

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT NAKURU  
APPEAL NUMBER E045 OF 2024**

**BETWEEN**

ELKANA ODUOR ONYANGO ..... APPELLANT

**AND**

MIJENGO INVESTMENTS LIMITED .....  
RESPONDENT

[An Appeal from the Judgment of Hon. Kibellion K. Principal Magistrate Nakuru, delivered on 18th day of May 2024, in Nakuru C.M.E.L.R.C No. E216 of 2022, between the Parties herein].

**JUDGMENT**

1. The Appellant is a former Employee of the Respondent. He was employed as an assistant sawmill sawyer in February 2016. He later became a full sawmill sawyer. He worked until 7th July 2022, when the Respondent terminated his contract, on account of redundancy.
2. Aggrieved, he presented the Claim before the Trial Court, asking the Court to find that termination was unfair and unlawful, and to grant him compensation, and a raft of terminal benefits with costs, and interest.
3. The monetary claims, added up at Kshs.569,848.
4. The Trial Court determined that termination was fair, and that the Appellant was paid his terminal dues.

5. He appeals against that decision, through a Memorandum of Appeal, dated 4th June 2024.
  
6. He lists 13 Grounds of Appeal, which may be collapsed as follows: -
  - a. The Trial Court disregarded his evidence on the claim for unfair termination.
  - b. It erred in determining that he was not entitled to compensation under Section 49 of the Employment Act.
  - c. It erred in denying the Appellant terminal benefits.
  - d. The Trial Court erred in finding that the Appellant was paid terminal benefits in full.
  
7. It is proposed by the Appellant that: -
  - a. The Appeal is allowed.
  - b. Judgment of the Trial Court is set aside, varied, and / or reviewed.
  - c. Costs of the Appeal in the cause.
  
8. Parties recorded a consensual procedural order on 8th July 2025, that the Appeal is considered on the strength of the record and submissions. They confirmed filing and exchange of submissions at the last mention, on 29th October 2025.

**The Court Finds: -**

9. The main conclusions in the Judgment of the Trial Court, which relate to the Grounds of Appeal above, are contained at page 85 of the Record of Appeal.

10. The Trial Court states: -

*“ He was notified of redundancy through a letter of termination of employment. Reasons for the termination were clearly spelt out in the letter. I do not find the termination as unfair termination... the Claimant was similarly issued with terminal dues amounting to Kshs. 105, 444”*

11. The law on redundancy is under Section 40 of the Employment Act. There are various judicial authorities, on interpretation and application of this redundancy law. The most erudite of the recent judicial authorities the Court can think of, is Court of Appeal of Kenya decision, **The German School Society & Another v. Ohany & Another [2023] KECA 894 [KLR]**.

12. The Court of Appeal in the above decision highlighted the need for an Employer to issue notice to an Employee, whose contract is intended to be terminated on redundancy, and to give adequate room for consultations.

13. The purpose of notice under Section 40 [1] [a] and [b] of the Employment Act, as is also provided in ILO Convention 158- Termination of Employment Convention 158 [1992], is to give the parties an

opportunity to consider measures to be taken, to avert or minimize termination and its effects, the Court of Appeal elaborated.

14. At the Trial Court, the notice of termination issued upon the Appellant was exhibited. It is dated 7th July 2022. It referred to "*consultations held with you on Thursday, 7th July 2022...*" It also states that, "*...we hereby inform you of termination of the contract of employment dated February 2016, with immediate effect, on account of redundancy.*"
15. Termination was with immediate effect; there was no proper notification of redundancy; there was no notice of termination, termination having taken effect immediately; and there was no consultations.
16. The Appellant was issued a letter of termination on 7th July 2022, alleging consultations took place on the same date, termination became effective. The Certificate of Service issued upon the Appellant, confirmed that the effective date of termination [EDT] was 7th July 2022.
17. In **German School Society v. Ohany [supra]** it was underlined that consultations have to be real, not a charade, and opportunity must be given for the stakeholders to consider the process. Notice to the Employee, Trade Union and the Labour Office, is important, because it is intended to pave way, for consultations.

18. In the Trial subject matter of this Appeal, there was no involvement of the Labour Office, and none is mentioned in the Judgment of the Trial Court.
19. Termination was in blatant violation of fair and lawful procedure, under Section 40 of the Employment Act. Termination was unfair.
20. The execution of the letter of termination by the Appellant, was not in the nature of a discharge agreement, absolving the Respondent from further claims.
21. It was specified that the Appellant signed the letter, in acknowledgment of its receipt, and no more.
22. He was paid salary for 7 days worked; notice of 1 month; gratuity equivalent of 1 month salary; and 39 days of pending annual leave.
23. He did not articulate the terminal benefits claimed as underpayment, overtime and public holidays. He claimed Kshs. 11,433 as severance. He was paid Kshs. 14,200 as per the letter of termination, which was termed as gratuity. Notice and pending leave claims were paid.
24. The Trial Court did not err, in declining his claims for additional terminal benefits.

25. The Court is however persuaded that termination was unfair and unlawful, and not in conformity with Section 40 of the Employment Act. An award of compensation was merited.
26. The Appellant worked for 6 years and 5 months. He earned a monthly salary of Kshs. 14,200. He did not cause or contribute to circumstances leading to termination. Termination was on account of redundancy. It was a no-fault termination. He was paid terminal benefits at Kshs. 105,444, including severance.
27. The Court declares termination to have been unfair and unlawful, and grants the Appellant equivalent of 7 months' salary in compensation for unfair termination, at Kshs. 99,400. No order on the costs of the Appeal.

**IT IS ORDERED: -**

- a. ***The Appeal is allowed on the Ground that termination was unfair and unlawful.***
- b. ***The Respondent shall pay to the Appellant equivalent of 7 months' salary in compensation for unfair and unlawful termination, at Kshs. 99,400.***
- c. ***No costs on the Appeal.***

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 19th day of December 2025.

James Rika  
Judge

A handwritten signature in blue ink, appearing to read 'James Rika', enclosed within a blue oval shape.