redundant, first and foremost, the Claimant contends that her role was that of commercial leader EEMEA and not commercial leader SSA.
104. The record confirms that the Claimant was appointed to the position of commercial leader SSA vide an appointment letter dated 6th August, 2018.
105. Although the Claimant insists that her position at termination was commercial leader EEMEA, and contends that she transited to this position from that of SSA, no documentary evidence was produced to show a formal change of designation to Commercial Leader EEMEA. Further, both CW2 and CW3 confirmed that the Claimant's official role remained SSA, and which position was again confirmed by RW2 who told the court that the Claimant's primary role was that of commercial leader SSA, and was only assigned extra roles in other locations due to insufficient work in the SSA region.

106. In the premise, it is clear that the Claimant's position at termination was that of commercial leader SSA and not commercial leader EEMEA.
107. The next question is whether the Respondent has demonstrated sufficient reasons for the declaration of redundancy. The Claimant's position is that although she sought to know the rationale for the declaration of redundancy, her questions were never sufficiently answered and for this reason, she deems the redundancy unlawful and unfair.
108. The Respondent in my view, demonstrated that the Onshore Wind business was experiencing prolonged losses, and SSA had recorded no new deals for over five years. The record further confirms the Respondent's assertion that a global restructuring affected multiple regions and employees, and the reasons it resolved to exit SSA markets.
109. The Claimant herself admitted on cross-examination that the business was loss-making, that other employees across the regions were affected by the redundancy, and that she was informed of restructuring as early as October 2022.
110. In my considered view, I am satisfied that the Respondent has established a valid, fair, justified and genuine operational reasons for declaring the Claimant's position redundant. The Claimant's termination on account of redundancy, is therefore both substantively and procedurally fair, and so I hold.

Whether the Claimant has proved discrimination and unfair labour practices

111. The Claimant's position is that she was discriminated against based on her gender, African nationality, and physical location in Nairobi, which was perceived as a cheaper and easier jurisdiction for termination. On cross-examination however, she confirmed that other employees of the Respondent were also affected by the redundancy. In ***Barclays Bank of Kenya Ltd v Gladys Muthoni [2018] eKLR***, the Court of Appeal held that discrimination must be proved by evidence showing differential treatment based on a prohibited ground.
112. Further, the court record confirms that indeed, other employees of the Respondent both male and female, African and non-African were affected by the redundancy. In ***GMV v Bank of Africa Kenya Ltd [2013] eKLR***, the Court held:-
“Allegations of discrimination must be supported by cogent evidence.”
113. The Claimant has also not led any evidence showing preferential retention based on gender, physical location or nationality, and neither did the recruitment cited by the Claimant show that it is the same role that was declared redundant that was being filled.
114. The Claimant did not also controvert the Respondent's position that she was free to apply for other existing roles within the Respondent's employ.

115. Accordingly, I find and hold that the Claimant has failed to prove discrimination or unfair labour practices as alleged.

116. In whole, I find and hold that the Claimant's termination on the ground of redundancy is lawful and fair.

Whether the Claimant is entitled to the reliefs sought

117. The remedies sought herein, are all except the prayer for payment of pension, only tenable upon a finding of an unfair termination. Having found the Claimant's termination lawful and fair, the claims fail and are dismissed.

118. On the Claim for payment of pension contribution for the months of March 2023 and April 2023, the Claimant admitted receipt of terminal dues and no pension shortfall evidence was produced. Further, claims on account of contributory pension fall under the jurisdiction of the Chief Executive Officer of the Retirement Benefits Authority and not this court. (See ***Albert Chaurembo Mumba & 7 Others vs Maurice M. Munyao & 148 Others [2016] eKLR***).

119. This claim therefore equally fails and is dismissed.

120. In conclusion, the Claimant's claim is devoid of merit, and is dismissed in its entirety with costs to the Respondent.

121. Judgment accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND
IN COURT AT NAIROBI THIS 18TH DAY OF DECEMBER,
2025.**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Mwaniki h/b for Mr. Omondi for the Claimant

Mr. Nyaburi present for the Respondent

Ms. Esther S- C/A