

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

CAUSE NO. E307 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

OTIENO FRANCIS ODHIAMBO1ST CLAIMANT

AGER ERYCK WASONGAH.....2ND CLAIMANT

HENRY KAAHWA3RD CLAIMANT

VERSUS

ONA KENYA LIMITED1ST RESPONDENT

ONA SYSTEMS INC.....2ND RESPONDENT

JUDGMENT

1. The 1st, 2nd and 3rd Claimants sued the 1st and the 2nd Respondents and pleaded, *inter-alia*:-

(a) that the 1st Respondent is a limited liability company incorporated in Kenya, while the 2nd Respondent is a company incorporated in Burlingham in the United States of America, and conducting operations in various countries in Africa, including Kenya.

- (b) that on diverse dates **between 2020 and 2021**, the Claimants signed respective and separate contracts of employment with the 1st Respondent which allocated them to specific duties/responsibilities and that in **March 2025**, their employment was terminated on account of redundancy, without following the requisite procedure enshrined in the Constitution and the relevant statutes.
- (c) that the Claimants executed **Confidentiality and Intellectual Property Assignment Agreements with the 2nd Respondent (Ona system, Inc.)** which bound them to protect sensitive business information, assign ownership of intellectual property **to the employer** and to ensure compliance with legal obligations as per the agreement.
- (d) that the Claimants **had an employment relationship with both Respondents**, and that they fit within the definition of an employee according to the common law tests of determining the existence of an employment relationship.

(e) that the Claimant's duties and responsibilities **were determined by both Respondents, who controlled the methods and provided necessary tools for their work.** That the Claimants' work was **integral** to the Respondents' business, and were financially depended on the Respondents for remuneration and benefits.

(f) that the **1st Claimant** was employed for the position of Technical Program Manager vide a contract dated **30th January, 2020**, whose terms were:-

(i) A monthly salary of **Kshs.804,275.00**.

(ii) A medical scheme covering a spouse and 4 declared children.

(iii) Employer's contribution towards pension capped at 5% of the Claimants salary.

(iv) Paid annual leave of 21 days for each completed year of services; and that as at the date of termination, the 1st Claimant had **27.4** leave days for which the 1st Respondent did not compensate him upon termination.

(g) that **the 2nd Claimant** was employed for the position of Technical Program Manager vide a contract **dated 22nd January, 2021**, whose terms were:-

- (i) A monthly salary of **USD 6,500.00**
- (ii) Medical scheme covering a spouse and 4 declared children.
- (iii) Employer's contribution towards pension capped at 5% of the employee's monthly salary.
- (iv) Paid 21 leave days for each completed year of service; and that as at the time of termination, the 2nd Claimant had **14.3** outstanding/uncompensated leave days.

(h) that the **3rd Claimant** was employed for the position of Product Designer I vide a contract dated 22nd January, 2021, whose terms were:-

- (i) A monthly salary of **USD 2,812.**
- (ii) Medical scheme covering a spouse and 1 declared child.

- (iii) Employer's contribution towards pension capped at 5% of the Claimant's monthly salary.
- (iv) Paid annual leave of 21 days for each completed year of service, and that as at the date of termination, the 3rd Claimant had **1.5** outstanding leave days, for which the 1st Respondent had not compensated him.
- (i) that on **4th February, 2025**, the 1st Respondent issued a **general notice** to all its staff members **stating that the decision by the American Government to put an immediate stop to all foreign aid had adversely affected the company, hence there was need for review of the company's structure.**
- (j) that subsequently, the Claimants were **on 7th March, 2025**, issued with letters of termination citing **redundancy** as the reason for termination and informing them that they would be eligible for **one week's salary upto 7th March, 2025, including 5% pension contribution, retention**

of work laptops, continued health insurance coverage under the company's insurance scheme until 26th March 2025 and a certificate of service.

(k) that the Claimants were **effectively terminated from employment on 7th March, 2025 without following the procedure set out in law**, and have been subjected to mental anguish as they struggle to cope with the sudden turn of events in their respective careers.

(l) that the Claimants were **not personally** issued with written notices on the intended redundancy, and were not consulted regarding the same.

(m) that the 1st Respondent failed to rely on its own Human Resource Manual which required payment of the following upon termination on account of redundancy:-

(i) 1 month salary in lieu of notice.

(ii) Severance pay at the rate of not less than fifteen days per full year of completed service.

(n) that upon termination, **the Claimants were only paid a week's gross salary**, and were not given payment in lieu of notice, severance pay at the rate of 15 days for each completed year of service, and leave days earned and not utilized as at the date of the termination letters.

(o) that the 1st Respondent breached both the Constitution of Kenya, the statute and **Clause 15.1** of the Claimants' respective employment contracts in that:-

(i) it did not issue one month notice, did not demonstrate the selection criteria used in selecting the affected employees, and failed to issue payment in cash for outstanding leave days.

2. The Claimants set out their respective claims at paragraph 32 of the Memorandum of Claim as follows:-

(a) 1st Claimant

(i) 12 months' pay at the rate of **Kshs.804,275/= per month** being compensation for unfair termination of

employment pursuant to Section 49(1)(c) of the Employment Act.

- (ii) Payment for **27.4** outstanding leave days in cash pursuant to Section 40(i)(e) of the Employment Act.
- (iii) One month salary in lieu of notice at the rate of **Kshs.804,275/=** pursuant to Section 40(1)(f) of the Employment Act.
- (iv) Severance pay covering 4 years worked at half a month's salary at the rate of **Kshs.402,137.50** per month for each of the 4 years served pursuant to Section 40(1)(g) of the Employment Act.
- (v) General and aggravated damages for discrimination, violation of constitutional rights and for unprocedural redundancy.

(b) The 2nd Claimant

- (i) 12 months' pay at the rate of **USD 6,500 per month**, being compensation for unfair termination of employment pursuant to Section 40(1)(c) of the Employment Act.

- (ii) Payment for **14.3 outstanding leave days in cash** pursuant to Section 40(1)(e) of the Employment Act.
- (iii) One month salary in lieu of notice at the rate of **USD 6,500** pursuant to Section 40(1)(f) of the Employment Act.
- (iv) Severance pay covering four complete years worked at half a month's pay at the rate of **USD 3,250** for each of the four years served pursuant to Section 40(1)(e) of the Employment Act.
- (v) General and aggravated damages for discrimination, violation of constitutional rights and for unprocedural redundancy.

(c) The 3rd Claimant

- (i) 12 months' pay at the rate of **USD 2,812 per month** being compensation for unfair termination of employment.
- (ii) Payment for **1.5** outstanding leave days in cash pursuant to Section 40(1)(e) of the Employment Act.

- (iii) One month salary at the rate of **USD 2,812** in lieu of notice pursuant to Section 40(1) of the Employment Act.
- (vi) Severance pay covering four complete years of service at the rate of **USD 1,406.00** for each of the **four (4) years served** pursuant to Section 40(1)(g) of the Employment Act.
- (iv) General and aggravated damages for discrimination, violation of constitutional rights and for unprocedural redundancy.
- (p) that the Claimants are **not** members of any trade union, and ought to have been notified of the intended termination on account of redundancy **personally**, and in writing.
- (q) that termination of the Claimants' employment **without giving reasons** for the same pursuant to Section 43 of the Employment Act, and without following due procedure, was unlawful and unfair pursuant to Section 45 of the said Act.

3. The Claimants, jointly and severally, sought the following reliefs:-

- (a) A declaration that the Respondents' actions amounted to unfair termination, on account of redundancy of the Claimants from their employment.
- (b) Compensation for unfair termination at the rate of **twelve (12) months** salary calculated at the rate of the last salary earned before termination.
- (c) **One month** salary being payment in lieu of notice.
- (d) Severance pay covering four complete years worked at half month's pay for each of the **four (4) years** served.
- (e) Payment of outstanding leave days in cash.
- (f) General and aggravated damages for discrimination, violation of constitutional rights and for unprocedural redundancy.
- (g) Costs of the suit and interest at Court rates from the date of institution of the suit.
- (h) Interest on (b), (c), (d), (e), (f) and (g) at Court rates from the date of termination until payment in full.

4. Documents filed alongside the Claimants' Memorandum of Claim included an affidavit in verification of the claim, witness affidavits of the 1st, 2nd and 3rd Claimants, all sworn on 10th April, 2025, and an evenly dated list and bundle of documents; listing nine documents [categories of documents].
5. The Claimants also filed a supplementary witness statement of the first Claimant dated 31st July, 2025 and an evenly dated further list of documents; listing seven (7) documents [categories of documents].
6. The Respondents filed a Statement of Response dated 7th May, 2025. The Respondents pleaded, ***inter alia***:
 - (a) *that the 1st Respondent denied liability as the Claimants' termination was on account of redundancy, while the 2nd Respondent did **not** have any employer-employee relationship with the Claimants. That the 2nd Respondent would move the Court to strike out the Claimants' suit against it on the basis of lack of a cause of action.*

- (b) that the Claimants were terminated on account of redundancy following the requisite procedure and pursuant to the Respondent's Human Resource Manual.
- (c) that the Claimants executed contracts of employment with the 1st Respondent (**Ona Kenya Limited**) between December 2020 and January 2021.
- (d) that the 2nd Respondent denied that the **Confidentiality and Intellectual Property Assignment Agreement** executed by the respective Claimants was in consideration and a condition of the Claimants' service relationship with the 2nd Respondent; and asserted that the purpose of the agreement **was to safeguard and protect the 2nd Respondent's confidential information, developments and intellectual property rights in relation to their respective service relationship with the 1st Respondent.**
- (e) that the 2nd Respondent denied having had an employment relationship with the Claimants.

(f) that **the only relationship that the respective Claimants had with the 2nd Respondent was related to the confidential information, developments and enforcement of intellectual property rights; and that this did not establish an employment relationship between the respective parties.**

(g) that the Claimants only had an employment relationship with the 1st Respondent, with whom they had separate and individual contracts of employment; performed different and separate tasks and responsibilities, and received remuneration.

(h) that the Respondents did not unlawfully terminate the Claimants' employment contracts, but the Claimants' employment contracts were terminated due to a decision of the American Government to put an immediate stop to all foreign aid programs, which decision **significantly affected the Respondents' businesses.**

(i) that on **4th February 2025**, the 1st Respondent issued a notice of intention to declare

redundancies to all its former staff, which notice informed the staff that the company's operations had been severally affected by the American government's decision to immediately halt foreign aid programs.

(j) that the 1st Respondent also notified the Labour Office of its intention **to carry out a potential redundancy exercise, citing similar reasons.**

(k) that on **7th March, 2025**, the 1st Respondent issued termination letters to all its former employees; as it was closing down its operations in the country due to lack of finances. That the terminated employees were entitled to:-

(i) Salary **upto 7th March, 2025**, including 5% pension contribution.

(ii) Retention of work laptop.

(iii) Continued company health insurance coverage until 26th March, 2025.

(iv) A certificate of service.

(i) that the 1st Respondent acted in good faith in extending the aforestated entitlement and payments to all its employees as a gesture of good

will; arising from closure of its operations in the country. That redundancy procedure as set out in Section 40 of the Employment Act, 2007, and in **Clause 18.3** of the Respondent's Human Resource Manual was followed.

- (j) that the requirement set out in Section 40(1)(c) of the Employment Act was rendered **inapplicable** in the circumstances arising from the inevitable and **complete** ceazation of the 1st Respondent's operations.
- (k) that there were consultations between the 1st Respondent and its former employees regarding the situation of the company as a result of abrupt termination of critical foreign aid funding by the United States Government.
- (l) that **the 1st Respondent could only afford to pay all its employees a week's gross salary as its operations were shutting down**, and did not have a steady cash flow to operate and to pay out salaries and remuneration to its former employees.

*(m) that the redundancy affected **all** employees' dues to closure of operations, hence eliminating the possibility of selective terminations.*

7. The Respondents also filed a witness statement (**of Dickson Ukanga Mutsotso**) dated 20th June, 2025 and a list of documents dated 22nd July, 2025, listing 14 documents.
8. The 2nd Respondent filed a Notice of Motion dated 23rd June, 2025 seeking the following Orders:-
 - (a) That the Court strikes out the 2nd Respondent/Applicant's name from the proceedings herein.***
 - (b) That costs of the application be borne by the Claimant/Respondents.***
9. The application was based on the supporting affidavit of **Peter Lubell-Doughtie**, the 2nd Respondent's Chief Technology Officer, sworn on 1st June, 2025 and a further affidavit of **Roger Wong** sworn on 14th July, 2025.

10. The application was opposed by the Claimants vide a replying affidavit sworn on 23rd June, 2025.
11. Both the 2nd Respondent and the Claimants filed written submissions on the application. The 2nd Respondent's written submissions are dated 27th August, 2025 while those filed by the Claimants are dated 15th August, 2025.
12. Upon hearing submissions by Counsel for the Claimants and Counsel for the Respondents on 16th July, 2025, the Court issued the following directions, among others:-

“(1) The 2nd Respondent’s Notice of Motion dated 23/6/2025, and all affidavits filed thereon, shall be treated as part of the Respondents’ Response to the Claimants’ suit/claim herein.

(2) . . .

(3) . . .

(4) . . .

(5) The suit herein shall be determined on the basis of the filed pleadings, affidavits, documents and submissions filed by both

**parties pursuant to Rule 59 of the ELRC
(Procedure) Rules 2024.**

(6) . . .

(7) . . .

(8) . . .

**(9) Highlighting of submissions will be on
23/9/2025, and each party will be given 15
minutes to do so.”**

13. The Claimants and the 1st Respondent filed written submissions (on the main suit) as directed by the Court on 16th July, 2025. The Claimants’ written submissions are dated 15th August, 2025, while the 1st Respondent’s written submissions are dated 1st September, 2025.

14. Rule 59 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-

“59. The Court may, either by an agreement by all parties, or on its own motion, proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties.”

15. Having considered the pleadings filed herein, witness affidavits/affidavits, witness statements and documents filed by parties to the suit, issues that fall for determination, in my view, are as follows:-

- (a) Whether the Claimants have a cause of action against the 2nd Respondent.**
- (b) Whether termination of the Claimants' employment was unfair.**
- (c) Whether the reliefs sought by the Claimants are merited.**

16. On the first issue, it is to be noted that **no** contract/agreement was exhibited by either of the Respondents to show that any one of them had contracted and/or engaged the other as a service provider of whatever nature. Each of the Claimants is shown to have signed two agreements at the point of employment as follows:-

- (a) a contract of employment with the 1st Respondent, *Ona Kenya Limited*, which allocated him to specific roles, duties and responsibilities.**

*(b) a Confidentiality and Intellectual Property Assignment Agreement with the 2nd Respondent, **Ona Systems, Inc.** which bound him to protect sensitive business information, assign ownership of intellectual property to the **employer (Ona Systems, Inc.)** and ensure compliance with legal obligations as per the agreement.*

17. The 2nd Respondent did not deny the existence of the Confidentiality and Intellectual Property Assignment Agreements between itself and each of the Claimants. Indeed, the 2nd Respondent confirmed existence of the said agreements in the affidavit of **Peter Lubelle-Doughtie**, the 2nd Respondent's Chief Technology Officer, sworn on **1st June, 2025** in support of the 2nd Respondent's Notice of Motion dated **23rd June, 2025**, which application formed part of the Respondent's defence/response to the Claimants' claim.

18. I have taken note of **paragraph 4** of the Claimants' respective Confidentiality and Intellectual Property

Assignment Agreements with the 2nd Respondent, which state in part:-

“4. . . . The Company will have the right to assign this Agreement to its affiliates, successors and assigns. I expressly agree to be bound by the provisions of this agreement for the benefit of the company or any parent, subsidiary or affiliate to whom I may be transferred without the necessity that this Agreement be re-executed at the time of such transfer.”

19. In the context of the foregoing Confidentiality and Intellectual Property Assignment Agreement, the term **“Company”** is expressly shown to refer to the 2nd Respondent, **Ona Systems, Inc.**

20. It is trite that the human resource/managerial duty of transferring an employee can **only** be performed by an employer. Transfer of an employee is a managerial prerogative of an employer. The 2nd Respondent cannot blow hot and cold at the same time. It cannot deny the

existence of an employer-employee relationship with the Claimants and at the same time own up to the existence of, and exhibit agreements with the Claimants assigning it (the 2nd Respondent) a crucial role of an employer.

21. Further, the 1st Claimant stated in his supplementary witness statement dated 31st July, 2025:-

(a) *that during his tenure as a Technical Program Manager, the 1st Claimant experienced first hand the **integrated** nature of the 1st and 2nd Respondents. That his immediate Manager was **Roger Wong**; Head of Design and Co-founder, who was associated with the 2nd Respondent; and was responsible for all aspects of supervision, including approval of the Claimant's leave applications and conducting of performance appraisals.*

(b) *that the first Claimant reported to **Peter L. Doughtie**, the Chief Technical Officer and Co-founder at Ona, and had bi-weekly meetings with him and Mr. Wong; which served as a structured management relationship.*

- (c) **that Dickson Ukanga**, a Co-founder and director of the 1st Respondent (Ona Kenya Limited), **only signed administrative documents like payslips**, promotion letters and bonus letters, but neither supervised nor gave work instructions. **That the 1st Respondent served as a local administrative vehicle while operational control remained with Ona Systems Inc. (the 2nd Respondent).**
- (d) that the 1st and 2nd Respondents operated as a **single entity, Ona**; and that in terms of the working structures, employees used the same email domain (**@ona.io**) through G-Suite, and there was no separate.ke domain for Ona Kenya employees. That all employees accessed the same website (www.ona.io), and communicated through the same **slack workspace** as one unified team; and that all the employees identified themselves as **Ona employees**.
- (e) that during the recruitment period, the 1st Claimant was interviewed by Matt Berg, Peter L.

Doughtie and Dickson Ukanga collectively, with no mention of two separate companies.

22. The 2nd Respondent did not deny the foregoing facts, and only stated in the supplementary affidavit of **Roger Wong**:-

“7. That while members of the 2nd Respondent’s team interacted with the Claimants during project execution - sharing tools, assigning deliverables, participating in meetings and using a common email domain - such interaction was considered as standard in outsourced or contractor relationships.”

23. As already stated elsewhere in this judgment, the Respondents did **not** exhibit any agreement/contract demonstrating that either of them had contracted the other for provision of any form of service. The 2nd Respondent **never** demonstrated the existence of any outsourcing agreement.

24. On their part, the Claimants produced in evidence/filed their **Annual Performance Review Forms for the year 2023,**

indicating **Roger Wong and Peter Lubell-Doughtie** (both of the 2nd Respondent) as the Claimants' primary reviewer and secondary reviewer respectively.

25. The Claimants also filed/exhibited herein Nonqualified Bonus Stock Option Grant Agreements ("Grants") issued to them by the 2nd Respondent in **2023**. The 2nd Claimant's Grant, dated 15th May, 2024, reads as follows, in part:-

"Dear Ager Wesongah,

It is with great pleasure that we extend this formal notification regarding issuance of Bonuses Stock Options (the "Option") of Ona Systems Inc.'s common stock, in accordance with the provisions outlined in the Company's 2023 Stock Incentive Plan, as amended (the "Plan").

We recognize and deeply appreciate your significant contributions to Ona Systems Inc.'s growth and success. As a token of our appreciation and to further align your interest with the long term prosperity of the Company,

we are pleased to offer you these Bonus Stock Options. The details of the grant are as follows:- . . .

Once again, congratulations on this significant recognition of your dedication and performance. We look forward to your continued contribution to Ona Systems Inc.'s success.

**Yours faithfully,
Matt Berg,
CEO-Ona Systems Inc.”**

26. All the foregoing point to an employer/employee relationship between the Claimants and the 2nd Respondents. The Claimants' duties were clearly an integral part of the 2nd Respondent's business. Citing with approval the decision in **Kollengode Venkatachala Lakshminarayan - vs - Intex Construction Limited**, the Court, in **Eldoret Aviation Limited - vs - Kenya Revenue Authority (through the Commissioner of Domestic Taxes) [2013] eKLR** stated as follows:-

“There are various tests to be employed when there is doubt on whether a person is an employee. One of those tests is whether the person’s duties are an integral part of the employer’s business. . . . See *Belof - vs - Preddram Ltd [1973] ALL ER 241*. The greater the direct control of the employee by the employer, the stronger the ground of holding it to be a contract of service. See *Simons - vs - Health Laundry Company [1990] 1KB 543*.”

27. In the present case, the evidence availed by both parties demonstrates that the Claimants, who had signed formal employment contracts with the 1st Respondent, were directly controlled and directed by the 2nd Respondent in the performance of their duties. Indeed, the 2nd Respondent reviewed and appraised their performance; and commended, recognised and rewarded them when their performance was outstanding. In the words of the 2nd Respondent’s CEO (Chief Executive Officer), the Claimants’ outstanding performance **“contributed to the growth and success of the 2nd Respondent Company.”**

28. The Claimants pleaded and stated that the 1st and 2nd Respondents operated from shared resources, including the same office space at One Padmore Place, George Padmore Lane in Nairobi. The 2nd Respondent did **not** deny, and indeed admitted that the 1st and 2nd Respondents were using the **same email domain, the same slack workplace and the same website.**

29. I return a finding that the Claimants were employees of the 1st and 2nd Respondents, and have a cause of action against both the 1st and the 2nd Respondents.

30. On the 2nd issue, the Claimants were each issued with termination letter dated 7th March, 2025, which stated in part:-

***“We write further to the Notice of Intention to declare positions redundant dated 4th February, 2025.*”**

As we have already communicated, the business of Ona Kenya Limited has been adversely

affected by the recent decision of the United States government to put an immediate stop to all foreign aid programs. This decision has significantly impacted our operation, rendering it unsustainable to continue business as before. Consequently, we are compelled to undertake a thorough review of our operations, organizational structure, and workforce requirements.

. . . We deeply regret to inform you that your position, along with all other positions in the company, has been declared redundant, effective 7th March, 2025.

. . . As a result, you will be entitled to the following:-

- 1. Salary upto 7th March, 2025.***
- 2. Retention of your work laptop.***
- 3. Continued health insurance coverage under the company's current insurance scheme until 26th March, 2025; and***

4. A certificate of service.”

31. It is clear from the foregoing that the Claimants' employment was terminated on the date of the foregoing letter, 7th March, 2025. The Respondents did **not** demonstrate that the Claimants had, prior to 7th March, 2025, **been served with individual notices of the intended redundancy**. It was a common ground that on 4th February, 2025, the 1st Respondent had issued a letter to the County Labour Office – Nairobi stating, in part:-

“RE: REVIEW OF BUSINESS

. . . The recent decision of the American government to put an immediate stop to all foreign aid programs has therefore had a direct impact on our operations in the circumstances, and with tremendous regret, this adverse decision has compelled the Management to review its operations; organizational structure and manpower requirements.

Consequently, we wish to inform your good offices that we have to embark on a redundancy plan. We intend to lawfully lay 52 employees off. All departments will be affected.

The management is in the process of developing an objective criteria for identifying employees who will be affected by this redundancy; and we shall update you as soon as a final decision is made . . .”

32. Section 40(1) of the Employment Act sets out the procedure that **must** be followed by an employer before termination of an employee’s employment on account of redundancy. The Section provides 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."

33. It was the Claimants' evidence that they were **not** members of any trade union. The written notice provided for in Section 40(1)(b) ought to have been served on each of the Claimants **personally, and on the area labour officer.**

34. Although the 1st Respondent alleges that its operations are shutting down and/or have shut down, nothing was said regarding operations of the 2nd Respondent, for which the

Claimants are shown to have worked with dedication for four years. The Respondents did not present in Court the criterial used in selecting the Claimants for redundancy, and did not, therefore, demonstrate compliance with Section 40(1)(c) of the Employment Act. Nothing was produced in Court to show that all employees of the Respondents were laid off.

35. Sections 40(1)(e), (f) and (g) of the Employment Act provide for payment to an employee declared redundant of any leave due in cash, one month's wage in lieu of notice, and severance pay at the rate of not less than fifteen days' pay for each completed year of service.

36. The Claimants' respective letters of termination of employment on account of redundancy were **silent** on payment for leave days due, notice pay and severance pay, which formed part of the Claimant's claim in Court.

37. The Respondent's failure to comply with mandatory provisions in terminating the Claimants' employment on account of redundancy rendered the whole process unlawful, and therefore unfair. In my view, the entire process

amounted to **unfair termination of employment within the meaning of Section 45 of the Employment Act.**

38. The Court of Appeal stated as follows in the case of **Thomas De Larue (K) Ltd - vs - David Opondo Omutelema [2013] eKLR:-**

“It is clear to us that Section 40(1)(a) and 40(1) (b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a trade union, the notification is to the union and the Local Labour Officer at least one month before the effective redundancy date.

Where the employee is not a member of a union, the notification must be in writing to the employee and the local labour officer.”

39. It was held as follows in **Francis Maina Kamau - vs - Lee Construction [2014] eKLR:-**

“Where an employer declares redundancy, the conditions set out in Section 40 of the

Employment Act must be observed, and where the employer fails to do so, the termination becomes unfair termination within the meaning of Section 45 of the Employment Act.”

40. I find and hold that termination of the Claimants' employment by the 1st and the 2nd Respondents was unfair pursuant to Section 45 of the Employment Act 2007.

41. On the third issue, and having made a finding that termination of the Claimants' employment was unfair, I award each of the Claimants the equivalent of **four (4) months' salary** being compensation for unfair termination of employment.

42. As none of the Claimants was issued with a termination notice, I award each of them one month's salary in lieu of notice pursuant to Section 35(1)(c) of the Employment Act.

43. The prayer for severance pay cannot be granted, in view of the Court's finding of an unfair termination of employment pursuant to Section 45 of the Employment Act.

44. On the prayer for outstanding leave dues, the Claimants did not state the respective amounts claimed in that regard. A claim for payment in respect of leave earned and not taken is in the nature of special damages, and must be **specifically** pleaded and proved. A Claimant must also state the leave-earning year when those leave days accrued. The claim for payment of outstanding leave days was not proved on a balance of probabilities; and is declined.
45. The claim for general and aggravated damages for discrimination, violation of constitutional rights and for unprocedural redundancy was not proved, and is declined. For record purposes, an award of compensation for unfair termination of employment is in the nature of damages, and allowing the prayer for general and aggravated damages would, in the circumstances of the present case, amount to double award.
46. According to the evidence on record, the Claimants' respective gross salaries at the time of termination were as follows:-

- (i) **1st Claimant (Otieno Francis Odhiambo)**
Kshs.804,275.87.
- (ii) **2nd Claimant (Ager Eryck Wasongah) USD**
6,500
- (iii) **3rd Claimant (Henry Kaahwa) USD**
2,812

47. In sum, and having considered written submissions filed on behalf of the parties herein, Judgment is hereby entered for the Claimants against the 1st and 2nd Respondents, jointly and severally, for:-

(a) 1st Claimant (Otieno Francis Odhiambo)

- (i) The equivalent of four (4) months' salary for unfair termination of employment
Kshs.3,217,103.48
- (ii) One month salary in lieu of notice
Kshs.804,275.87

Total = Kshs.4,021,379.35

(b) 2nd Claimant (Ager Eryck Wasongah)

(i) Equivalent of four (4) months' salary being compensation for unfair termination of employment USD 26,000

(ii) One month salary in lieu of notice USD 6,500

Total = USD 32,500

(c) 3rd Claimant (Henry Kaahwa)

(i) Compensation for unfair termination of employment = USD 11,248

(ii) One month salary in lieu of notice USD 2,812

Total = USD 14,060

48. The awarded sums shall be subject to statutory deductions **as applied to the Claimants at the time of termination**, pursuant to Section 49(2) of the Employment Act.

49. The Claimants are awarded interest on the awarded sums at Court rates. Interest shall be calculated from the date of this Judgment until payment in full.

50. Costs of the suit are awarded to the Claimants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
19TH DAY OF DECEMBER 2025**

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Kathurima for the Claimants

Mr. Otieno and Mr. Ogolla for the Respondents