



**Reale Hospital Limited v Cheronno (Employment and Labour Relations Appeal
E001 of 2023) [2026] KEELRC 89 (KLR) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 89 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E001 OF 2023
MA ONYANGO, J
JANUARY 22, 2026**

BETWEEN

REALE HOSPITAL LIMITED APPELLANT

AND

DAIZY CHERONO RESPONDENT

*(Being an appeal from the Judgment and decree of Honourable
Richard O. Odenyo (Senior Principal Magistrate) in ELDORET
CMELRC No. E013 of 2020 delivered on 22nd December 2022)*

JUDGMENT

1. The Appellant herein was the Respondent, while the Respondent was the Claimant in Eldoret CMELRC No. E013 of 2020 wherein the Respondent sued the Appellant vide a Statement of Claim dated 18th February 2020 seeking compensation and terminal dues for the alleged unfair termination of her employment on account of redundancy.
2. After hearing the parties, the trial court delivered its judgment on 22nd December, 2022 in favour of the Claimant awarding her Kshs. 336,000 on account of salary in lieu of notice, severance pay, 6 months compensation for unfair termination of employment and unpaid salary. The Claimant was also awarded costs of the suit and interest.
3. The Appellant being dissatisfied with the said Judgement instituted the instant appeal vide the Memorandum of Appeal dated 19th January 2023 the following grounds of appeal:
 - a. The learned trial magistrate erred in allowing the Claimant's case without any legal basis.
 - b. The learned trial magistrate erred in failing to appreciate the overwhelming evidence in favour of the Appellant.



- c. The learned trial magistrate erred in failing to appreciate the Respondents written submissions.
 - d. The learned magistrate erred in focusing only on the Claimant's submissions in the entire judgment.
 - e. The learned trial magistrate erred in being biased against the Respondent in his entire judgment.
 - f. The learned trial magistrate erred in failing to hold that the Claimant had not proved her case on a balance of probability.
 - g. The learned trial magistrate erred in granting the Claimant compensation for unfair termination without any basis in law.
 - h. The learned trial magistrate erred in awarding the Claimant salary in lieu of notice of Kshs. 32,000/= yet the same had been paid vide a cheque No.005701 which was produced in court as exhibit.
 - i. The learned trial magistrate erred in awarding the Claimant severance pay to the tune of Kshs. 80,000/= yet the Claimant abandoned the claim in her writtenth February 2020 and adopted in court as evidence in-chief and substituted it with a claim of Kshs. 32,000/= as severance pay. statement dated 18
 - j. The learned trial magistrate erred in failing to hold that severance pay of Kshs. 32,000/= was duly paid by the Respondent vide a Cheque No. 005701 which was produced in court.
 - k. The learned trial magistrate erred in failing to hold that the Respondent had rebutted the Claimant's case.
 - l. The learned trial magistrate erred both in law and in fact in awarding compensation to the tune of Kshs. 326,000/= (Kenya Shillings Three Hundred and Twenty Six) without any basis in law and in fact.
 - m. The learned trial magistrate erred in failing to rely on and/or misconstruing the provisions of the *Employment Act*, 2007.
 - n. The learned trial magistrate erred both in law. and in fact in failing to find in favour of the Appellant.
4. The Appellant prayed that the appeal be allowed, the judgment of the trial court be set aside, and substituted with an order dismissing the Respondent's suit with costs.
 5. The appeal was disposed of by way of written submissions pursuant to the directions of this court. The Appellant's submissions are dated 21st October 2025 while the Respondent's submissions are dated 27th October 2025.

Analysis

6. This being a first appeal, this court is guided by the principles espoused in several decisions among them, *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968) EA 123, to re-evaluate and re-examine the evidence adduced in the trial court in order to reach its own finding, taking into account the fact that this court had no opportunity of hearing or seeing the parties as they testified.



7. Vide his Statement of Claim dated 18th February 2020, the Claimant (now the Respondent) averred that she was employed by the Appellant as a Physiotherapist on permanent terms from 8th July 2015 at a salary of Kshs 16,000. That she was earning a monthly salary of Kshs 32,000 as at the time her employment was unfairly terminated on account of redundancy on 15th July 2019.
8. She contended that she served the Appellant diligently and without any warning throughout her employment until the date of termination, which she termed abrupt, unfair, and unlawful.
9. It was the Claimant's case that the termination was effected without compliance with the procedure prescribed under the *Employment Act*, 2007.
10. The Claimant averred that on 11th July 2019, she was summoned by the Human Resource Manager and informed that the hospital was allegedly overstaffed and intended to downsize her department. That on 12th July 2019, she was issued with a termination letter dated 15th July 2019, informing her that her services had been terminated on account of redundancy.
11. The Claimant denied that her department was overstaffed, stating that other employees had been hired after her termination and continued working for the Respondent, demonstrating that the redundancy was unjustified.
12. She testified that the department operated on shifts, with six employees covering a 12-hour shift, rendering the claim of overstaffing untenable.
13. The Claimant contended that no criteria was disclosed as to why she was selected for redundancy over other employees.
14. She further averred that the Respondent failed to pay her terminal dues contrary to Sections 35, 36, 40, 49(c), and 51 of the *Employment Act*.
15. The Claimant particularized the unlawfulness of her termination from employment by the Respondent as follows. That: -
 - a. No notice of termination was issued to the claimants' Union as envisaged under section 40 (a) of *Employment Act*, 2007
 - b. No notice was issued to the Local Labour Officer as envisaged under Section 40(b) of the *Employment Act*, 2007;
 - c. The Claimant was not given her pay in lieu of the notice pursuant to Section 36 and 40(f) of the *Employment Act*, 2007;
 - d. The Claimant was not issued with a notice as envisaged under Section 40 (1) and (b) of the *Employment Act*, 2007 and
 - e. That the Respondent did not comply with Section 40 (e) (g) and Section 49 (c) of *Employment Act*, 2007
 - f. There was no hearing and/or representation prior to termination of claimant's services
16. As a result, the Claimant asserted that the Respondent's action of terminating her employment on account of redundancy was unfair and illegal.
17. The Claimant contended that owing to the alleged unfair termination of her employment, she was entitled to the following reliefs:



- a. A declaration that the termination of claimants' employment on account of redundancy was discriminative, malicious, unlawful, unfair, unprocedural and a fundamental violation of the rights of the Claimant
 - b. Terminal dues
 - c. A maximum compensation as per Section 49 (c) of the *Employment Act*, 2007
 - d. A Certificate of Service as per Section 51 of the *Employment Act*;
 - e. Costs and interest of this suit.
 - f. Any other awards as the honourable court deems fit to grant in the circumstances of this case.
18. The Appellant (Respondent in the trial court) filed a Response to Statement of Claim dated 12th March 2020 and averred that it undertook restructuring of its physiotherapy department due to operational needs, rendering some positions superfluous.
19. According to the Respondent, the Claimant was given full particulars of the intended redundancy and was duly issued with a proper notice that complied with the provisions of Section 40 of the *Employment Act*
20. It is the Respondent's case that the decision to declare the Claimant and another employee from the physiotherapy department redundant was preceded by a meeting held between the Chief Executive officer, Human Resource Manager, Head of Department (Physiotherapy Department) and all staff members from the Physiotherapy department including the Claimant herein and the reason was duly explained to them.
21. The Respondent therefore contended that there is no amount due to the Claimant as the procedure envisaged in section 40 of the *Employment Act* was followed and she was paid one month's salary in lieu of notice and severance pay.
22. The Appellant prayed that the suit be dismissed with costs.

Evidence

23. The suit was heard on 9th September 2022 when the Claimant testified on her own behalf while the Respondent called its Human Resource Officer, Joy Ngelechei who testified as RW1.
24. The Claimant adopted her witness statement and testified that on 12th July 2019, she was called by the Respondent's Human Resource Officer and told that she would be declared redundant on the basis that the number of patients had reduced.
25. She testified that the meeting was between the HR officer and six other employees who worked in the physiotherapy department. The Claimant's evidence was that there had been no notice before that date. The Claimant averred that she was not paid one month's salary in lieu of notice and further, that out of the 5 employees who were not affected by the illegal redundancy carried out by the Respondent, only one preceded her in employment and that the other four were employed after her.
26. The Claimant denied that she underperformed and averred that there was no appraisal where she was told that she was underperforming. Further, she stated that she was never served with a notice to show cause and was never invited to any disciplinary hearing.
27. On cross examination, the Respondent stated that her employment contract indicated that her salary was inclusive of all allowances.



28. On re-examination, the appellant stated that the termination letter was served on her just one day after the meeting with the Respondent's Human Resource Officer.
29. RW1, Joy Ngelechei adopted her witness statement recorded on 13th March 2020 as her evidence in chief. It was her testimony that the Respondent held two meetings with the affected employees before they were declared redundant. She averred that the first meeting was held on 10th July 2019 where herself, the CEO and all the staff at the Physiotherapy Department were present. That after that meeting she was tasked with the responsibility of evaluating who among the 7 staff were to be declared redundant.
30. RW1 maintained that the Claimant was paid her terminal dues. She also stated that the Claimant's salary was a consolidated amount inclusive of house allowance. RW1 further stated that the labour officer was notified of the Respondent's intention to declare some of its employees redundant.
31. She averred that the Claimant has not been issued with her Certificate of Service as she is yet to clear with the Respondent.
32. On cross examination, RW1 stated that the Claimant did not work until the end of July and that she only worked until 15th July 2019. She asserted that the Claimant was given notice in the meeting of 10th July 2019 and was paid one month's salary in lieu of notice. She however conceded that she was not aware whether the Claimant was paid her July salary.
33. After the close of the Respondent's case, the trial court delivered its judgment on 22nd December, 2022 in favour of the Respondent.

Appellant's submissions

34. The Appellant crystallized the grounds of appeal into the following two issues:
 - i. Whether the termination of the Respondent's employment by the Appellant on account of redundancy was unfair, unlawful and illegal
 - ii. Whether the Respondent was entitled to the reliefs sought
 - iii. Who should pay the costs and interests of the suit
35. On the first issue, the Appellant submitted that Section 40 of the *Employment Act*, 2007 expressly permits an employer to terminate an employee's services on account of redundancy and further, that section 43 of the Act places an obligation on the employer to prove the reason or reasons for termination, which reasons are those that the employer genuinely believed to exist at the time of termination.
36. The Appellant submitted that its Human Resource Manager testified before the trial court and explained that patient numbers in the Physiotherapy Department had significantly reduced, rendering it economically untenable to maintain the existing workforce. It was submitted that expenditure outweighed income, necessitating restructuring of the department and the declaration of some positions redundant. The redundancy was therefore intended to enhance efficiency and address operational needs, as the Respondent's services had become superfluous.
37. It was submitted that the Appellant fully complied with the substantive requirements of Section 40(1) of the *Employment Act* which outlines the procedure to be followed in a redundancy situation.



38. With regard to Section 40(1)(a), the Appellant submitted that the Respondent confirmed during trial that she was not a member of any trade union. Consequently, there was no obligation to issue notice to a trade union.
39. In respect of Section 40(1)(b), the Appellant submitted that it complied with the requirement to issue notice to the employee and the labour officer. The Appellant submitted that the Respondent was notified of the redundancy vide a letter dated 15th July 2019, which she acknowledged. Additionally, that the County Labour Officer, Uasin Gishu County, was notified vide a letter dated 10th July 2019 which was received on 19th July 2019.
40. In this regard, the Appellant submitted that the trial court erred in finding that no notice was issued, as the letter dated 15th July 2019 clearly demonstrated compliance. It was further submitted that the Respondent misled the trial court by alleging that she was verbally instructed to leave the premises on 15th July 2019, yet no evidence was placed before the court to support this allegation.
41. According to the Appellant, prior to the issuance of the notice the Respondent and other members of the Physiotherapy Department were invited to a meeting at which they were informed of the intention to downsize the department due to reduced patient numbers which meeting, the Appellant submitted that the Respondent admitted in her testimony that she attended the said meeting and was informed of the reasons for the downsizing. In support of the position that prior communication of the intention to declare redundancy satisfies the requirement of procedural fairness, the Appellant relied on the decision in *Gerrishom Mukhutsi Obayo v DSV Air & Sea Limited (2018) eKLR*.
42. On compliance with Section 40(1)(c), the Appellant submitted that due regard was given to the criteria of ability, reliability, and conduct. It is the Appellants submission that RW1 testified that the Respondent frequently reported to work late and absented herself without explanation. To support this testimony, the Appellant produced employee time cards (Exhibit 4) showing several instances of late reporting and absenteeism.
43. The Appellant submitted that given the nature of its operations as a hospital, punctuality and reliability were critical. It was asserted that on the basis of the Respondent's conduct, the Claimant was legitimately selected for redundancy in accordance with Section 40(1)(c).
44. With regard to Section 40(1)(d), the Appellant reiterated that there was no collective bargaining agreement applicable as the Respondent was not a union member.
45. On Sections 40(1)(e), (f), and (g), the Appellant submitted that the Respondent was paid all her terminal dues. According to the Appellant, RW1 testified that the Respondent was paid one month's salary in lieu of notice and severance pay totalling Kshs. 64,000/= via Cheque No. 005701 filed by the Appellant in its bundle of documents.
46. The Appellant thus submitted that while the Respondent denied physically receiving the cheque, she did not deny that the amount was credited to her account.
47. The Appellant submitted that the redundancy satisfied both substantive and procedural fairness requirements.
48. The Appellant submitted that the Respondent failed to prove unfair termination and was therefore not entitled to any of the reliefs awarded by the trial court.
49. Regarding severance pay, the Appellant submitted that the Respondent's severance pay was properly computed at Kshs. 32,000/= based on four completed years of service and a monthly salary of Kshs. 16,000/=, in compliance with Section 40(1)(g) of the *Employment Act*.



50. The Appellant submitted that the trial court erred in awarding severance pay of Kshs. 80,000/= without explaining the basis of computation.
51. On salary in lieu of notice, the Appellant submitted that the Respondent's salary was consolidated and inclusive of allowances as per Clause (iv) of the employment contract in the Appellant's bundle of documents. It is the Appellant's submission that the trial court was therefore invited into error by awarding a higher figure and effectively rewriting the contract.
52. On compensation for unfair termination, the Appellant submitted that having demonstrated compliance with Section 40 of the *Employment Act*, no basis existed for an award under Section 49.
53. On house allowance, the Appellant reiterated that the Respondent's salary was expressly stated to be inclusive of allowances and that parties are bound by the terms of their contract.
54. On overtime, the Appellant submitted that the Respondent worked on shifts and could not have accrued overtime. Further, she was paid locum fees whenever she stepped in for absent colleagues.
55. On unpaid salary, the Appellant submitted that all salary dues had been paid and no outstanding amount was owed.
56. The Appellant thus urged the court to allow the appeal in its entirety and award costs.

The Respondent's submissions

57. The Respondent set out the issues for determination to be:
 - i. Whether the Respondent was unfairly, unlawfully and unprocedurally terminated from employment by the Appellant on account of redundancy
 - ii. Whether the trial magistrate applied the correct principles of law when awarding the Respondent
 - iii. Who should pay the cost of the Appeal
58. The Respondent submitted that the Appellant failed to comply with the mandatory procedure prescribed by law when terminating her employment on account of redundancy. She contended that the termination of her employment on 15th July 2019 was unlawful, unfair, and unprocedural, as the Appellant failed to adhere to Sections 40, 41, 43, and 45 of the *Employment Act*, 2007.
59. The Respondent submitted that she was issued with a letter dated 15th July 2019 terminating her employment on account of redundancy and was informed by the Appellant's Human Resource Manager that the termination was to take effect immediately. This, she argued, demonstrated that the decision to terminate her employment had already been made with finality and was implemented without compliance with the statutory procedure.
60. The Respondent pleaded that the Appellant did not issue a notice of intended redundancy as required under Section 40 of the *Employment Act*. She submitted that the letter dated 15th July 2019 was a termination letter and not a notice of intention to declare redundancy, thereby rendering the entire process procedurally flawed.
61. In support of this position, the Respondent relied on *Cargill Kenya Limited v Mwaka & 3 Others* (Civil Appeal No. 54 of 2019) [2021] KECA 115, where the Court emphasized the importance of issuing a notice of intended redundancy to allow for consultations and mitigation measures. Reliance was also placed on *National Oil Corporation of Kenya v Cheruiyot & 37 Others* (Civil Appeal No. 283



- of 2020) [2025] KECA 148, where the Court underscored that the purpose of issuing a redundancy notice is to facilitate consultations prior to termination.
62. The Respondent further relied on *Fursys Kenya Limited v Oyare* (Appeal No. E046 of 2021) [2023] KEELRC 2846, where the court held that a termination letter cannot substitute a notice of intended redundancy and that failure to issue such notice renders the redundancy process procedurally unfair.
 63. The Respondent submitted that the Appellant violated Section 40(1)(a) of the *Employment Act* in totality and failed to comply with the entirety of Section 40. Consequently, the Respondent contended that her termination was unfair and unlawful.
 64. The Respondent further submitted that the Appellant violated Section 40(1)(c) of the *Employment Act*, as no fair and objective selection criteria were applied. She argued that the decision to terminate her employment had already been reached and was effected immediately when she was instructed to leave the Appellant's premises.
 65. The Respondent submitted that the Statement of Defence on record did not dispute the fact that the termination was immediate and final. Equally, the Appellant's witness did not dispute this fact during cross-examination. No minutes of any meeting were produced to demonstrate that consultations were conducted or to show the criteria used in selecting the Respondent for redundancy.
 66. The Respondent denied that she was consulted and denied the Appellant's assertion that proper consultations took place. She submitted that mere attendance at a meeting where employees are informed of a decision does not amount to consultation within the meaning of Section 40 of the *Employment Act*.
 67. The Respondent relied on *Nation Media Group Limited v Munene* (Civil Appeal No. E603 of 2021) [2025] KECA 114, where the Court held that termination on account of redundancy without prior consultation is procedurally flawed. In that case, the employee was informed and terminated almost simultaneously, without involvement of the union or labour officer, and without an opportunity to discuss or mitigate the redundancy.
 68. It was the Respondent's submission that the burden of proof lay on the Appellant to demonstrate that consultations were conducted and that a fair selection criteria was applied. The Appellant, it was argued, failed to discharge this burden, having not produced minutes of meetings or any documentary evidence outlining the criteria used to select the Respondent for redundancy.
 69. The Respondent submitted that the Appellant further failed to comply with Section 40(1)(b) of the *Employment Act*, as the alleged notice to the labour officer was neither contemporaneous nor effective prior to the termination taking effect.
 70. It was further submitted that payment of terminal dues, even if proved, does not cure a procedurally flawed redundancy process.
 71. The Respondent submitted that the trial court correctly evaluated the evidence on record and properly applied the law in finding that the termination of her employment on account of redundancy was unfair, unlawful, and unprocedural.
 72. The Respondent further submitted that the trial court correctly exercised its discretion in awarding terminal dues and compensation under Section 49 of the *Employment Act*, having regard to the circumstances of the case.
 73. The Respondent urged this Court to find that the Appellant failed to justify both the substantive and procedural fairness of the redundancy and that the appeal lacks merit.



74. In conclusion, the Respondent prayed that the appeal be dismissed with costs and that the judgment of the trial court be upheld in its entirety.

Determination

75. I have considered the Appellant's Record of Appeal and the submissions by both parties. The grounds of appeal may be summarized into the following issues for determination: -

- i. Whether the termination of the Respondent's employment on account of redundancy was procedurally and substantively fair within the meaning of the *Employment Act, 2007*
- ii. Whether the trial court erred in law and fact in awarding the Respondent the reliefs granted
- iii. What reliefs should issue

Whether the termination of the Respondent's employment on account of redundancy was procedurally and substantively fair

76. It is not in dispute that the Respondent's employment was terminated on account of redundancy. Section 40(1) of the *Employment Act, 2007* provides for termination on account of redundancy, subject to the employer complying with certain procedural requirements including notice to the employee, consultation, and selection based on fair and objective criteria.

77. The Appellant submitted that the redundancy was occasioned by reduced patient numbers and operational restructuring within the Physiotherapy Department. It asserts that the termination was justified, that proper consultations were conducted, and that the Respondent was paid her terminal dues, including salary in lieu of notice and severance pay. The Appellant further contends that the Respondent's attendance at departmental meetings constituted sufficient consultation and that the redundancy was substantively fair.

78. On her part, the Respondent contends that the procedural requirements under Section 40 were not complied with, particularly the issuance of a notice of intended redundancy, prior consultation, and application of fair selection criteria. The Respondent emphasizes that the termination letter dated 15th July 2019 was served one day after the initial meeting and took effect immediately, thereby demonstrating that the decision to terminate her employment had already been made with finality.

79. I have analyzed the record of appeal. The evidence on record shows that the Respondent was issued with a letter dated 15th July 2019 terminating her employment on account of redundancy. That letter was unequivocal in its terms and communicated a final decision to terminate her services.

80. The Appellant argued that a prior meeting which was held on 10th July 2019 constituted sufficient notice and consultation. However, there is no documentary evidence such as minutes of meetings or correspondence that demonstrates a consultation process in accordance with Section 40(1) of the *Employment Act*. Mere attendance of a meeting does not constitute meaningful consultation envisaged by section 40 requiring the employees to be notified of the intended redundancy at least one month prior to the termination on account of redundancy and an opportunity to engage on the extent, criteria for selection and make representations on alternatives to termination.

81. From the record, it is also clear that the Appellant failed to demonstrate compliance with Section 40(1)(c) regarding the application of a fair and objective selection criteria. The Appellant pleaded and testified through its witness, RW1 that the Respondent was earmarked for termination on account of redundancy due to lateness and underperformance. This allegation was not proved as no appraisal or



- disciplinary records were produced to substantiate these claims. Moreover, no documentary evidence was produced to show that these factors were applied comparatively across all affected employees.
82. The burden of proof lay with the Appellant to demonstrate that a fair selection criterion was applied. In the absence of minutes, evaluation reports, or any objective framework showing how the Respondent was selected over other employees, that burden was not discharged.
 83. On the requirement of notice to the labour officer under Section 40(1)(b), while the Appellant produced a letter dated 10th July 2019, the evidence shows that the same was received on 19th July 2019, after the termination had already taken effect. Such notification does not meet the statutory requirement of prior notice.
 84. Having considered the submissions and evidence, this Court finds that the Appellant did not fully comply with the procedural requirements set out in Section 40(1) of the *Employment Act*. The absence of documented consultation, the immediate effect of the termination without prior notification or termination notice, and lack of clear selection criteria render the redundancy procedurally unfair.
 85. On the substantive fairness of the redundancy, while the Appellant argued that operational needs justified the redundancy, the Respondent adduced credible evidence that other employees in the same department were retained, including those hired after her termination. The Appellant's allegations of lateness and underperformance by the Respondent were unsubstantiated, as no appraisals, disciplinary records, or comparative evaluations were produced. This raises serious doubts as to whether the redundancy was genuinely necessary or fairly implemented.
 86. In light of the foregoing, the Court finds that the termination of the Respondent's employment was both procedurally and substantively unfair, unlawful, and in contravention of the *Employment Act, 2007*.
 87. I therefore find and hold that the trial court correctly found that the Respondent's termination by the Appellant was procedurally and substantively unfair.

Whether the trial court erred in law and fact in awarding the Respondent the reliefs granted

88. The trial court awarded the Respondent Kshs. 32,000 as salary in lieu of notice, Kshs. 80,000 as severance pay, Kshs. 192,000 as 6 months' salary compensation for unfair termination and Kshs. 32,000 as unpaid salary.
89. With respect to the award of salary in lieu of notice, although the Appellant argued that it paid the Respondent Kshs. 64,000 for salary in lieu of notice and severance pay, the Respondent was entitled to Kshs. 32,000 as salary in lieu of notice in addition to the Kshs. 64,000 which constituted on severance pay. The Respondent was thus rightly awarded the same by the trial court.
90. On the award of severance pay, the trial court awarded Kshs. 80,000. Severance pay is calculated based on the Respondent's length of service, which was four (4) completed years. Pursuant to Section 40(1) (g) of the *Employment Act, 2007*, severance pay is equivalent to one month's salary per completed year of service. At a monthly salary of Kshs 32,000, the total severance pay is $\text{Kshs } 16,000 \times 4 = \text{Kshs } 64,000$, which aligns with the amount paid by the Appellant via cheque. There is no evidence that she was paid any further terminal dues.
91. Regarding compensation for unfair termination, Section 49(1)(c) of the *Employment Act* grants the court discretion to award up to twelve months' gross salary for unfair termination, taking into account the factors set out under Section 49(4).



92. An appellate court will not interfere with the exercise of discretion by a trial court unless it is shown that the court acted on wrong principles, misapprehended the evidence, or arrived at a manifestly unjust decision. No such error has been demonstrated in the present appeal.
93. I therefore find no basis to interfere with the award made by the trial court save for the award of severance pay, which is hereby set aside as the same was paid to the Respondent as reflected in the letter of termination. The award is thus set aside as it constitutes a double payment.
94. In the result, the appeal herein partially succeeds to the extent that the award on severance pay is set aside.
95. Save for the foregoing variation on severance pay, the judgment of the trial court delivered on 22nd December 2022 is otherwise upheld in its entirety.
96. Given that the appeal has only succeeded partially, each party shall bear its own costs of the appeal.

DATED, DELIVERED AND SIGNED* THIS 22ND DAY OF JANUARY, 2026.

M. ONYANGO

JUDGE

