

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

ELRC CAUSE NO E392 OF 2022

**JANET
MWALUMA.....CLAIM
ANT**

VERSUS

**KCB BANK KENYA PLC.....
RESPONDENT**

JUDGMENT

Background

1. The parties to the dispute had an employment relationship through which the Respondent hired the Claimant's services as the Head Securities and Documentation Centre. In addition, the Claimant was to support the Respondent's subsidiary, KCB Bank Burundi Ltd.
2. The Claimant contends that she executed her duties diligently and with dedication until the Respondent unlawfully terminated the employment relationship between them on 11th June 2019 through a flawed redundancy process. She avers that the Respondent did not follow the guidelines for redundancy declaration as stipulated under *the Employment Act*.
3. The Claimant avers that the Respondent initiated her irregular removal from employment by restructuring her

position into four new positions namely: Principal Legal Counsel - Securities; Principal Legal Counsel - Risk and Compliance; Principal Legal Counsel - Commercial; and Principal Legal Counsel - Litigation. She contends that when the Respondent created the four positions, it caused her to give up her permanent position by asking her to apply for placement in any of the new positions.

4. The Claimant contends that the Respondent subjected her to an opaque psychometric test as a precondition for securing any of the new positions. She avers that the Respondent used the results of the flawed process to disqualify her from the positions thus declaring her redundant.
5. The Claimant contends that the purported redundancy was unlawful because the split of her position into four increased rather than reduced the number of employees the Respondent was to hire. According to her, this meant that there was no valid redundancy at the workplace.
6. The Claimant further contends that the Respondent deployed a flawed psychometric test as a precursor for her removal. It is her case that this essentially meant that the Respondent summarily terminated her services.
7. The Claimant contends that the Respondent forced her to reapply for her position which had not changed. As such, she contends that the Respondent's actions amounted to constructive termination of her employment.

8. The Claimant avers that the Respondent did not first issue a general redundancy notice as required by law. She contends that this rendered the process irregular and that the notice which the Respondent subsequently issued to the local labour office was meant to sanitize an irregular process.
9. The Claimant contends that she is the only one who was impacted by the redundancy despite the fact that the Respondent had posted a 25% asset growth rate. As such, she posits that there was no justification in declaring the redundancy.
10. The Claimant contends that the Respondent did not give her an opportunity to improve her performance after she failed the psychometric test. She further avers that the Respondent did not address her grievances concerning the psychometric test. In her view, this vitiated the purported redundancy.
11. The Claimant contends that the Respondent did not consult her on the purported redundancy before it issued her with the redundancy notice. As such, she asserts that the Respondent's actions on the whole amounted to unfair labour practice. Consequently, she prays for the various reliefs in the statement of claim.
12. During the trial, the Claimant confirmed that the Respondent notified her about the restructuring process it was to undertake. She indicated that she was notified about the

process on 1st April 2019. She also confirmed that the process was publicized.

13. The Claimant further stated that the process affected approximately 40 other members of staff. Nevertheless, she asserted that the exercise did not result in the closure of the Company Secretary division even though she conceded that the division was restructured. She stated that the restructuring was pursuant to a directive by the Central Bank of Kenya.
14. The Claimant stated that the restructuring resulted in four (4) new positions in her department. She said that she applied for all the positions because she qualified for them. She indicated that besides her, other members of staff also applied for the positions.
15. The Claimant stated that after she applied for the positions, she was asked to go for a suitability assessment for them. She confirmed that the Respondent notified her that the assessment was to be conducted by an external service provider.
16. The Claimant said that the service provider invited her for the assessment which she attended. She stated that the assessor acted professionally and that the Respondent's officers did not participate in the assessment. She however asserted that she felt that the test was odd and not relevant to her career.

17. The Claimant confirmed that the results of the assessment were shared with her. However, it is her case that she was not satisfied with them.
18. The Claimant confirmed that the Respondent wrote to her and asked her for a meeting on 29th May 2019 to explore possibilities of alternative placement despite the outcome of the assessment. She confirmed that she attended the meeting for the aforesaid purpose. She further confirmed that there was a follow up meeting on 11th June 2019 when the Respondent informed her that it had not been able to secure alternative placement for her.
19. The Claimant stated that on 11th June 2019, the Respondent issued her with a letter of the proposed redundancy. She averred that there was a similar notice addressed to the labour office although she could not confirm if it was delivered to the said office.
20. The Claimant confirmed that after she was issued with the redundancy notice, she raised grievances on the process which were referred to a Committee which was set up for this purpose. She confirmed that the Committee heard her and upheld the redundancy.
21. Although the Claimant contended that the suitability test which was conducted on her was flawed, she conceded during the trial that she did not have a contrasting expert report on the matter. She further conceded that her

contention that the assessment was flawed was not based on expert opinion.

22. The Claimant averred that other employees who were affected by the process were deployed to other departments in the bank. However, she contended that the Respondent singled her out for release from service.
23. The Claimant contended that her failure to pass the suitability test should not have resulted in her position being declared redundant. As such, she contended that she was a victim of unfair termination as opposed to a regular redundancy.
24. The Respondent has disputed the claim. It contends that it hired the Claimant as Head, Securities and Documentation Centre which was housed within the Company Secretary division of the bank. It further contends that the Claimant was to report to the Company Secretary.
25. The Respondent contends that it issued the Claimant with a Job Description which she signed. It contends that the instrument spoke to the Claimant's specific roles as Head, Securities and Documentation Centre.
26. The Respondent contends that it did not have an issue with the Claimant's performance. It further contends that she had no disciplinary issue.
27. The Respondent contends that it underwent a restructuring process in 2019 which resulted in the closure of the Company Secretary division. It avers that it established the

Legal Services department to replace the Company Secretary division with effect from 1st April 2019.

28. The Respondent avers that the aforesaid changes resulted in the Claimant's position disappearing from its structure. It contends that in place of the position, four new positions were established to wit:-
- a) Principal Legal Counsel – Securities.
 - b) Principal Legal Counsel – Risk & Compliance.
 - c) Principal Legal Counsel – Commercial.
 - d) Principal Legal Counsel – Litigation.
29. The Respondent avers that the new positions had different reporting lines, scope, role specifications and competencies. It contends that the details of the new roles were captured in their respective Job Descriptions.
30. The Respondent avers that the Claimant applied for the four positions on 4th April 2019. It contends that she was subjected to an assessment to determine her suitability for the positions. It further contends that the assessment, which also applied to other applicants for the positions, was conducted by an independent agency which was engaged for this purpose. As such, it denies that the assessment was conducted in an opaque or discriminatory manner.
31. The Respondent avers that it received the Claimant's assessment results for the four positions she had applied for from the independent consultant. It contends that the reports showed that she did not exhibit the skills and

competencies which were required for any of the four positions.

32. The Respondent avers that it wrote to the Claimant on 28th May 2019 to notify her of the outcome of the assessment. It further contends that it invited her to discuss the consequences of the outcome.
33. The Respondent contends that it held a meeting with the Claimant on 29th May 2029 during which the parties explored the possibility of deploying her to another position within the bank. However, it contends that there was no suitable position to which she could be deployed at the time. As a result, it contends that it issued her with a letter to terminate her services on account of redundancy.
34. The Respondent contends that on 20th June 2019, the Claimant raised a grievance regarding the process. It contends that she was invited to a meeting with the Grievance Handling Committee which was held on 10th July 2019. It further contends that after the aforesaid Committee heard the Claimant, it upheld the decision to terminate her contract of service on account of redundancy.
35. The Respondent asserts that after the Grievance Handling Committee rendered its decision, the Claimant moved on appeal. It contends that following the appeal, it set up the Appeals Committee to handle the matter.
36. The Respondent avers that the Appeals Committee heard the Claimant on 7th August 2019 and recommended that she

be considered for placement in another position within the bank. However, it (the Respondent) contends that it could not find suitable placement for her at the time.

37. The Respondent contends that it wrote to the Claimant on 30th August 2019 to inform her of the fact that it had not been able to secure an alternative placement for her. As such, it advised her that her release from employment due to redundancy still stood.
38. The Respondent contends that the Claimant was issued with a redundancy notice dated 11th June 2019 which was to crystalize on 15th July 2019. It contends that in the interceding period, it encouraged her to seek alternative placements within the bank but to no avail.
39. The Respondent avers that it also issued the Provincial Labour Officer, Nairobi with the notice of intended redundancy on 11th June 2019. It avers that the notice set out the reasons for and extent of the anticipated redundancy.
40. The Respondent avers that after the Claimant was discharged from service, she dutifully handed over, was paid her terminal dues and issued with the requisite Certificate of Service. It contends that the terminal dues it paid to her were more than what the law provides.
41. The Respondent avers that after the Claimant received the terminal dues, she executed a Certificate of Discharge dated

22nd July 2019. As such, it contends that the instant claim is an afterthought which is intended to unjustly enrich her.

42. The Respondent asserts that the Claimant was engaged by another bank shortly after she left its employment. As such, it contends that she is not out of employment.
43. During trial, the Respondent's witness reiterated that the Claimant lost her employment through redundancy when the position she was holding was restructured resulting into four new positions. He averred that the position of Principal Legal Counsel, Securities was different from the position of Head of Securities and Documentation which the Claimant had been holding. The witness stated that the new position was larger than the position initially held by the Claimant as it had more staff attached to it and a bigger budget.
44. The witness further stated that the Claimant's previous position was also different from the new position of Principal Legal Counsel, Risks and Compliance. He stated that the new role was about managing risks, a role which was not part of the Claimant's job description under her position. He contended that although the Claimant's position of Head, Securities and Documentation entailed an element of risk control, this was limited to securities and documentation. In contrast, he asserted that the risk and compliance element under the new position went beyond what the Claimant had been handling as it covered all activities in the bank.

45. The witness stated that the four new positions which were created in the Legal Services division subsumed portions of the Claimant's position but also incorporated new aspects which were taken from other departments. As such, he contended that the positions were much larger in portfolio.
46. The witness conceded that the restructuring resulted in increased jobs at the bank. However, he contended that the process also led to job loss for the positions which were rendered obsolete.
47. The witness reiterated that the Claimant's position is one of the positions which were rendered moribund as a result of the restructuring. As such, he maintained that she lost employment on account of redundancy.
48. The witness stated that the suitability assessment that was carried out on the Claimant showed that she did not possess the requisite skills for the new positions. As such, he contended that she could not be on-boarded to any of the positions.
49. The witness stated that the redundancy notices were issued to the Claimant and the labour office on 11th June 2019, one month before she was discharged from service in order to provide room for consultations on the process. He stated that the consultations were to see if the redundancy could be avoided through deployment to other departments in the bank. He stated that the bank was alive to the fact that redundancy should be declared as a last resort.

50. The witness stated that although the Claimant's position became moribund once the restructuring took effect, she was not released from employment immediately. He stated that she was retained within the bank as possibilities for her deployment were explored. As such, he contended that the Claimant remained in the Respondent's employment until the redundancy notice matured in July 2019.
51. The witness stated that the Respondent was aware that seniority was important in undertaking the selection of employees to be discharged from service on account of redundancy. However, he stated that this requirement could be disregarded if the reason for the redundancy is the search for better skills and competencies.
52. The witness contended that the Respondent was looking for special skills and competencies for the new positions. He averred that this is why it did not focus on seniority in selecting the employees to take up the positions.

Issues for Determination

53. After evaluating the pleadings, evidence and submissions by the parties against the applicable law, the following issues arise for determination: -
 - a) Whether the Claimant's employment was improperly terminated on account of the impugned redundancy process.
 - b) Whether the Claimant is entitled to the reliefs which she seeks through this suit.

Analysis

54. According to the evidence on record, the Respondent restructured some of its departments sometime in 2019. The Claimant stated in her oral testimony that the exercise was in compliance with a directive by the Central Bank of Kenya. The process affected, inter alia, the Company Secretary department.
55. The Claimant was, at the time, the Head of Securities and Documentation Centre which was under the Company Secretary department. As a matter of fact and from her letter of appointment, she was reporting to the Company Secretary.
56. According to the evidence on record, the Securities and Documentation docket was restructured into four new positions namely: Principal Legal Counsel - Securities; Principal Legal Counsel - Risk & Compliance; Principal Legal Counsel - Commercial; and Principal Legal Counsel - Litigation.
57. The Claimant confirmed that she had knowledge of the restructuring. During trial, she confirmed that the Respondent informed her about the process which was to commence on 1st April 2019. She further stated that the Respondent publicized the process through local dailies. She also indicated that the process affected about forty (40) members of staff in her department.

58. The fact that the restructuring took place is also evident from the fact that members of staff were invited to express interest in the four (4) new positions which resulted from the Claimant's earlier position. The Claimant indeed confirmed that she applied for the four (4) positions.
59. This evidence confirms that the Respondent indeed underwent a restructuring process which impacted the Claimant's position. The consequence of the process was that the Claimant's position of Head, Securities and Documentation Centre disappeared from the Respondent's organogram.
60. In law, a redundancy occurs when an employee's position is rendered obsolete or superfluous. It is the position which is held by the employee (and not the employee) which is rendered superfluous or redundant (***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR)***).
61. The Claimant contends that the Respondent had posted 25% asset growth in its financial report which preceded the redundancy declaration. She further contends that the impugned restructuring resulted in more job opportunities as opposed to reducing them. As such, she argues that the Respondent cannot, in the premises, contend that there was legitimate basis to declare a redundancy.
62. This contention by the Claimant is erroneous. It presupposes that an employer can only declare redundancy if he is

experiencing an economic downturn. Contrary to this supposition, an employer may declare redundancy even when he is not experiencing an economic downturn as long as there are circumstances which justify the declaration.

63. A redundancy may for instance be declared when the employer is relocating his business to another jurisdiction where it is logistically difficult to relocate the employees. He may also declare redundancy in the process of reorganizing the business in order to attain efficiency. This may be triggered by adoption of new technology or merger of roles with the consequence that some positions are lost. In all these scenarios, the redundancy is not informed by an economic downturn.
64. Speaking to this reality in the case of ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others*** (supra), Magara J observed that an employer can declare redundancy when he decides to reorganize his business in order to run it more efficiently and profitably. Such reorganization may not be motivated by the need to cut back on jobs. However, it may impact on some positions either through redistribution of functions or the positions simply being rendered unnecessary (***South African Breweries (Pty) Ltd v Louw (CA16/2016, C285/2014) [2017] ZALAC 63; [2018] 1 BLLR 26 (LAC); (2018) 39 ILJ 189 (LAC) (24 October 2017)***). In the premises, the court holds that the Claimant's contention that the

Respondent could not legitimately declare a redundancy in the face of growth in its business is not correct.

65. The Claimant also contends that the impugned redundancy was vitiated on account of the allegedly flawed psychometric assessment she underwent in order to determine her suitability for either of the four (4) new positions she had applied for. However, the court does not agree with this contention. In the court's view, the redundancy process, though intertwined with the recruitment process for the four (4) new positions, was separate from the latter process.
66. The redundancy process affected the Claimant's position of Head, Securities and Documentation Centre by rendering it obsolete or superfluous. This happened the moment the restructuring process which yielded the four (4) new positions was completed.
67. The Claimant's failure to secure any of the four (4) positions was not the reason why she lost her position of Head, Securities and Documentation. She lost this position because of the restructuring process which preceded but resulted in the creation of the four (4) positions. As such, she cannot contend that her failure to secure any of the four (4) new positions, which she blames on the contested psychometric assessment, occasioned the loss of the position she had previously held through redundancy.
68. But even assuming that the impugned redundancy was occasioned by the contested psychometric test, did the

Claimant present cogent evidence to support her contention that the assessment was flawed? The answer to the question is in the negative.

69. According to the evidence on record, the assessment was undertaken by an independent service provider with competencies in the area of assessing the suitability of individuals for specified assignments. During trial, the Claimant conceded that the Respondent did not participate in the assessment. She conceded that the process was carried out by an external service provider whom she described as having acted professionally.
70. Although the Claimant described the results of the assessment as copy pasted and not ideal for purpose, she did not provide cogent evidence to back these claims. She further conceded that she did not have her own expert assessment to discount the impugned assessment.
71. This being the case, the court finds that the Claimant's contention that the assessment was flawed is not backed by evidence. Absent other expert opinion on her suitability for the four (4) roles she had applied for, the court is convinced that the impugned assessment provided an unbiased and fair assessment of her suitability for the roles.
72. The Claimant has further questioned the Respondent's decision not to offer her any of the four (4) new positions on the ground that the assessment suggested that she did not possess the required competencies despite the fact that her

performance in the position of Head, Securities and Documentation Centre had been excellent. According to her, this meant that the Respondent had opted to doubt her competencies despite the reality that her previous performance was superb. Further, she expressed the view that it was, in any event, improper for the Respondent to contend that she had performance deficiencies and deprive her of the new positions without having subjected her to any performance improvement process.

73. Again, I think the Claimant has conflated two distinct issues here. The suitability assessment she was subjected to had nothing to do with her previous performance in the position of Head, Securities and Documentation. The assessment was meant to test her suitability for the four (4) new positions which is not unusual for individuals seeking to be hired into new positions as indeed she was (***Pratten v Afrizun KZN (Pty) Ltd (D439/15) [2020] ZALCD 9; (2020) 41 ILJ 2899 (LC) (17 April 2020)***).
74. The assessment having not been done in respect of the Claimant's performance in the position of Head, Securities and Documentation Centre, the issue of her previous performance did not arise. As such, the challenge to the process on this premise is not well founded.
75. Importantly, the psychometric assessment was not meant to serve as the selection criteria for the employees who were to be discharged from service as suggested by the Claimant. It

(the assessment) was intended for the distinct purpose of identifying the persons who would be suitable for the four new positions which the Respondent wanted filled (***South African Breweries (Pty) Ltd v Louw (CA16/2016, C285/2014) [2017] ZALAC 63; [2018] 1 BLLR 26 (LAC); (2018) 39 ILJ 189 (LAC) (24 October 2017)***). As such, it is erroneous for the Claimant to contend that the psychometric assessment was improperly deployed to isolate her for release from service on account of redundancy.

76. Having regard to the evidence on record, the court finds that the Respondent had a valid reason to declare the Claimant's position redundant. It is so declared.
77. Despite having a valid reason to declare the impugned redundancy, the Respondent was bound to process the redundancy in accordance with section 40 of *the Employment Act*. This provision speaks to the procedural requirements for declaration of a valid redundancy.
78. One of the critical procedural requirements is that the employer should issue the affected employee(s) with a notice of intended redundancy. The notice should be issued at least one month before the decision to terminate the employee's contract is made. Further, the notice should speak to the reasons for and extent of the proposed redundancy (***The German School Society & another v Ohany & another [2023] KECA 894 (KLR)***).

79. The Respondent asserts that it complied with this requirement. It avers that it issued the Claimant with a redundancy notice dated 11th June 2019 which crystalized on 15th July 2019.
80. However, an analysis of the aforesaid notice shows that it did not satisfy the requirements of section 40 of *the Employment Act*. The notice did not address the extent of the proposed redundancy.
81. The evidence on record shows that besides the Claimant, there were other employees in the legal department who were impacted by the impugned redundancy. The Claimant stated that forty (40) other employees were impacted by the process. On the other hand, the Respondent's witness stated in court that the redundancy affected the entire staff complement in the Company Secretary division. This being the case, the Respondent was under duty to specify in the notice the extent of the proposed redundancy.
82. As was held in ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others*** (supra), section 40 of *the Employment Act* is couched in mandatory terms. As such, the employer cannot wish away any of the requirements under the provision, however minor they may appear to be.
83. In their submissions to court, the Respondent's advocates contend that the Claimant was issued with the redundancy notice on 1st April 2019 and a notice of termination of

employment on 11th June 2019. However, this contention is not supported by the evidence on record. Although the Respondent's witness contends that the Respondent's management held a meeting with members of staff on 1st April 2019 to inform them about the restructuring process, he did not suggest that any formal redundancy notices were issued on this date.

84. In any event, the Respondent did not tender in evidence the notice which was allegedly issued on 1st April 2019. As such, the court arrives at the conclusion that the only redundancy notice which was issued to the Claimant is the one dated 11th June 2019.
85. Having regard to the aforesaid procedural flaw in the redundancy notice which was issued to the Claimant, the court faults the redundancy process. As such, it declares the impugned redundancy as procedurally flawed.
86. The next question for consideration is whether the Claimant is entitled to the relief which she seeks through this action. From the Statement of Claim, the Claimant seeks the following reliefs:-
 - a) A declaration that her dismissal from employment on account of redundancy was unlawful, contrary to procedure and unfair.
 - b) Compensation for unfair termination of her contract of service.
 - c) Costs of the suit.

d) Interest.

87. The court has already arrived at the conclusion that the impugned redundancy was vitiated by procedural flaws. As such, it is declared that the Claimant lost her employment through a flawed redundancy process.
88. The Claimant prays for compensation for unfair termination of her contract of service. This relief is founded on section 49 of *the Employment Act*.
89. At paragraphs 37 and 39 of the witness statement by the defense witness, it is stated that the Claimant was paid her terminal dues and executed a Certificate of Discharge on 22nd July 2019. At paragraph 26(j) in the Statement of Response, the Respondent avers that the Claimant was paid her terminal dues and that this claim is an afterthought meant to accord her unjust enrichment. The witness statement was adopted as part of the Respondent's evidence in the cause.
90. The Respondent's witness further tendered in evidence the Certificate of Discharge which was issued to the Claimant. The document, in part, provides as follows:-

“IN CONSIDERATION of KCB Bank (K) Ltd paying me and I accepting the sum of Ksh. 969,335.20 being the net amount due to me following the deduction of statutory taxes from the gross amount, the said sum being paid to me on account of my separation from the

Bank's employment as per the Bank's letter to me dated 11th June 2019;

I JANET MWALUMA ID No. 11457679 of P.O Box 45477 00100 Nairobi confirm that the payment made to me by KCB Bank (K) Ltd are proper and constitute the full and final settlement of any and all claim[s] and demands (whether previously intimated or not) by me against the Bank and I have no further claim against KCB Bank Ltd. I further declare that I have no other claim against the Bank in respect of the continuation or completion of my employment contract and accordingly discharge and release the Bank, its employees, agents, assigns and successors from all claims (whether past or arising in future or otherwise howsoever) in connection thereto. I further confirm that I fully understand the contents of this Discharge and that it will be irrevocable upon signing it.

*SIGNED]
JANET MWALUMA]
]
DATE 22.7.2019]
In the presence of]
WITNESS]"*

91. The document bears the Claimant's signature. It also apparent that her signature was attested by a witness.

92. During cross examination of the Claimant, she stated as follows:-

“I was paid redundancy dues as per bank’s letter....I was paid until end of the notice.”

93. The fact that the Claimant was paid redundancy dues and executed the aforesaid discharge instrument releasing the Respondent from further claims arising from the impugned termination of her contract raises the issue of whether she is entitled to re-open her pursuit for further compensation. Case law suggests that she may not.

94. It has been held that a discharge voucher which has been voluntarily executed by parties to it (the voucher) is binding on them. Such voucher has a contractual effect and cannot be disregarded unless it is proved that it was procured through fraud, coercion, mistake, misrepresentation or undue influence (see ***Star Publications Ltd v Simiyu [2023] KECA 23 (KLR)***, ***Thomas De La Rue (K) Ltd v Omutelema [2013] KECA 492 (KLR)***, ***Trinity Prime Investment Limited v Lion of Kenya Insurance Company Limited [2015] eKLR***, ***Lochab Transport Ltd v Kenya Arab Orient Insurance Ltd [1986] eKLR*** & ***Coastal Bottlers Limited v Kimathi Mithika [2018] eKLR***).

95. As indicated earlier, the Respondent contends that it paid the Claimant her terminal dues and she executed a

discharge closing the matter. On the Claimant's part, she conceded having been paid the redundancy dues.

96. The Claimant did not suggest that the discharge voucher was not executed by her or that her signature on the instrument was procured through fraud, misrepresentation, coercion, undue influence or mistake. As such and absent evidence to the contrary, the voucher has a binding effect on the parties.
97. The consequence of the foregoing is that by signing the voucher, the Claimant waived her right to pursue further compensation from the Respondent (***Star Publications Ltd v Simiyu*** (supra)). As such, she is not entitled to pursue the claim for compensation for unfair termination of her contract.
98. But even if the court was wrong on this, it is noteworthy that the Claimant secured new employment with another bank almost immediately after she lost employment with the Respondent. During her cross examination, she stated that she was hired with another bank in September 2019.
99. Section 49 of *the Employment Act* obligates the court to take into account the prospects of the aggrieved employee securing an alternative job whilst crafting the appropriate remedy to grant, if at all. In essence, the provision indirectly speaks to the duty to mitigate losses in cases for breach of a contract of service.

100. In the court's view, the fact that the Claimant secured a new job in September 2019 after she left the Respondent's employment in July 2019 significantly mitigated the loss she suffered as a result of breach of her contract by the Respondent. The court also takes cognizance of the fact that despite breach of the contract between the parties, the Respondent paid the Claimant her redundancy dues and allowed her to access additional benefits. Therefore, had it (the court) awarded compensation for unfair termination of the Claimant's contract, it would have been obligated to have regard for these realities.

101. In expressing this view, the court is guided by the principle that the purpose of awarding compensation for breach of contract is to put the aggrieved party in the position he would have been had the breach not occurred. Put differently, the award is intended to compensate the aggrieved party for the loss that is associated with the breach (***Ruxley Electronics and Construction Ltd v Forsyth [1996] AC 34***).

Disposition

102. Having regard to the totality of the evidence, the submissions by the parties and the law, the court makes the following findings and attendant orders:-

a) The court finds that the Respondent terminated the Claimant's services through a redundancy process which

had a procedural infirmity. As such, the Claimant's contract was irregularly terminated.

b) Nevertheless, the court finds that because the Claimant signed a discharge voucher which released the Respondent from further claims arising from their employment relation, she waived her right to pursue compensation for unfair termination of her contract. For this reason, the court declines to award compensation for unfair termination of the contract between the parties.

c) Each party to bear own costs of the suit.

Dated, signed and delivered on the 26th day of February, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and

rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI