



**Kenya Union of Commercial Food and Allied Workers v U-Fresh Enterprises Limited  
(Cause E461 of 2023) [2026] KEELRC 80 (KLR) (23 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 80 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E461 OF 2023  
SC RUTTO, J  
JANUARY 23, 2026**

**BETWEEN**

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**U-FRESH ENTERPRISES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant Union has instituted the present suit on behalf of 46 grievants who it avers were declared redundant by the Respondent. The Claimant avers that on 8<sup>th</sup> May 2023, the Respondent notified the Mavoko Sub-County Labour Officer of its intention to declare redundancies, with the notice being served on the Claimant on 9<sup>th</sup> May 2023.
2. The Claimant further avers that on 11<sup>th</sup> May 2023, the Respondent wrote to the affected employees notifying them of the redundancies and issued individual notices accordingly.
3. The Claimant further states that, on 16<sup>th</sup> May 2023, it wrote to the Respondent proposing a meeting to discuss the intended redundancies.
4. On 23<sup>rd</sup> May 2023, the parties met, during which the Claimant raised issues concerning alleged discrimination in the redundancy process and the non-inclusion of overtime payments in the redundancy notices. Following deliberations, the Respondent undertook to respond within seven days, prior to the expiry of the redundancy notices, but failed to do so.
5. It is the Claimant’s contention that the Respondent refused to engage in meaningful consultations to negotiate and address the issues raised. In particular, the Claimant avers that it had highlighted that the redundancies affected only permanent employees while casual employees remained employed, as well as concerns regarding the calculation and payment of redundancy benefits, including overtime.



6. In the Claimant's view, the redundancy was discriminatory and prejudicial to its members, particularly the permanent employees.
7. On the basis of the foregoing, the Claimant seeks a declaratory order that the redundancy was unfair, unlawful, and procedurally flawed, and that it should have encompassed both permanent and casual employees. The Claimant further seeks an order for the reinstatement of the 46 affected employees without loss of benefits. Alternatively, the Claimant prays that the grievants be paid maximum compensation for the redundancy, their terminal benefits, including salary for days worked, notice pay, severance pay, outstanding leave, and overtime. Additionally, the Claimant seeks the costs of the suit.
8. The Respondent neither entered appearance nor filed a Defence, despite being duly served with the Notice of Summons and Statement of Claim. In this regard, the Claimant filed an Affidavit of Service, sworn by Diffinah Moithaga Nyamwange on 20<sup>th</sup> March 2025, confirming that service was effected on the Respondent via electronic mail.
9. Satisfied with the proof of service, the Court directed that the matter proceeds as an undefended suit. The case was subsequently scheduled for a formal proof hearing on 21<sup>st</sup> October 2025, at which Rebecca Muthoki testified in support of the Claimant's case.
10. In her testimony before the Court, the Claimant reiterated the averments contained in her witness statement, which she adopted as her evidence in chief. She further produced the list and bundle of documents filed on behalf of the Claimant as exhibits before the Court.

### **Submissions**

11. Upon the close of the hearing, the Claimant filed written submissions, which the Court has duly considered. The Claimant submitted that after terminating the services of all paid-up union members, the Respondent continued its operations by engaging casual employees who were not union members, thereby demonstrating that the alleged redundancy was unnecessary and was merely a way to eliminate unionised employees.
12. The Claimant further submitted that the termination of the grievants from employment was not carried out in accordance with the fair procedure prescribed under Section 41 of the *Employment Act*, rendering the entire process unfair and unlawful.
13. Additionally, it was submitted by the Claimant that prior to the issuance of the termination notices, the grievants were not afforded any explanation as to the reasons for the redundancy or why redundancy was considered the best option.

### **Analysis and Determination**

14. From the pleadings, the evidence on record, and the Claimant's submissions, the following issues arise for determination by the Court:
  - i. Whether the termination of the grievants' employment was unfair and unlawful;
  - ii. Whether the grievants are entitled to the reliefs sought.

### **Unfair and unlawful termination?**

15. It is the Claimant's case that the termination of the 46 grievants on account of redundancy was both discriminatory and prejudicial to the Respondent's permanent employees.



16. As held in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* (2014) eKLR, any termination of employment on grounds of redundancy must be both substantively justified and procedurally fair.
17. While substantive justification concerns the reasons assigned for the redundancy, procedural fairness relates to the manner in which the redundancy is carried out.
18. The record bears that the termination of the grievants on grounds of redundancy was attributed to the Respondent's adverse economic situation and a tax dispute with the Kenya Revenue Authority, which had resulted in the withholding of revenue stamps and the suspension of the Respondent's operations.
19. Pursuant to Sections 43 and 45(2)(b)(ii) of the *Employment Act*, the employer bears the burden of proving not only the reasons for termination but also that such reasons were valid, fair, and based on its operational requirements. In the absence of such proof, the termination is deemed unfair.
20. Applying the foregoing statutory provisions to the present case, it follows that the Respondent herein was obliged to prove that the reasons advanced for the declaration of redundancy were valid, fair, and connected to its operational requirements.
21. As the Respondent did not file a Defence to the Claim, no evidence was adduced before this Court to justify the termination of the grievants' employment on grounds of redundancy, or to demonstrate that such termination was valid, fair, or aligned with the Respondent's operational requirements.
22. Consequently, the Court finds that the Respondent has not satisfied the required standard of proof to justify the termination of the grievants' employment on grounds of redundancy.
23. Regarding procedural fairness in redundancy cases, Section 40(1) of the *Employment Act* outlines the conditions an employer must satisfy before terminating an employee on the grounds of redundancy:
  - 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.



24. The Claimant avers that it received a letter dated 8<sup>th</sup> May 2023, through which the Respondent sought to declare certain positions redundant. The record shows that this letter, addressed to the Labour Office, Mavoko Sub-County, was served on the Claimant via email on 9<sup>th</sup> May 2023, in which the Respondent also forwarded the list of employees it was declaring redundant.
25. It is evident from the tone of the letter that the Respondent had already decided to implement redundancies and had proceeded to select and identify the employees to be made redundant.
26. As can be discerned from Section 40(1)(a) and (b) above, the notice provided for is an “intention to declare a redundancy” and must be issued before the redundancy takes effect. This position was amplified in the case of *Kenya Airways v. Aviation & Allied Workers Union Kenya & 3 Others* (supra), Maraga JA (as he then was), as follows: -

“My understanding of this provision is 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. It is that notice that will elicit consultation between the parties, ....”
27. As earlier stated, the Respondent did not file a Defence. Accordingly, there is no evidence that the Claimant was notified of the Respondents’ “intention” to declare a redundancy. Put differently, by the time the Respondent issued the notices to the Claimant Union and the Labour Officer, it had already made the decision to declare the grievants redundant. This was not in line with the provisions of Section 40(1)(a) and (b) of the *Employment Act* with respect to notice, hence the Respondent is at fault.
28. By issuing a final notice of redundancy, the Respondent left no room for consultations with the Claimant Union. Consequently, any discussions that took place thereafter did not comply with the provisions of Article 13, Convention No. 158, and Recommendation No. 166 of the International Labour Organisation (ILO).
29. In *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others* (supra), it was held that consultations are meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it is unavoidable.
30. It thus follows that the consultations should be before the redundancy process and not after.
31. In the present case, there is no evidence that the Respondent undertook pre-redundancy consultations with the Claimant union. To this end, the Respondent is at fault.
32. Another statutory requirement concerns the selection criteria under Section 40(1)(c) of the *Employment Act*. In this regard, the employer must demonstrate that, in selecting employees for redundancy, due consideration was given to seniority as well as the skill, ability, and reliability of each employee within the affected category.
33. Although the Respondent claimed in its letter to the Labour Officer dated 8<sup>th</sup> May 2023 that it applied the ‘last in, first out’ principle and considered reliability and ability in selecting the grievants for redundancy, no evidence was presented to show that these criteria were actually applied since the suit was undefended.
34. This is particularly significant given the Claimant’s contention that only permanent employees were declared redundant, while casual employees were retained.



35. In light of the foregoing, it is doubtful whether any such selection was conducted objectively. Accordingly, I cannot help but conclude that the Respondent did not substantially comply with the provisions of Section 40(1)(c) of the *Employment Act* in selecting the grievants for redundancy.
36. Regarding the statutory payments under Sections 40(1)(e), (f), and (g) of the *Employment Act*, the termination letters issued to the grievants stated that they would receive salary up to and including the last month worked, one month's salary in lieu of notice, severance pay calculated at 15 days' pay for each year of service, and payment for outstanding leave days.
37. Given that the Respondents did not file a Defence or produce any evidence, there is no proof that the grievants received the statutory payments under Section 40(1)(e), (f), and (g) of the *Employment Act*. In the absence of such proof, it is presumed that these payments were not made, and the Respondent is deemed not to have complied as required by law.
38. Overall, the Court finds that the Respondent failed to comply with the provisions of Section 40(1) of the *Employment Act*, and as such, the grievants' termination from employment on the grounds of redundancy was procedurally unfair.
39. The Court ultimately finds that the termination of the grievant's employment on account of redundancy was both substantively and procedurally unfair.

#### **Reliefs?**

40. Having found that the termination of the grievants' employment was both substantively and procedurally unfair, the Court finds that the grievants would ordinarily be entitled to compensatory damages in accordance with Section 49(1) of the *Employment Act*.
41. The Court further finds that there being no evidence of compliance on the part of the Respondent, the grievants would ordinarily be entitled to salary for the days worked and the statutory benefits under Section 40(1) (e), (f) and (g) of the *Employment Act* being, one month's salary in lieu of notice, accrued leave days and as well as severance pay calculated at a rate of not less than 15 days' pay for each completed year of service.
42. It is, however, notable that the Claimant failed to plead and prove the salary each grievant was receiving at the time of termination. Indeed, the grievants' salaries constitute a material fact that ought to have been pleaded, as the reliefs sought can only be determined and awarded based on their last drawn salaries.
43. Further, the Claimant has sought compensation for the grievants' outstanding leave days. However, the Claimant did not plead the number of leave days accrued by each grievant and for which compensation is sought. The same deficiency applies to the claim for overtime pay.
44. It is trite that a party must plead all facts that are necessary and material in support of their case.
45. In the absence of the essential facts and evidence supporting the grievants' claims, the Court is left to grope in the dark and is unable to determine the quantum to award each grievant.

#### **Orders**

46. In the final analysis, while the Court finds in favour of the grievants and declares that their termination on the grounds of redundancy was both unfair and unlawful, for the reasons set out above, it is unable to make any monetary award in their favour.
47. There will be no orders as to costs.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2026.

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Ms. Manene instructed by Mr. Nyumba

For the Respondent No appearance

Court assistant Catherine

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

