

CHILDRENREPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E1017 OF 2024

RACHEAL AMONDI ODONGO.....
CLAIMANT

VERSUS

SAVE THE CHILDREN INTERNATIONAL

(COMPANY REGISTRATION NUMBER 37322677).....1ST

RESPONDENT

SAVE THE CHILDREN INTERNATIONAL

(COMPANY REGISTRATION NUMBER CF/2012/70940)....2ND

RESPONDENT

JUDGMENT

1. The Claimant avers that she was initially employed by the Respondents with effect from 13th August 2013 in various capacities, her most recent position being that of Director, Regional Programmes. She states that her employment contract dated 1st September 2022 was for a fixed term of two years, which was subsequently extended by a letter dated 5th December 2023 to 1st January 2026, and further extended to 31st December 2026 by a letter dated 20th February 2024.
2. The Claimant asserts that she diligently discharged her duties, consistently maintaining cordial working relationships throughout the organization and meeting

all performance objectives aligned with the organization's strategic goals, both in her substantive roles and whenever she served in an acting capacity.

3. The Claimant contends that she had a legitimate expectation to serve as Director, Regional Programmes, uninterrupted until 31st December 2026, an expectation she asserts was violated when the 1st Respondent purported to terminate her employment on grounds of redundancy through a process she considers unfair, unlawful, and illegal. Consequently, the Claimant seeks the following reliefs against the Respondent:

- a) A declaration that the Redundancy process conducted by the Respondents was in contravention of Section 40 of the Employment Act and that the purported termination of the Claimant's employment was unfair and unlawful.*
- b) A declaration that the Respondents' actions and inactions violated the provisions of Articles 28 and 41 of the Constitution of Kenya and Section 25 of the Data Protection Act, Act Number 24 of 2019.*
- c) An order that the Respondents calculate the full amount due to the Claimant, and pay the Claimant the net sum claimed of Kshs. 23,337,400/-*
- d) An Order that the Respondents pay the Claimant her accrued Pension allowance being the sum of Kshs 6,823,440/- plus all accrued interest thereon.*

- e) An order that the Respondent remits to the Kenya Revenue Authority such tax which is due and payable in respect of the Claimant's employment for the full employment period as provided under the Claimant's Employment Contract.*
- f) An Order that the Respondents issue the Claimant with a Certificate of Service.*
- g) Costs of the suit.*
- h) Interest on (c) and (d) above at Court rates.*
- i) Any other/further relief this Honourable Court shall deem fit to grant.*

4. The Claim is opposed. The Respondents assert that the redundancy process was necessitated by a global budget decline of between USD 15–20 million attributable to economic challenges, increased operational costs, and the need to ensure long-term sustainability. They maintain that the Claimant's termination was lawful, procedurally fair, and unconnected to any alleged breach of privacy or confidentiality. Accordingly, the Respondents urge the Court to dismiss the Claim in its entirety with costs.

5. The matter proceeded for hearing on 14th October 2025, during which both sides called oral evidence in support of their respective cases.

Claimant's Case

6. The Claimant testified in support of her case as CW1. At the outset, she sought to adopt her witness statement to constitute her evidence in chief. She further produced the initial and further lists and bundle of documents filed on her behalf, as exhibits before the Court.
7. The Claimant testified that on 23rd October 2023, the Deputy Chief Executive Officer of the 1st Respondent circulated proposed guiding principles on impending organisational changes.
8. She further stated that on 22nd January 2024, the Chief Executive Officer of the 1st Respondent issued an email to all staff outlining the organisation's future outlook, emphasising the need to review its structure and optimise resource utilisation so as to remain "fit for the future" and capable of delivering meaningful change.
9. The Claimant averred that on 20th February 2024, she received a letter from the then Regional Director, Mr. Ian Vale, extending her Contract of Employment once more, this time from 1st January 2026 to 31st December 2026.
10. She stated that when official calls with the Senior Leadership Team commenced in March 2024, it was communicated during an all-staff meeting that Regional Programmes were regarded as Country Offices and would not be included in the restructuring exercise.

11. According to the Claimant, the March 2024 communication from the Senior Leadership Team, combined with the recent extension of her contract to 31st December 2026, created a reasonable and legitimate expectation that her role would not be declared redundant and that she would continue serving as Director, Regional Programmes until the expiry of her contract.

12. She added that as a member of Senior Leadership, she consistently sought clarification on whether the redundancy measures being undertaken complied with Kenya's labour laws, but received no feedback.

13. The Claimant testified that on 31st July 2024, during a call with the Director, International Programmes Operations, Ms. Isabel de Blas Marin, she was informed that her position was "at risk" of redundancy and advised of two potentially suitable alternative roles: *Global Director for Regional and Multi-Country Programmes* and *Head of Regional and Multi-Country Programmes*.

14. She later sent an email on 6th August 2024 summarising the discussion and requesting further details on the identified suitable roles, but no additional information was provided.

15. She stated that she came to learn that the Respondents had failed or neglected to notify the Labour Office of their intention to declare redundancies or provide a list of employees likely to be affected, as mandated by law. A formal complaint was

lodged with the authorities on behalf of affected staff by the firm of Alekeen Kenja & Company Advocates.

16. The Claimant further averred that on 22nd August 2024, employees were invited to a “Fit for Future” briefing at which a new Global Grading Framework was introduced, proposing downward revisions to the salary scale.

17. She contended that the new Global Grading Framework was unilaterally imposed by the Respondents to the detriment of staff. She added that when concerns were raised, the Chief People Officer of the 1st Respondent, Ms. Kate Brown, issued communication on 19th September 2024 withdrawing the proposed scales due to numerical errors and promising revised versions.

18. According to the Claimant, on 24th September 2024 she attended her first individual consultation meeting with her line manager, Mr. Mohammed Dahir, where she was again informed that her role was at risk of redundancy and advised of the available alternative roles. She raised four key questions, which she later reiterated in an email dated 22nd September 2024, but the responses she received were vague and unhelpful.

19. She further stated that by the time she received the unclear responses from her line manager, the deadline for applications for the suitable level-three roles that Senior Leadership Team members had been encouraged to apply for had lapsed. She was

thereafter offered the position of Head of Regional Programmes in an email dated 25th September 2024, which she declined as it amounted to a demotion.

20. The Claimant testified that on 17th October 2024, her line manager emailed her scheduling a final consultation meeting for 10:00 a.m. on 18th October 2024. She was unable to attend due to ongoing programme implementation duties.

21. She stated that she expected the meeting to be rescheduled, but instead, on 31st October 2024 she received an email from the Regional Human Resource Director enclosing a notice of termination on account of redundancy dated 29th October 2024.

22. The Claimant maintained that the entire “Fit for Future” process, which culminated in the purported redundancies, was unlawful, exclusionary and discriminatory, despite repeated assurances that it would be participatory and consultative.

23. She further stated that after the Respondents introduced *ex gratia* medical support in February 2024 for certain serious medical conditions affecting staff and dependents, she submitted a request in August 2024 for an *ex gratia* top-up to support her husband’s kidney transplant.

24. On 18th November 2024, she sent a follow-up email as her medical cover was becoming depleted, but received no response. She testified that this silence caused

significant mental strain for her family, especially since similar requests by other staff earlier in the year had been promptly approved.

25. The Claimant also averred that on 11th November 2024, while she was on official duty in Uganda, the Respondents unlawfully and without her consent shared her personal details, including her phone number and home address, with a third-party company to deliver her termination letter.

26. She stated that this was unnecessary since she had already received the termination letter by email on 30th October 2024 and the Respondents were aware that she was out of the country. She contended that the act exposed her children to security risks and amounted to a breach of her privacy and of the Respondents' data protection policy.

27. On 22nd November 2024, she formally lodged a report regarding the data protection and safety breach, together with the associated security risks, through the designated Datix reporting platform.

Respondents' Case

28. The Respondents called oral evidence through the 2nd Respondent's Regional Director, **Yvonne Arunga, who** testified as RW1. Equally, Ms. Arunga adopted her witness statement to constitute her evidence in chief. She proceeded to produce

the list and bundle of documents filed on behalf of the Respondents as exhibits before the Court.

29.RW1 testified that the Claimant's contract was terminated pursuant to the restructuring exercise undertaken by the Respondents following a significant decline in their operational budget. She stated that the 2nd Respondent embarked on both a global and local restructuring process aimed at ensuring long-term sustainability, which ultimately resulted in the Claimant's position being declared redundant.

30.RW1 maintained that the redundancy exercise was carried out transparently and in full compliance with statutory requirements. She added that all staff, including the Claimant, had been adequately informed of the financial challenges and operational imperatives necessitating the restructure, which was implemented through a well-documented and structured process.

31.She explained that the restructuring process was informed by contributions from leaders, technical experts, country offices, regional offices and centre staff. As part of this process, the Respondents eliminated both centre and regional office teams and merged them into a single integrated global team to meet operational needs.

32. According to RW1, prior to the restructuring, the Respondents' organisational structure consisted of individual country offices supported by centre and regional office teams.

33. She stated that the restructuring was designed to integrate the existing centre and regional office functions into a unified global structure to enhance efficiency and accountability. As a result, the Claimant's role as Director of Regional programmes for Eastern and Southern Africa was rendered redundant because regional responsibilities were reassigned into global functions.

34. RW1 explained that this approach aimed to streamline the organisation, remove duplications, and create a more coherent operational model. Out of a workforce of approximately 1,500 employees, about 500 positions were identified as being at risk, a significant number of which were ultimately confirmed redundant.

35. RW1 testified that the restructuring presented three possible outcomes for roles identified as being at risk of redundancy under the revised structure. Those roles that remained largely unchanged and existed in the same number within the new structure allowed incumbents to continue without reapplying. Where roles had been reduced in number, selection pools were created and existing role holders invited to apply for the remaining positions through a closed recruitment process.

36. She added that roles that were removed entirely or substantially altered were classified as redundant. Employees in this category, including those with transferable skills, were encouraged and supported to apply for alternative roles within the organisation. Such applications were processed through an open recruitment process, initially limited to staff at risk of redundancy.

37. RW1 further stated that all staff, including the Claimant, were informed about the restructuring and its rationale through all-staff meetings and centre and regional briefings from March 2024. Weekly update meetings led by the Regional Director were held from May 2024.

38. She added that the fully approved restructuring plan which merged centre and regional teams into global teams, including the Claimant's role, was communicated to all staff via email on 5th August 2024. Meetings were subsequently held between 5th and 9th August 2024 to engage with employees whose positions were at risk.

39. On 6th August 2024, the Respondents notified the Claimant by email that her position as Director of Regional programmes for Eastern and Southern Africa would undergo significant changes as it transitioned into a global role. Accordingly, and subject to collective consultation, the position was placed at risk of redundancy.

40.RW1 further stated that there were no direct equivalents of the Claimant's previous position in the new structure. However, the Claimant was encouraged to apply for any alternative positions aligned to her skills, experience, or career interests. Despite this opportunity, the Claimant opted not to apply for any available roles within the new structure, thereby not pursuing potential alternatives that may have matched her qualifications.

41.RW1 added that as part of the reorganization, the Respondents introduced the role of Director, Multi-Country and Regional Programs, as part of the newly established global structure representing a significantly different position from the regional-focused role the Claimant previously occupied. She maintained that there was no role of Director of Regional Programmes in Eastern and Southern Africa within the revised organizational structure.

42.RW1 asserted that the Claimant's employment was lawfully terminated on account of operational requirements.

43.She added that the Respondents issued a formal notice of intended redundancy dated 25th October 2024 to the Nairobi County Labour Office, setting out the reasons for redundancy and identifying the affected roles.

44.RW1 testified that consultations were conducted at two levels: collective consultations between mid-August and mid-September 2024, and individual consultations between 17th and 30th September 2024.

45.RW1 was categorical that the redundancy process was neither discriminatory nor targeted at regional staff in Africa while favouring employees in the United Kingdom. She asserted that the process was conducted objectively and in strict accordance with the Constitution and labour laws, and that the Claimant received all requisite protections, including adequate notice, consultation, and payment of terminal dues.

Submissions

46.The Claimant submitted that her position could not reasonably have been rendered redundant, particularly in light of the Respondents' conduct in extending her employment contract after the restructuring process had already commenced. In the same vein, she argued that these extensions, issued during the pendency of the restructuring exercise, directly contradicted the Respondents' assertion that her role had become unnecessary. In support of this contention, she relied on the case of ***Changalwa v Unga Limited (Cause 259 of 2017) [2025] KEELRC 1389 (KLR)***. The Claimant further posited that she held a reasonable and legitimate expectation that she would serve her full contract term.

47.The Claimant further argued that the selection of her role for redundancy was not

driven by financial constraints or the stated objective of streamlining the organization, but by other undisclosed considerations. In her view, the Respondents failed to demonstrate before this Honourable Court the actual reasons leading to the termination of her employment or to show that such reasons were reasonable and justified as required under Section 43 of the Employment Act.

48. The Claimant further submitted that the notification to the Labour Office, issued on 25th October 2024, was sent only after the Respondents had already made and implemented the decision to declare her position redundant.

49. Referring to the cases of *Barclays Bank of Kenya Ltd v Gladys Muthoni & 20 Others [2018] eKLR* and *Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others [2014]*, the Claimant contended that the consultations undertaken by the Respondents were neither genuine nor meaningful. She maintained that the Respondents' engagement with her was superficial and amounted to a mere formality intended to create the appearance of legal compliance.

50. The Claimant further submitted that the redundancy process was marred by both direct and indirect discrimination. She argued that employees based in offices located in the Global South, including Kenya, were disproportionately targeted for

redundancy, while those in the Global North were largely unaffected. She asserted that several regional roles previously held by staff in the Global South were relocated to the global headquarters and reclassified with upgraded titles, without any rational or objective justification for the differential treatment.

51. The Respondent, on the other hand, submitted that it had a legitimate and substantive basis for undertaking the organisational restructure, which merged or eliminated both the centre and regional offices into integrated global teams based on operational requirements. In support of this position, reference was made to the cases of *Kenya Airways Limited v Aviation & Allied Workers Union of Kenya [2014] eKLR* and *Mohamed Fawzan Chaudhri v CFC Stanbic Bank (Cause 613 of 2013) [2017] KEELRC 1764 (KLR)*.

52. The Respondent further submitted that the consultations carried out met the required standard, based on the objective test articulated in *Kenya Airways Limited v Aviation & Allied Workers Union of Kenya (supra)*.

53. Citing the decision in *Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] KECA 492 (KLR)*, the Respondent contended that an employer is only required to issue the statutory redundancy notice under Section 40(1)(b) of the Employment Act after the conclusion of consultations.

54. The Respondent further argued that a proper interpretation of Section 40 of the

Employment Act does not impose a requirement for two separate statutory notices, save for the alternative notices provided under Section 40(1)(a) for unionised employees and Section 40(1)(b) for non-unionised employees.

55. It was further submitted by the Respondent that the redundancy notice was duly served upon both the local Labour Office and the Claimant, and that it sufficiently outlined the reasons and justification for declaring her position redundant, the effective date of termination, and the computation of terminal dues.

56. In the Respondent's view, the Claimant had failed to establish any breach of Section 40 of the Employment Act or to demonstrate any procedural or substantive unfairness in the redundancy process.

57. Relying on the case of *Samson Gwer & 5 Others v Kenya Medical Research Institute & 3 Others (2020) KLR*, the Respondent submitted that the Claimant bore the primary obligation to adduce sufficient and credible evidence to discharge the evidential burden required to show that the 1st Respondent's redundancy process contravened Section 5 of the Employment Act, which prohibits discrimination. In this regard, it was submitted that no substantial material was presented to demonstrate that the Respondents' actions were discriminatory or that the Claimant was adversely affected in the manner alleged.

Analysis and Determination

58. Flowing from the record, the Court has isolated the following issues for determination:

- a) **Whether the Claimant's termination on account of redundancy met the threshold of substantive justification;**
- b) **Whether the Respondents complied with the requirements of procedural fairness prior to terminating the Claimant's employment;**
- c) **Whether the Claimant's constitutional rights were violated during the restructuring process; and**
- d) **Whether the Claimant is entitled to the remedies sought.**

Substantive justification?

59. It is evident from the termination letter dated 29th October 2024 that the Claimant's employment came to an end on the basis of a projected decline in the Respondent's unrestricted income of approximately USD 15–20 million.

60. Essentially, the Respondent attributed the Claimant's termination to its operational requirements.

61. In terms of **Sections 43 and 45(2)(b)(ii) of the Employment Act**, the Respondent was obligated not only to state the reasons for terminating the Claimant's employment but also to prove that those reasons were valid, fair, and connected to its operational requirements. Where an employer fails to meet this threshold, the termination is rendered unfair.

62. In the present case, the Respondent asserts that due to a significant budget shortfall, it undertook both global and local restructuring measures to ensure long-term sustainability, a process that ultimately resulted in the Claimant's role being declared redundant.

63. The Respondent added that the restructuring exercise eliminated the centre and regional office teams, merging them into an integrated global team aligned to its operational needs.

64. According to the Respondents, the Claimant's position as Director of Regional Programmes in Eastern and Southern Africa was rendered redundant because regional responsibilities were either absorbed into or reassigned within global functions.

65. The Claimant, however, contended that during an all-staff call in March 2024, the Senior Leadership Team indicated that Regional Programmes were to be treated as Country Offices and would therefore not form part of the restructuring. She further asserted that since her contract had been extended to 31st December 2026 on 20th February 2024, she reasonably and legitimately expected that her role would not be declared redundant.

66. In support of its position, the Respondent produced its organisational design proposal titled “Fit for Future.” The introduction to the proposal states that unrestricted income, which funds most centre and regional functions, had declined in the preceding year amidst rising costs, with anticipated revenue growth remaining below inflation. The projected operational budget gap was between USD 15 and USD 20 million. The proposal indicated that to address this gap, centre and regional offices would be merged into global teams, creating a flatter structure.

67. In view of the foregoing, the Court finds no reason to doubt that the Respondent was indeed undertaking a restructuring exercise and that the Claimant’s role was affected by that process.

68. Further, the emerging jurisprudence holds that courts should not unduly restrict employers in making and implementing strategic or business decisions within their operations.

69. Accordingly, the Respondent cannot be faulted for restructuring its operations in the manner it deemed necessary to improve efficiency, so long as the process was carried out fairly.

70. To this end, the Court concludes that the Respondent has established to the requisite standard that it had a valid and fair reason to terminate the Claimant’s employment based on its operational requirements.

Procedural Fairness?

71. With respect to termination on the grounds of redundancy, **Section 40(1) of the Employment Act** expressly provides that the following conditions must be fulfilled before an employee can be declared redundant:

- a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;*
- b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;*
- c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*
- d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;*
- e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;*

- f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and*
- g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.*

72. The record shows that by an email dated 6th August 2024 addressed to the Claimant, *De Blas Isabel* expressed appreciation for the Claimant's attendance at the meeting held on 31st July 2024, during which she was informed of the organizational structure and the potential implications for her role, subject to collective consultation. The Claimant was further informed of the roles deemed suitable for her that were to be opened, as well as the next steps in the process.

73. The record further shows that during the intervening period between August 2024 and the issuance of the termination notice on 29th October 2024, the Claimant participated in a consultative process.

74. In interpreting **Section 40(1)(a) and (b) of the Employment Act**, the Court in *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR*, per Maraga JA (as he then was), affirmed that where an employer contemplates redundancy, the employer must first issue a general notice of the

intended redundancy to the affected employees or their union. It is this notice that triggers the consultative process between the parties.

75. Accordingly, applying the foregoing precedent to the present case, the Court finds that the Respondent complied with Section 40(1)(a) and (b), as the Claimant was notified months beforehand that her position was at risk of redundancy, thereby initiating the consultation process.

76. As to the consultative process undertaken, the Claimant contends that the process was not genuine, describing it as superficial.

77. The record bears that through an email dated 16th September 2024, **Sipiwe Mhlanga** notified the Claimant that the collective consultation process had been concluded, effective 17th September 2024.

78. Subsequently, by an email dated 17th September 2024 from **Mohamed** to the Claimant, she was informed that the individual consultation provided an opportunity for her to raise any outstanding issues, offer feedback, or ask questions, including those related to her redundancy entitlements.

79. In an email dated 22nd September 2024, the Claimant followed up on questions she had raised during a prior call, seeking clarification regarding the roles for which she should apply. It is apparent from the record that Mohammed escalated the

Claimant's queries to Human Resources and the Design teams and later relayed the responses received to her.

80. Through an email dated 26th September 2024, the Claimant thanked Mohammed for the feedback and indicated that there was no need for a further call.

81. By an email dated 2nd October 2024, Mohamed enquired why the Claimant had not applied for any of the open roles. He also asked her to inform him of her intended next steps and how he could support her.

82. In a subsequent email dated 14th October 2024, Mohammed followed up again, noting that the Claimant had not responded. She replied that she did not require his assistance at that time but would reach out if needed.

83. In another email dated 17th October 2024, Mohamed invited the Claimant to a final individual consultation meeting scheduled for 18th October 2024, noting that although the meeting was allocated 45 minutes, they could use as much or as little time as she preferred. According to an email dated 18th October 2024 from Mohamed, the Claimant did not attend the meeting. Consequently, the outcome of the consultation process is not reflected in the record.

84. My understanding of the consultations envisaged under **Article 13, Convention No. 158 and Recommendation No. 166 of the International Labour Organization (ILO)** is that they should commence as early as possible and focus on measures to avert or minimize terminations, as well as measures to mitigate the adverse effects of any resulting terminations on the affected workers, including exploring alternatives such as securing other suitable employment.

85. What can be gathered from the consultative process in which the Claimant was engaged is that she was offered options of alternative employment but opted not to apply for the same. For instance, in the email of 25th September 2024, Mohammed advised the Claimant that there was a second role in the structure (Head of Regional Programmes) which was more like her current role at the time, as that role would continue to manage ESA plus WCA regional programmes.

86. In this regard, the Claimant was informed that she could be slotted into that role, but then she would not be prioritized for the recruitment of the Director role. She was asked to confirm if she would be interested. She was also notified that her salary would be protected as the head level maps to her current grade.

87. Seemingly, the Claimant declined to take up the role on the basis that it was a demotion. It is, however, unclear how taking up the new role would have amounted to a demotion, given that the role attracted the same remuneration and required the Claimant to manage both the ESA and WCA regional programmes.

88. In light of the foregoing, the Court is not persuaded that the consultations initiated by the Respondents were cosmetic and superficial.

89. Regarding the requirement for a selection criterion under Section 40(1)(c) of the Act, there is no evidence that any other employee held a position similar to that of the Claimant at the time of the redundancy. As such, the Court finds that the selection criteria under Section 40(1) (c) of the Act was inapplicable in this case. In any event, the Claimant did not raise any concern regarding the selection criteria applied by the Respondents.

90. It is also evident that, at the time of termination, the Respondents paid the Claimant notice pay, accrued annual leave, and severance pay, in accordance with **Sections 40(1)(e), (f), and (g) of the Employment Act.**

91. Applying the provisions of Section 40(1) of the Employment Act to the present case, the Court finds no fault in the process followed by the Respondents in terminating the Claimant's employment on the grounds of redundancy.

Constitutional violations

92. The Claimant further contends that the restructuring process was discriminatory. She argues that the redundancy disproportionately affected regional employees across Africa, Asia, Latin America, the Caribbean, the Middle East, and Eastern

European staff in the London office. According to her, employees in the London office were classified as holding global roles, while those in the Global South were designated as regional roles.

93. Under Section 5(7) of the Employment Act, the employer bears the burden of proving that the alleged discrimination did not occur and that any action taken was not based on the grounds specified in that Section. However, before the burden can shift, the Claimant must first establish a *prima facie* case of discrimination.

94. Although the Claimant alleged discrimination in the redundancy process, she did not provide evidence demonstrating that only staff holding regional roles were affected by the redundancy. In addition to that, it is evident that the classification of roles (either global or regional) predated the restructuring exercise. Accordingly, the Court is not persuaded that the restructuring, which resulted in the merger of the centre and regional offices, was discriminatory.

95. It is also evident that the proposed cost-saving measures outlined in the '*Fit for Future – Organizational Design Proposal*' included merging the Global Programme Quality and Impact team with the Global Policy and Advocacy teams, showing that global roles were likewise affected by the restructuring.

96. Ultimately, on the issue of discrimination, the Court finds that the Claimant has not established a *prima facie* case sufficient to shift the burden of proof to the Respondents.

Reliefs?

97. As the Court is persuaded that the Respondents have proven, to the requisite standard, that the termination of the Claimant's employment on account of redundancy was for a fair and valid reason and was procedurally fair, the claims relating to monetary awards are dismissed.

98. The Court further finds that by refusing to accept any of the roles that became available following the restructuring exercise, the Claimant effectively failed to mitigate the losses resulting from her redundancy.

99. Indeed, under **Section 49(4)(l) of the Employment Act**, an employee is obliged to mitigate his or her losses. In determining appropriate remedies for wrongful dismissal or unfair termination, the Court must consider, among other factors, any failure by the employee to take reasonable steps to mitigate such losses.

100. On the issue of mitigation of loss, the Court of Appeal in *African Highland Produce Limited v. John Kisorio [2001] eKLR*, held that:

“The prime factor is that he(sic), plaintiff, has a duty to mitigate loss if it is within his means to do so. Herein the plaintiff had the means to do so but did

not act prudently.... It is manifestly clear that the plaintiff did not take reasonable steps to mitigate the loss which he sustained consequent upon the accident.”

101. In the present case, the Claimant had the opportunity to mitigate her loss by accepting another comparable role that became available during the restructuring exercise, but she failed to do so. Consequently, she did not take reasonable steps to mitigate her losses, and it would therefore be imprudent to grant her any monetary relief for the period from 1st December 2024 to 31st December 2026 as claimed.

Orders

102. In the final analysis, the Claim is dismissed in its entirety with no orders as to costs.

DATED, SIGNED and DELIVERED at NYERI this 17th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Mwamburi

For the Respondent Mr. Garat

Court Assistant Ndati

ORDER

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

STELLA RUTTO

JUDGE