

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

**CAUSE NO. E1055 OF 2021**

**MUNIRA HAMISH MWALELE.....**  
**CLAIMANT**

**VERSUS-**

**STANDARD CHARTERED BANK KENYA LIMITED.**  
**RESPONDENT**

1. The Claimant through her Memorandum of Claim dated 14<sup>th</sup> December, 2021 pleaded inter alia as follows:

- a. That she was employed by the Respondent way back on 16<sup>th</sup> June 2016 in the capacity of a Branch Sales and Service Executive and served the Respondent faithfully, diligently and without any blemish.
- b. That on 20<sup>th</sup> January, 2019 the Respondent unilaterally and without any justification terminated her employment on the pretext that her employment had been rendered redundant. That the said redundancy was unlawful, unfair, unwarranted and contrary to the principles enunciated in the Employment Act and in particular the provisions of section 40 of the act, general principles on redundancy as well as the Respondent's redundancy standard.
- c. That the conduct by the Respondent amounted to an act of constructive dismissal undertaken in bad faith and in all circumstances of the case, the Respondent did not act in accordance with the law, justice and equity in terminating her employment.

d. That the failure to adhere to the Procedures stipulated in section 40 of the act rendered the purported termination on account of the alleged redundancy unlawful and consequently the termination of the Claimant's services was both wrongful and unlawful and deprived her the right to equal protection and equal benefit of the law.

e. That the Claimant is servicing an outstanding loan with the Respondent which attracts interest at staff rate of 16% per annum wherein the Respondent insisted on deducting her dues to pre-pay the loan and in respect of which she was obliged to write a letter dated 28<sup>th</sup> January, 2019.

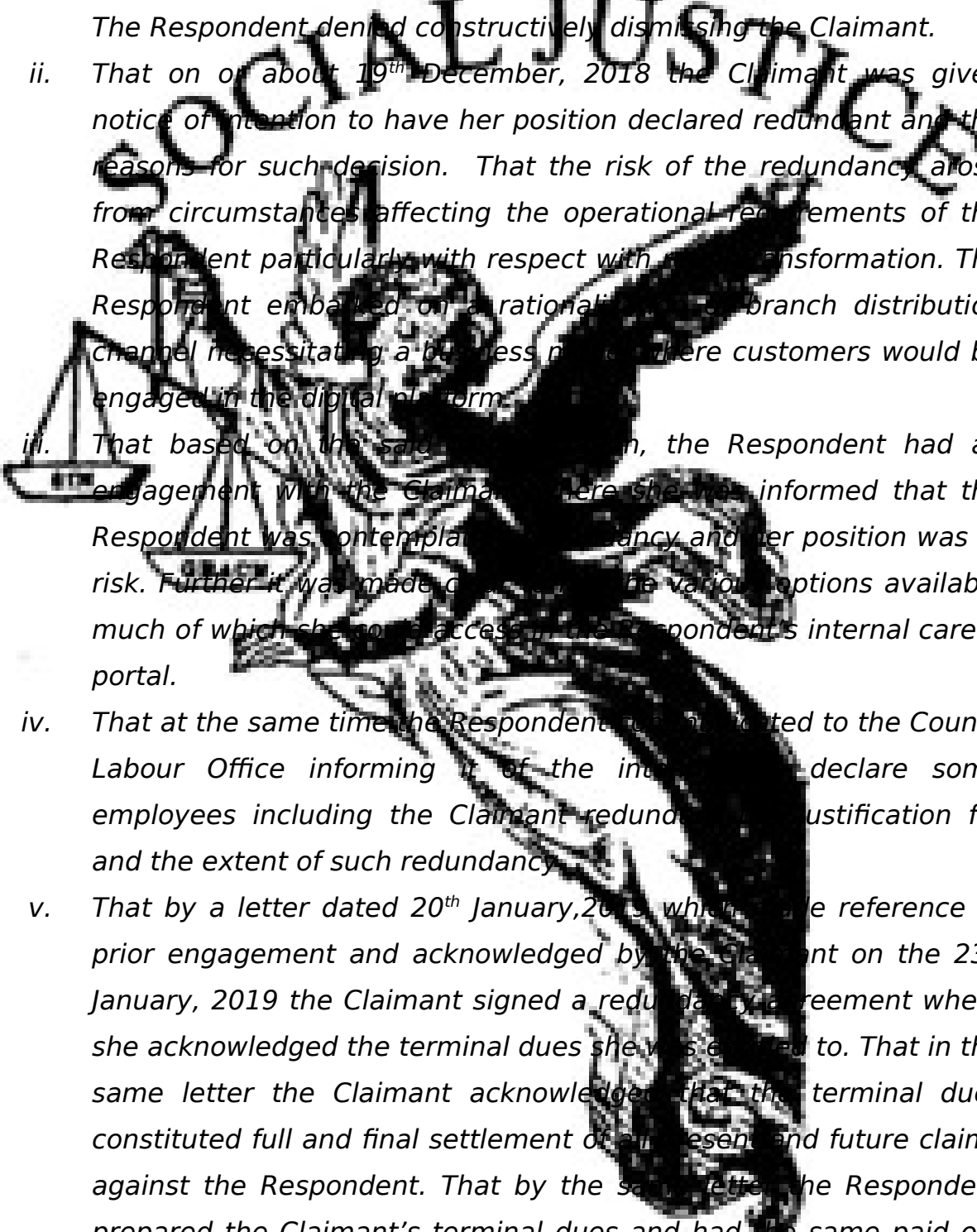
f. That the Respondent without any justification legal basis and/or foundation indicated vide her consultancy letter that the rate of interest would be changed after the termination from staff rate to the prevailing commercial interest rate. That she refused to sign an acknowledgment of the said reading the proposed move non-contractual and of no legal effect.

2. The Claimant in the upshot prayed for the following against the Respondent: -

- a. A declaration that the Claimant's termination was wrongful, unlawful and unfair.
- b. A declaration that the Claimant is entitled to service the outstanding loan with the Respondent while applying the staff interest rate.
- c. General damages for wrongful dismissal of Kshs 44,690/= x 12 Months = Kshs 1,736,280/=
- d. Compensation for violation of rights under Bill of Rights enshrined in the Constitution of Kshs 10,000,000/=
- e. Certificate of service.
- f. Costs and Interest on all the damages payable

3. The Respondent filed its statement of Response dated 8<sup>th</sup> November, 2022 and averred inter alia as follows:

- i. That the Claimant was a former employee having been employed in July 2016 until 20<sup>th</sup> January, 2019 when she was lawfully terminated

- 
- on account of redundancy occasioned by restructuring of the Company to meet the operational requirements of the Respondent. The Respondent denied constructively dismissing the Claimant.
- ii. That on or about 19<sup>th</sup> December, 2018 the Claimant was given notice of intention to have her position declared redundant and the reasons for such decision. That the risk of the redundancy arose from circumstances affecting the operational requirements of the Respondent particularly with respect with respect to transformation. The Respondent embarked on a rationalisation of branch distribution channel necessitating a business model where customers would be engaged in the digital platform.
  - iii. That based on the said information, the Respondent had an engagement with the Claimant where she was informed that the Respondent was contemplating redundancy and her position was at risk. Further it was made clear to her the various options available much of which she could access in the Respondent's internal career portal.
  - iv. That at the same time the Respondent communicated to the County Labour Office informing it of the intention to declare some employees including the Claimant redundant and justification for and the extent of such redundancy.
  - v. That by a letter dated 20<sup>th</sup> January, 2019 which had reference to prior engagement and acknowledged by the Claimant on the 23<sup>rd</sup> January, 2019 the Claimant signed a redundancy agreement where she acknowledged the terminal dues she was entitled to. That in the same letter the Claimant acknowledged that the terminal dues constituted full and final settlement of all present and future claims against the Respondent. That by the same letter the Respondent prepared the Claimant's terminal dues and had the same paid out to her.

- vi. That the Claimant in the same spirit rescheduled her financial obligations in light of the separation and made commitments by authorizing the Respondent to deduct 70% of her dues to liquidate her obligations.
- vii. The Respondent prayed that the court upholds its decision, find the claim without merit and dismisses the same with costs to the Respondent.

### **EVIDENCE**

4. Both the Claimants' and Respondent's case was heard on 20<sup>th</sup> February, 2023 where the Respondent's witness (CW1) testified. She adopted her statement sworn on 14<sup>th</sup> December, 2021 and documents filed as her evidence in chief. She sought to be compensated for a wrongful dismissal.
5. In cross-examination she confirmed that her position was Branch Sales Service Executive. That she worked at Maritime Branch Mombasa and that she knew Hannah Mwangwenyi who was in HR although she had not met her in person she knew her through the circulars and emails sent by the bank.
6. She confirmed that she never received any memo from Hannah. That all those who were working as sales executives were affected. That they were told their roles were no longer

needed but someone was brought to handle their roles. That the person came from Malindi Branch which was closing down.

7. She confirmed that she did not have discussion with Hannah but a reliable person called Erick was handling the issue. That they were reporting to Branch Manager Patrick. She confirmed that the letter of loans and outstanding loans granted 25% discount on any outstanding loans.
8. She confirmed that their variable interest rates were changed although she did not have any document from the bank to show the rates were changed. That the medical cover was extended until end of year but was withdrawn after a few months. That she did not complain and
9. She confirmed she was paid Kshs 1,100,000 but there were deductions. That she signed the same. That they were forced to sign and she could not avoid signing but she did not indicate that she was signing without prejudice. That someone from the Head Office in Chiromo dictated what should be written and signed. That she never indicated this in her witness statement but she explained to her lawyer.

10. In re-examination she clarified that in paragraph 8 of her witness statement she indicated that she was coerced to write and that she was sent an email over the redundancy.

11. The Respondent on the other hand called one witness Lorraine Oyombe their Employee Relations Manager herein (RW1) who relied on her witness statement sworn on 17<sup>th</sup> February 2023, the response and documents filed by the Respondent as her evidence.

12. In cross examination she confirmed that that the redundancy notice dated 19<sup>th</sup> October, 2018 was addressed to Commissioner for Labour Nairobi as the Claimant was based in Mombasa. That they did not visit the local labour office in Mombasa. She confirmed that the Claimant was working under retail banking which was affected by redundancy. That forty employees were declared redundant.

13. That the employees were paid their accrued leave days and final dues were sent to the salary account.

14. In re-examination she clarified that there were no requirement that a report on redundancy be filed. That there were discussions and follow up email with staff on the

redundancy. That the Claimant was at retail banking at the time of redundancy.

# SOCIAL JUSTICE

## CLAIMANTS' SUBMISSIONS

15. The Claimant's advocates Kabue Thumi & Co. Advocates filed written submissions dated 7<sup>th</sup> March 2021 and counsel submitted that the cause of action in the matter related to unlawful termination on account of redundancy. That in declaring the Claimant redundant, the Respondent did not adhere to the procedural duties of the law enshrined in section 40 of the Employment Act and the material provisions of section 40 of the Employment Act that were breached were section 40(b), (c) and (e).

16. Counsel submitted that the Respondent failed to notify the relevant labour officer of the redundancy yet it stated that the Commissioner of labour was notified via a letter dated 20<sup>th</sup> January, 2019. That the allegation that a notification was sent to the commissioner of labour was false and misleading as it was not clear if it was received and that it was not sent to the area labour office.

17. Counsel further submitted that the letter dated 20<sup>th</sup> January 2019 addressed to the Commissioner of Labour was in any event deficient in that it only indicated an intention to lay off 40 managerial members of staff. That the said letter did not disclose the names of the affected employees and their respective designations. Indeed, no schedule was attached to the said letter.

18. Counsel further submitted that the Respondent in the selection of employees failed to take into account seniority in time and to the skill, ability and capability of each employee. That the alleged termination was discriminatory and contrary to the principle of "first in, last out" as the Respondent terminated their services but retained their colleagues who were senior to them as could be discerned from the employment numbers which were sequential in nature.

19. The Claimant in his statement enumerated the names and employment numbers of employees who were junior to her at work by virtue of date of employment but who were nonetheless retained. The Respondent failed to give a proper account of how they arrived at the employees to be declared

redundant. A detailed report touching on the interviews would have shed light on the criteria used in determining the employees to be laid off and those to be retained.

20. Counsel further submitted that the Respondent failed to pay the Claimant her leave days in cash as provided for under Section 400(e) of the Act. That it is evident from the documents on record that the Claimant herein was paid her leave days together with other social benefits and the said payment was never made in cash as required by law.

21. Counsel submitted that the redundancy was done in bad faith since the Claimant was interviewed in the self-same position that she was occupying at the time of the intended redundancy, instead of the ₱1,100,000/= redundancy pay the Respondent only paid her ₱144,000/= which was way too low of her expectations. Counsel relied on section 2 of the Act on definition of redundancy.

22. Counsel submitted that the Claimant was capable to write and sign the letter authorizing the Respondent's action to deduct seventy percent of their deduction through a Human Resource representative from the Headquarters. That a

Human resource representative from the Respondent Company was dictating words as the Claimant typed and thereafter the Claimant cross signed, the signing of the authority was procured through undue influence to the Claimant by the Human Resource Representative. That the exercise conducted by the Respondent did not meet the legal definition of redundancy.

23. Counsel further submitted that as a manifestation of bad faith for the Respondent to re-employ positions redundant then proceed to interview employees for the same positions. In effect it meant that the positions were not redundant but rather the Respondent had devised a way of unlawfully dismissing the Claimant.

24. Counsel submitted that no proper consultations were held touching on the redundancy. That the Respondent produced documents but no single document pointed to such meetings being held. The Respondent failed to produce any evidence touching on such consultations. No minutes and/or notes pertaining to such consultative meetings were produced. Indeed, the Respondent's witness confirmed under cross-

examination that no labour officer was present during the consultative meeting that he alleged was held.

25. Counsel relied on case laws on this issue while submitting that the law on redundancy was elaborated extensively by the court of Appeal in the case of **Cargill Kenya Ltd -vs- Mwaka and 3 others (civil appeal No. 54 of 2019) (2021) KECA 115 (KEA)** where the court had occasion to consider various aspects touching on redundancy specifically on consultation that lack of consultation rendered the redundancy process irregular.

26. That the same court also addressed the issue of selection criteria to be employed before declaration of redundancy. That the Respondent did not offer any criteria in selection of the employees declared redundant. The Respondent only issued scores without laying the basis for the same. That no redundancy report was prepared and furnished to court on selection criteria. Counsel urged the Court to make a finding that the declaration of redundancy was irregular and did not meet the requirements of the law.

## RESPONDENT'S SUBMISSIONS

27. The Respondent's Advocates Federation of Kenya Employers filed written submissions dated 24<sup>th</sup> November, 2025 and on the issue of whether the Claimant's termination of employment on account of redundancy was lawful and fair counsel submitted that the suit amounted to an abuse of Court's process, given that the parties had a binding Redundancy Agreement. That in relation to the engagements with the Respondent and which the Claimant acknowledged on or around 23<sup>rd</sup> January, 2019, the Claimant signed a Redundancy agreement where she acknowledged that the terminal dues she was entitled to. That in the same letter, the Claimant acknowledged that the terminal dues constituted full and final settlement of all present and future claims against the Respondent.

28. Counsel relied on the Court of Appeal in Mombasa in **Coastal Bottlers Ltd Vs Kimani Mwangi (2018) eKLR** where the court held that where an employee has discharged an employer at the time of separation, she must be bound by the terms of compromise. That in this case, the Claimant never

denied signing the Redundancy agreement and was therefore estopped from alleging unlawful termination or constructive dismissal.

29. Counsel also relied on this Honourable Court's decision in the case of **Momanyi v Spedag Interflight Limited (Cause 433 of 2019) [2024]** on an employee establishing malice when declared redundant. In the redundancy process was conducted lawfully and the parties entered into a binding agreement. The Claimant therefore, could not claim that her termination was wrongful. Evidence pointed to the contrary.

30. Counsel submitted that the Claimant failed to substantiate any allegations of constructive dismissal or wrongful termination and there was no factual or legal basis to challenge the validity of the redundancy exercise. That all procedures were conducted lawfully, fairly and in accordance with the law. Counsel relied on section 40 of the Act on the substantive and procedural requirements while declaring an employee redundant.

31. Counsel submitted that in this case, the Respondent issued the requisite notices to the Ministry of Labour and to the affected employees and equally complied with the substantive and procedural tenets in conducting the redundancy.

32. Counsel submitted that the Respondent embarked on a digital transformation agenda in line with its growth strategy to enable its clients access most of its products digitally via online and mobile platforms. The Retail Banking, Wealth Management, Commercial Banking and Information Technology were to be affected. This affected all the Respondent's branches countrywide. That the Respondent was notified by the Commissioner for Labour vide the letter dated 19<sup>th</sup> November, 2018 and received on 22<sup>nd</sup> December 2018. The letter (albeit faint) indicated that it was received in the Commissioner's office.

33. That the Employment Act contemplates that the notice to the Ministry and the employees are done in contemplation of consultations that will reveal the eventual extent of the redundancy. In the letter to the Commissioner for Labour the extent of the redundancy was noted that it would affect 40 employees within the Retail Banking, Wealth

Management, Commercial Banking and Information Technology departments.

34. That the Claimant's position was declared redundant entirely and hence was not upon the Respondent to elect which employee in the said branch would remain and would be declared redundant. The argument by the Claimant that the Respondent's conduct amounted to an act of constructive dismissal undertaken in good faith was untenable. Entire branches were shut down in the process of digitalization.

35. Counsel submitted that since the Respondent extended various career options to the Claimant which the Claimant did not take up and hence failed to accept any alternative employment. Counsel relied on the decision in **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (2014) KECA 404 (KLR)** on retrenchment notices which may not identify the specific employees to be affected by redundancy process. That the Respondent complied with requirements of section 40 of the Act.

36. Counsel submitted that the last limb under Section 40 was that the reason for the redundancy must be as a result of

operational requirements and not based on any fault of the employee or other extraneous factors. The redundancy as communicated in the letter to the Commissioner of Labour and the Claimant was the digital transformation of service delivery in the Retail Banking department that affected various branches thus the positions at those branches would be rendered redundant. The Respondent was continuing to offer services to its customers digitally. The stated reason for the redundancy was lawful and fair.

37. On the issue of whether the Claimant was entitled to the reliefs sought, counsel submitted that the Claimant was not entitled to any relief whatsoever as she was to discharge the burden of proof for unlawful termination. This proposition was reiterated in the case of **Francis Nyongesa Mwangi v Eldoret Water and Sanitation Company Limited (Cause 7 of 2017) [2017]**.

38. On the prayer on declaration that the Claimant's termination was unfair, counsel submitted that the Claimant was not entitled to a declaration of unfair termination, as the separation was not a termination, but a lawful redundancy.

carried out strictly in accordance with Section 40 of the Employment Act. The Claimant has neither demonstrated procedural flaws nor shown that the redundancy was a sham or targeted action.

39. On the prayer for declaration that the Claimant was entitled to repay the outstanding loan at the staff interest rate counsel submitted that this prayer was not to be granted as the Claimant had no entitlement to continue at staff loan interest rates after cessation of employment. The Claimant argued that she was coerced to write a letter on 28 January 2019 but had not provided any evidence to support this. The Respondent further communicated that the loan was to revert to the commercial interest rate after six months. The Respondent's gesture clearly demonstrated good faith and fairness toward the Claimant. The Claimant had therefore not established any legal or contractual basis for repayment under staff rates, and this prayer should be dismissed.

40. On the prayer for general damages, counsel submitted that the Claimant was lawfully and fairly declared redundant in strict compliance with Section 40 of the Employment Act, 2007.

This head of claim was therefore devoid of merit and ought to be dismissed in its entirety by this Honourable Court considering the Claimant herself signed a redundancy agreement acknowledging her terminal dues.

41. On the prayer for compensation for violation of rights counsel submitted that the Claimant was not detailed with precision any of her constitutional rights that were infringed on by the Respondent. The absence of evidence of any such violation this head of claim is without merit and should be dismissed. In any event, any alleged non-compliance with the Employment Act, 2007 can only be remedied with an award of compensation under Section 19.

### **DETERMINATION**

42. The court has reviewed and considered the pleadings, testimonies, submissions and authorities relied on by both parties and has come up with three main issues: -

a. Whether the Claimant's termination of employment on account of redundancy was unfair and unlawful

b. Whether the Respondent violated the Claimant's rights.

Whether the Claimant is entitled to the reliefs sought.

**Whether the Claimant's termination of employment on account of redundancy is unfair and unlawful**

43. The Respondent allegedly terminated the services of the Claimant on grounds of redundancy among other 40 employees occasioned by restructuring of Respondent to meet operational requirements. From the letter dated 19<sup>th</sup> December, 2018 to the Commissioner of Labour the Respondent stated that 40 employees would be affected in the Retail Banking, Wealth Management, Commercial Banking and Information Technology. The Claimant was in Retail banking.

44. The Claimant on the other hand alleged that the redundancy was done in bad faith as she was constructively dismissed from employment. Whereas she did not illustrate or

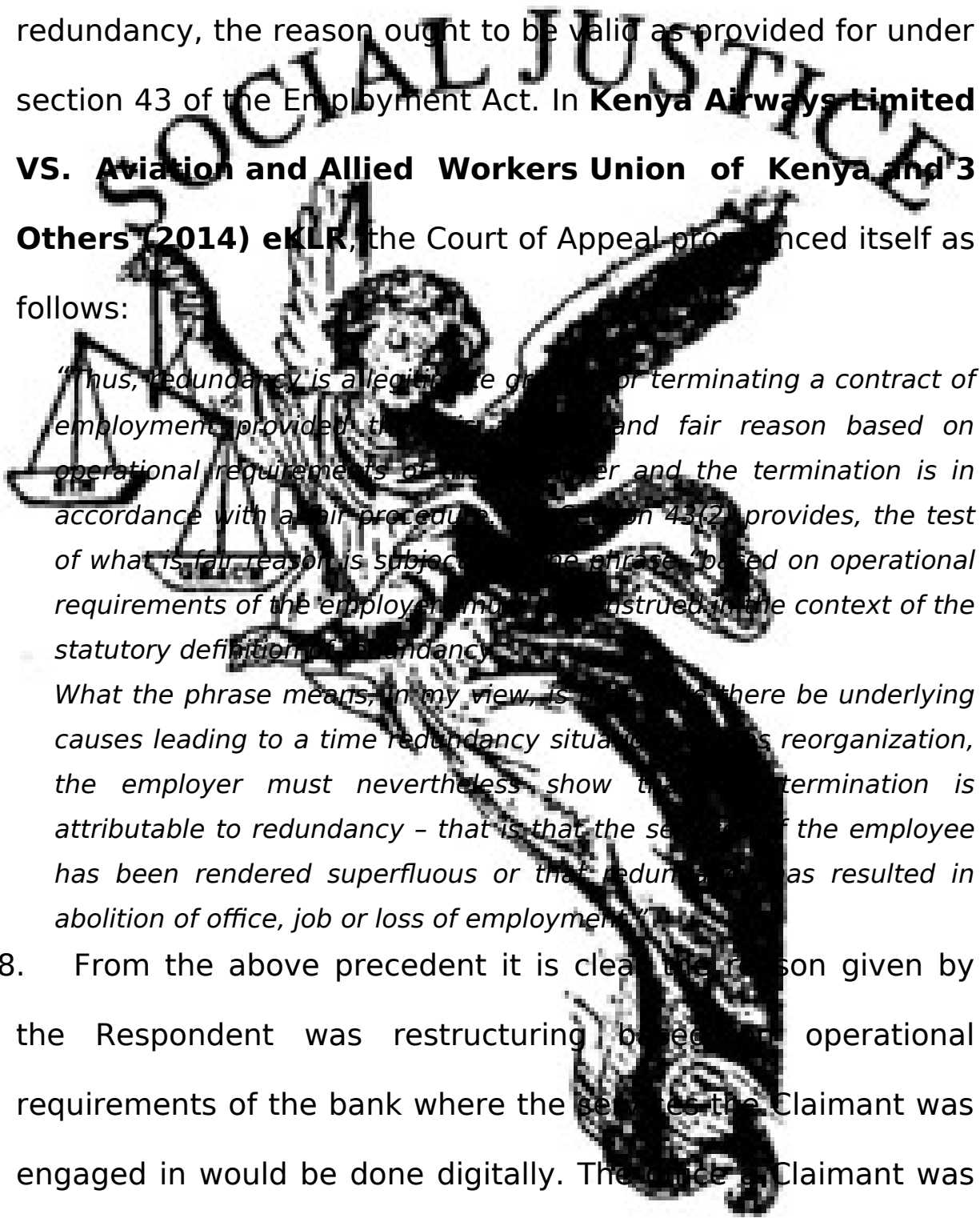
tender evidence of how she was constructively dismissed, the court will analyze the reason given in the redundancy notice which was termination due to redundancy.

45. It has been decided by case law that even in cases of termination on account of redundancy, there must be both substantive and procedural fairness. This was the principle established in **Walter Murray v Teachers Service Commission [2013] eK** and other cases.

46. Whereas the claimant was terminated on account of redundancy due to restructuring where the Respondent migrated to performing some of its functions digitally; redundancy is one of legitimate ways of ending employment relationship so long as it was done as per the tenets of law. Under section 2 of the Employment Act, redundancy is defined as;

*"...the loss of employment, occupation, job or office 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 and the practice commonly known as abolition of office, job or occupation and loss of employment.*

47. Courts have stated severally that even in cases of redundancy, the reason ought to be valid as provided for under section 43 of the Employment Act. In **Kenya Airways Limited VS. Aviation and Allied Workers Union of Kenya and 3 Others (2014) eKLR**, the Court of Appeal pronounced itself as follows:



*“Thus, ‘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 a fair procedure. Section 43(2) provides, the test of what is fair reason is subject to the phrase ‘based on operational requirements of the employer’ and should be construed in the context of the statutory definition of redundancy.”*

*What the phrase means, in my view, is that where there be underlying causes leading to a time redundancy situation such as reorganization, the employer must nevertheless show that the termination is attributable to redundancy - that is that the services of the employee has been rendered superfluous or that redundancy has resulted in abolition of office, job or loss of employment.”*

48. From the above precedent it is clear the reason given by the Respondent was restructuring based on operational requirements of the bank where the services the Claimant was engaged in would be done digitally. The office of Claimant was occupying must be rendered superfluous as seen in the above

case. The Claimant alleged that she was interviewed for the same role without any evidence. The Respondent alleged that the Claimant was offered other roles in the bank which she did not take up again without any evidence. It was common between the parties that two branches were closing down hence the office would be rendered surplus to requirements.

49. The court appreciates that it was within an employer's right to restructure its business operation in order to remain afloat in the business world. The court is therefore of the view that the Respondent had a valid business reason to declare the Claimant redundant due to operational requirements where it was migrating from manual and or physical service to digital service.

50. The Respondent was however bound to follow a fair procedure in terminating the Claimant on account of redundancy. The guiding law on procedural fairness on redundancy is section 40 of the Employment Act which 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 the benefits payable upon redundancy, the employer has not acted to 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 the employee in cash;*

*(f) the employer has paid to 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 the employee declared redundant severance pay at the rate of not less than thirteen days' pay for each completed year of service.*

51. In this case the Claimant never received the notice of intention to declare her redundant. The Respondent never produced any evidence of notice of the redundancy to the Claimant as required by section 40(1)(b).

52. It was therefore clear to the court that the Respondent did not provide sufficient evidence to show that the Claimant was notified 30 days prior to the declaration of redundancy. The notice is necessary to allow the employee to think and prepare for the future after job loss on account of redundancy and allow for option of sourcing for alternative employment. The alleged

redundancy notice dated 20<sup>th</sup> January, 2019 was to take place the same day without any evidence of prior notice to the Claimant in writing.

53. The Claimant was also not consulted as it was held in the above case. Apart from the redundancy notice stating that the Claimant was consulted there was no other evidence such as any email or minutes or notes of meetings held. In **Cargill Kenya Limited v Mwasikali & Others (Civil Appeal 54 of 2019) [2021] KECA 115 (22 October 2021) (Judgment)** the Court of Appeal held as follows:

*While the requirement of consultation is not expressly provided in section 40 of the Employment Act, this requirement is implied, as the main reason and rationale for giving the provisions of section 40(1)(a) and (b) to the unions and employees is an impending redundancy.....*

*We can only add that in interpreting statutes, the courts have the function of filling in the textual detail by implication, which arises either because it is directly suggested by the words expressed, or because they are indirectly suggested by general principles of law which are not excluded by the express wording of the statute. See in this regard the text by F. Bennion, Bennion on Statutory Interpretation, 5th Edition, at sections 17-19. Having regard to the legislative intention of the provisions of section 40 of the Employment Act, the international law and decided cases, it is our finding that consultations on an intended redundancy between the*

employer and the relevant unions, labour officials and employees is implied by section 40(1)(a) and (b) of the Employment Act.

36. Furthermore, consultation is also now specifically required by article 47 of the Constitution and the Fair Administrative Action Act. Article 47 and section 4(3) of the Fair Administrative Action Act provide that where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the proposed action and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;

(d) a statement of reasons upon the making of a decision;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine, where applicable; or

(g) information, materials and evidence relied upon in making the decision or taking the administrative action.

54. This then means consultation is vitally crucial in the redundancy process. Unless the circumstances are such that it would be an utterly futile exercise to engage in meaningful negotiations, consultation has to be real, not cosmetic. The New Zealand Chief Judge succinctly expressed this point in the case of **Cammish v. Parliamentary Service**.

*“Consultation has to be a reality, not a charade. The party to be consulted must be told what is proposed and must be given sufficiently precise information to allow a reasonable opportunity to*

*respond. A reasonable time in which to do so must be permitted. The person doing the consulting must keep an open mind and listen to suggestions, consider them properly and then (and only then) decide what is to be done.”*

55. The Court finds that the requirement of consultation was 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. The failure by the Respondent to meet this requirement faults the procedural requirement.

56. The Respondent also admitted during hearing that they notified the Labour Office of Nairobi in December, 2018 of the decision to terminate the Claimant on redundancy grounds yet the same was addressed to Labour Office of Nairobi but the Claimant was based in Mombasa. Why did the Respondent not notify the Mombasa Labour office of the impending redundancy? The notice indicated that 4 employees would be affected by the redundancy without stating the ranks the employees held.

57. On selection criteria as provided in the Act the Respondent's criteria of selection of employees to be declared redundancy was not very clear as it did not produce

performance records to show that the Claimant was not performing as required. No evaluation report was furnished to this court by the Respondent. In the *Cargil* case above, the court held as follows:-

*From the above provisions and decisions, the requirements in fulfilling the threshold set by section 40(1)(b) of the Employment Act can therefore be summarised as follows:- First, an employer should include the factors set out in section 40(1)(c) of the Employment Act in the criteria for evaluating and selecting the employees to be declared redundant. Secondly, an employer is required to prove that the criteria was objectively, rationally and fairly applied. The Appellant has in this respect furnished a report titled 'Job Evaluation Report' dated November 2007 and which was prepared by its consultants, who also gave evidence to the trial court. The Appellant argues that the said report stated the criteria for selection for redundancy.*

58. This court is of the view that the selection criteria as per the Act of first in last out was not applied in this case. In conclusion whereas this court is of the view that the Respondent had valid reasons to declare the Claimant redundant the process was procedurally flawed hence amounted to unfair termination within section 45 of the Employment Act.

***Whether the Respondent violated the Claimant's rights.***

59. The Claimant has claimed violation of her constitutional rights under the Bill of Rights. This court notes that the same violations need not just be pleaded, the Claimant ought to prove the manner of the violation with precision. The court will be guided by the holding in **Mumo Mutea v Trusted Society of Human Rights Alliance and Others (2013) eKLR** that the Petition ought to be pleaded with precision as required in constitutional cases. It is held as follows: -

*It is our finding that the petition before the High Court was not pleaded with precision as required in constitutional petitions. Having reviewed the petition and supporting affidavits, we have concluded that they did not provide adequate particulars of the claims relating to the alleged violations of the Constitution of Kenya and the Ethics and Anti-Corruption Commission Act, 2011. Accordingly, the petition did not meet the standard enunciated in the **Ananji v Njeru** case (supra)*

60. This court finds that the Claimant has not sufficiently illustrated which of her rights and fundamental freedoms were violated by the respondent and the manner in which they were violated besides wrongful and unjust termination of employment through redundancy is adequately provided for in the Employment Act.

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

61. Whereas this court has found that the Claimant was unlawfully terminated on account of redundancy, the court notes that the parties entered into redundancy agreement which the Claimant alleged that she was coerced into signing. She acknowledged during hearing that she never indicated as such in the redundancy agreement. The Claimant also alleged that an HR from the Respondent dictated what was to be written in the letter dated 15 January 2019 when she authorized the Respondent to pay 90% of her dues to settle her obligations. Again, she never recorded any objection therein.

62. The Redundancy Agreement however cannot bar the court from awarding the Claimant compensation for unfair termination after finding she was unfairly terminated. The Claimant would still be entitled to compensation for unfair termination as per section 49 of the Act, however the quantum of such compensation must take into account the sums already paid under the redundancy agreement.

63. The Claimant had worked with the Respondent for around 2 and half years and guided by Section 49(4) of the Employment Act and considering that she had already been paid Kshs 1,100,000/= and award of 3 months compensation for the unfair termination would be reasonable in the circumstances

64. On the prayer for the Claimant to be ordered to repay the outstanding loan advanced to her during her employment at staff rates, the Court takes note that the termination of the claimants service was involuntary and through no fault of her own. Further, if the claimant were to serve until the loan was fully repaid, she would have served at staff rates. The respondent must have projected the loss and realized that no loss would be occasioned to it if the claimant repaid the loan fully at staff rates. In the circumstances it would be just to allow the prayer considering as said that the termination of the claimant's service was involuntary.

65. **In conclusion the Claimants claim succeeds with costs as follows:**

- a. **3 months compensation for unlawful dismissal.....Kshs 434,070/=**

b. **Compensation for violation of Constitutional rights.....Kshs NIL**

c. **Claimant to continue servicing the loan advanced to her at staff rates until payment in full.**

d. **The respondent to issue the claimant with a certificate of service.**

66. **It is so ordered.**

**Dated at Nairobi this 16th day of February, 2026**

**Delivered virtually this 16th day of February, 2026**

**Abuodha Nelson Jorum**

**Presiding Judge Appellate Division**