Boleslaw v Alliance for a Green Revolution Revolution in Africa (Cause 195 of 2020) [2026] KEELRC 149 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 149 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 195 OF 2020

ON MAKAU, J

JANUARY 29, 2026

BETWEEN

STAWICKI BOLESLAW ..... CLAIMANT

AND

ALLIANCE FOR A GREEN REVOLUTION REVOLUTION IN AFRICA ..... RESPONDENT

JUDGMENT

1. The Claimant filed suit on 8th May 2020 alleging unlawful redundancy by the Respondent on 26th May 2017. He sought the following reliefs:-

    a. Payment of severance pay at USD 21,135.94 or such sum as the Court deems correct.

    b. Payment of the shortfall on " payment in lieu of notice" being USD 2,025 or such sum as the Court deems correct.

    c. Compensation for wrongful termination of the Claimant's contract of employment.

    d. Aggravated damages.

    e. Interest on each of the sums granted above at Court rates from 26th May 2017 until date of full payment.

    f. Issuance of a Certificate of Service.

    g. Costs of this suit.

    h. Any other relief that this Honourable Court may deem just and fair to grant.

2. The Respondent filed a Statement of Response on 5th March 2021 vehemently opposing the claim, asserting that the termination was lawful, fair, and compliant with statutory provisions and its internal policies. Therefore, it prayed for the suit to be dismissed with costs.

3. Having carefully considered the pleadings, the evidence adduced, and the submissions by the Learned Advocates, I found that the following issues are not in dispute:-

    a. The Claimant was employed by the Respondent vide a letter dated 26th November 2013 as a Program Officer within the Africa Enterprise Challenge Fund (AECF), then a unit of the Respondent.

    b. Vide a letter dated 11th December 2014, he was appointed as Interim Program Manager, with an adjusted salary. His initial contract was set to end on 30th June 2015.

    c. Vide a letter dated 29th June 2015, his position was confirmed as Program Manager, and his contract was extended to 30th June 2018. This letter stated, inter alia, that his contract "will be replaced depending on AECF becoming its own entity."

    d. AECF was incorporated as an independent legal entity in Mauritius on 20th October 2015 and registered in Kenya on 9th March 2016.

    e. The Respondent issued a Notice of Intended Redundancy dated 28th February 2017 to the Claimant. A hard copy was received by the Claimant on 10th March 2017. This notice invited the Claimant to a "consultative meeting" scheduled for 1st March 2017.

    f. The Respondent did not serve a copy of the Notice of Intended Redundancy on the area Labour Officer, as admitted by its witness, Ms. Kahama.

    g. Following correspondence and meetings, the Respondent issued a Notice of Redundancy dated 25th April 2017, terminating the Claimant's employment effective 26th May 2017.

    h. Vide a letter dated 4th May 2017, the Respondent amended the terms, offering three months' salary in lieu of notice but expressly removing "severance pay" and stating an "indemnity payment" of three months' base salary would be paid instead.

    i. The Claimant was paid a total of USD 52,425.35 as terminal benefits. He acknowledges receipt but contends it was short of his lawful entitlements, specifically severance pay and a full notice pay calculation.

    j. The Claimant applied for several positions within the new AECF entity in November 2016 and within the Respondent in April 2017. He received no substantive response to these applications.

4. There disagreement on the fairness of the redundancy and the dues payable which necessitated the trial.

5. The hearing partially proceeded before Ndolo J on 18th February 2025 and I took over the suit on 8th October 2025. During the hearing both sides gave evidence and thereafter filed written submissions

Evidence

6. The Claimant, testified as CW1 and basically adopted his written statement dated 8th May 2020 as his evidence in chief. He then produced as exhibits document 1-29 in the list dated 8th May 2020, one document in the list dated 3rd February 2021, and document 1-10 in the 6th December 2023. In brief the claimant's evidence affirmed the undisputed facts above but added that the redundancy violated

section 40 of the *Employment Act* as there was no justification and the statutory procedure was not followed.

7. Upon cross-examination, the Claimant stated that he was initially employed as a Program Officer within a specific unit of the Respondent but worked across other units. He confirmed receipt of the letter dated 11th December 2014, which informed him of restructuring within AECF and transition arrangements. He further confirmed the letter dated 29th June 2015 appointing him as Program Manager effective 1st July 2015, also stated that his contract would be replaced depending on AECF becoming its own entity.

8. He testified that AECF was incorporated in Mauritius on 20th October 2015 and later registered in Kenya in 2016. He stated that the Respondent was responsible for transitioning staff to AECF and referred to an email dated 20th March 2015 confirming such transfers, noting that his position was the only one not transferred. He further testified that job advertisements for AECF positions bore the AECF logo but required applications to be submitted through the Respondent, demonstrating that recruitment remained under the Respondent's control.

9. The Claimant confirmed that he applied for the positions of Director of Strategy and Portfolio Manager within AECF in November 2016, at a time when restructuring was ongoing. He acknowledged receipt of the Notice of Intended Redundancy dated 28th February 2017, which he received on 10th March 2017, and responded by emails dated 20th and 21st March 2017. He testified that despite proposing alternative roles and redeployment, he received no substantive response.

10. He further confirmed receipt of letters dated 25th April 2017 and 4th May 2017, the latter amending the redundancy terms. He stated that he was paid terminal dues but maintained that severance pay was unlawfully removed and that the indemnity payment was distinct from statutory severance. He testified that he disputed the removal of severance pay through his advocates' letters dated 23rd May 2017 and 31st May 2017. He stated that he eventually received a Certificate of Service after follow-up by his advocates.

11. In re-examination, the Claimant stated that his understanding of the letter dated 29th June 2015 was that his contract would continue if AECF did not become a separate entity.

12. The claimant called Mr. Zakayo Kadenge Kidiga who testified as CW2. He also adopted his written statement dated 5th December 2023 as his evidence in chief. In brief his testimony was that he was employed by the respondent as a Finance Officer attached to AECF from January 2014 and 17th April 2017 when he moved to AECF after it was incorporated as an independent entity.

13. Upon cross-examination, CW2 reiterated that AECF was a program of the Respondent until April 2017, when it was incorporated as a separate entity. He confirmed that he was not deployed to AECF but rather he applied for employment by AECF and he was issued with a new contract by AECF Limited which never mentioned the respondent. He further confirmed that Deloitte is the one who advertised the positions in the EACF Limited

14. He stated that he was privy to the approved organizational structure of AECF Limited and stated that, to his knowledge, all staff within the AECF unit were to transition with their positions to the new entity. He contended that the Claimant's former role of Program Manager existed in the new entity but that the Claimant was the only one laid off by the respondent. However, he confirmed that he was not aware whether claimant applied for any position in the new entity. He contended the position given other persons including as Noel Amoit, who served as Program Manager between January 2018 and August 2020.

15. The respondent called its general Counsel, Ms. Annette Kahama as its only witness and she testified as RW1. She adopted her witness statement dated 18th November 2020 as her evidence in chief and produced a bundle of 12 documents as exhibits. In brief her evidence was that AECF was developed as a unit within the respondent in 2008 but subsequently, the respondent agreed with AECF partners to form AECF Limited from January 2017. The new entity was a distinct entity from the Respondent. She denied that all the respondent's staff in the AECF unit transitioned to the AECF Limited.

16. Upon cross-examination, RW1 admitted that she did not have document giving her authority to testify on the Respondent. She further stated that the Claimant's monthly basic salary was USD 6750. He was also entitled to a monthly post adjustment allowance of USD 1012.5 and a special allowance at the rate of 15% of the Basic salary.

17. She admitted that the claimant was served with a Redundancy notice on 10th March 2017 which invited him for consultations on 1st March 2017 but the same were held on 29th March 2017 and 3rd April 2017. She further admitted that she did not have any minutes for the said consultation meetings. She contended that consultation is just about informing the employees that redundancies are likely to affect them.

18. She admitted that section 40(1) of the *Employment Act* requires service of redundancy to the Labour Officer but in this case the respondent did not serve any. She opined that the failure to serve the notice on the Labour Officer was not fatal.

19. She admitted that the claimant wrote a letter requesting for copy of minutes of the consultative meeting, the organizational structure and the vacant positions but the respondent failed to respond. She confirmed that the claimant applied for positions in the new AECF Limited through the email address of the respondent and Delotte. She was unaware whether the application elicited any response or whether position of Program officer was reinstated. She confirmed that Noel Amoit was appointed Program Officer six months after the claimant's redundancy.

20. She admitted that severance is payable during redundancy but claimant was paid indemnity of three months salary which was higher than the severance pay prescribed by the statute. She contended that respondent's HR Policy Manual provides for a superior benefit for the international Staff than the statute.

21. Finally, she maintained that the redundancy was lawful and the position of Program Manager was never reinstated in the Respondent after the claimant's exit.

Issues for determination

22. Having carefully considered the pleadings, evidence, and submissions, the following issues fell for determination:

    a. Whether the declaration of the Claimant's position redundant was justified.

    b. Whether the redundancy process leading to the Claimant's termination was procedurally fair.

    c. Whether the Claimant is entitled to the reliefs sought.

Analysis and determination

a. Justification for Redundancy

23. Section 2 of the *Employment Act*, 2007 defines redundancy 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..."

24. Section 40(1) of the *Employment Act* the provides 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 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."

25. 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. Article 13(1) of the Convention states that:-

> " (1) (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."

26. 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. 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.

27. The seminal authority on redundancy in Kenya is the Court of Appeal decision in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR. where the court held:-

> "... 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."

28. Faced with a case of alleged unlawful redundancy, the court ought to inquire whether the employer had a valid and fair reason, based on its operational requirements, to justify the declaration of a position redundant. The employer bears the burden of proving that the services of the employee had indeed become superfluous. While courts are slow to interfere with genuine business restructuring decisions, they will scrutinize whether the redundancy was a sham or a disguise for an unfair termination. See Kenya Plantation and Agricultural Workers Union v Unilever Tea Kenya Limited [2025] KEELRC 1867 (KLR).

29. In the instant case the Respondent averred that the spin-off of its AECF unit into an independent entity necessitated a restructuring, rendering the Claimant's role as Program Manager within itself (AGRA) superfluous. It argued that AECF, as a new entity, had its own approved structure which did not include a "Program Manager" position as previously known.

30. The Claimant did not adduce any evidence to prove that after spin-off of AECF unit and restructuring of the Respondent, the role of Program Manager remained in the Respondent. My understanding of the evidence on record is that all the positions in the AECF unit fell off the Respondent's organizational structure and as such the Claimant's role in the respondent became superfluous. In the circumstances, unless another role was to be found in the respondent for the claimant upon consultations, the only option left for him was to exit the Respondent and seek fresh appointment by the new AECF Limited or elsewhere.

31. For the foregoing reasons, I find that the Respondent has proved that a redundancy situation occurred after the AECF Unit spin-off to become AECF Limited. There is no dispute that the unit became an independent entity and all the staff hitherto working in the unit lost their jobs and sought fresh mandate from the new entity including the Claimant.

B. Procedural fairness of the redundancy process

32. The procedure for termination on account of redundancy is mandatorily set out in Section 40 of the *Employment Act* which I have reproduced hereinabove. For an employee who is not a member of a trade union like in this case, Section 40(1)(b) requires the employer to notify the employee personally in writing and the labour officer of the area where the employee works.

33. The purpose of this dual notification is profound and it is captured in the Article 13(1) (b) of the ILO Convention 158, of 1982 Termination of Employment, thus:-

> " 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."

34. I have already observed that under the Kenyan Act, the competent authority for purposes of redundancy is the area labour officer, a key stakeholder, who is mandated to oversee the process, to ensure fairness. The labour officer is also mandated to facilitate consultations and therefore the statutory requirement to serve him/her at the earliest opportunity. Section 40 (1) of the Act is couched in mandatory terms and therefore failure to notify the Labour Officer renders the redundancy faulty for jumping a crucial step in the mandatory process.

35. It was admitted by RW1 that the Respondent did not serve the Notice of Intended Redundancy dated 28th February 2017 upon the Labour Officer and maintained that the omission was not "fatal". However, the Court of Appeal in the Kenya Airways case (supra) specifically considered failure to give notice to the labour officer as a flaw rendering a redundancy procedurally unfair. It follows that the failure to serve the officer herein deprived the redundancy process of an independent overseer and contravened a clear statutory command.

36. In The German School Society & another v Helga Ohany & another [2023] eKLR, the Court of Appeal reiterated that notice to the labour officer opens up the door for a consultative process with the key stakeholders. Consequently, by failing to serve the labour officer, the Respondent herein unilaterally shut that door, rendering the subsequent process inherently defective.

37. The Respondent contended that there was consultations before the redundancy but the Claimant was of a contrary view. It is trite law that consultation must be meaningful. In the Kenya Airways case, supra, the court outlined principles of consultation, emphasizing that it must be "a reality not a charade," where the employer keeps an open mind.

38. In this case, the process was marred by irregularities that made a charade of consultation:-

    a. The Notice of Intended Redundancy, received on 10th March 2017, invited the Claimant to a meeting on 1st March 2017, a date already passed. This demonstrated gross disregard from the outset.

    b. Despite the Claimant, through his lawyers, raising pertinent issues (non-notification of labour officer, availability of alternative roles) and proposing a framework for genuine consultation on 20th March 2017, the Respondent's response of 28th March 2017 simply asked for "written representations," ignoring the proposals already made. This indicates a closed mind.

    c. The Claimant applied for other positions within the Respondent's organization on 7th April 2017, during the consultation window. There is no evidence that these applications were

considered. An employer undertaking redundancy has a duty, where possible, to consider redeployment. The failure to do so taints the process. (See the German School case, supra).

39. Consequently, I find that the redundancy process was procedurally unfair. It violated the mandatory requirement of Section 40(1)(b) of the *Employment Act* and failed to constitute the meaningful consultations envisaged by law.

C. Reliefs

Compensation

40. Having found the termination of the Claimant's employment violated the mandatory procedure set out by Section 40(1) of the *Employment Act*, I must hold that the termination was unfair and unlawful within the meaning of Section 45 of the Act. Consequently, under Section 49 (1) of the Act, I awarded him compensation for unfair termination 3 months gross salary considering that he worked for about three and half years and he was laid off for no fault of his own.

Severance Pay – USD 21,135.94

41. Section 40(1)(g) of the *Employment Act* provides that an employer "shall pay to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service." This is a minimum statutory entitlement which cannot be taken away unless a more superior benefit is provided. See Section 26(1) of the *Employment Act*.

42. The Respondent argues that the "indemnity pay" of three months' base salary (USD 20,250) paid to the Claimant under its HR Policy Clause 10.5 was an enhancement that replaced and extinguished the right to severance pay. It relies on Barclays Bank of Kenya v Agnes Wachu Wamae & 104 Others [2020] eKLR, where paying a more generous package was held to satisfy the statutory obligation.

43. The Claimant was paid an indemnity equaling three-months basic salary for three years of service (30 days per year), which is indeed double the statutory 15 days severance pay per year of service. Therefore, the indemnity pay of USD 20,250 was a more superior benefit than severance pay.

44. The Claimant purported calculation of USD 21,135.94 was based on 15 days' pay per year, including Post Adjustment Allowance and Provident Fund contributions in the "pay" calculation. Severance pay ought to be calculated based on basic salary excluding allowances like the Post Adjustment Allowance. Consequently, I reject this claim by the Claimant since he was paid more than he would have received as severance.

Shortfall in Payment in Lieu of Notice – USD 2,025

45. The Claimant's contract provided for three months' notice or payment in lieu. The Respondent paid three months' base salary (USD 6,750 x 3 = USD 20,250). The Claimant argues the calculation should have included the monthly Post Adjustment Allowance (USD1012.50). He prayed for the short fall of the said amount for two months equaling to USD 2,025. I award this claim as prayed because the respondent never paid the same to the claimant as required under the contract.

46. Aggravated damages has been sought but I see no basis for the same since damage caused by the unlawful redundancy has be compensated above.

Certificate of Service

47. Under Section 51 of the *Employment Act*, an employer is obliged to issue a Certificate of Service upon termination. The Respondent admitted that it had not issued one. I order the Respondent to issue a Certificate of Service to the Claimant forthwith.

Conclusion

48. I have found that the termination of the Claimant's employment on account of redundancy was justifiable but it was rendered unfair and unlawful by the respondent's failure to follow the mandatory procedure set out by section 40 of the *Employment Act*. I have further found that the Claimant is entitled to compensation for the unfair termination plus the shortfall in the amount paid as salary in lieu of notice Pay. I have further found that the claim for severance pay is not payable to the Claimant because he was paid an indemnity pay under the employer's HR Manual which was higher than the severance payable to him under the Act. I have also awarded the him certificate of service.

49. In final analysis, I enter judgement for the Claimant against the Respondent as follows:

    a. Compensation (USD 6750 + 1012.50) x 3 23,287.50

    b. Notice pay shortfall 2,025.00

    Total due USD 25,312.50

50. The above award is subject to statutory deductions but the Claimant will have costs and interest at court rates from the date of this Judgement.

    It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

ONESMUS MAKAU

JUDGE

Appearance:

Mito for the Claimant

Chege for the Respondent