REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E1018 OF 2024

RITA KIJALA SHAKO……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 employed by the Respondents effective 9th March 2020 as the Regional Head of Advocacy, Campaigns, Communication, and Media, pursuant to an employment contract dated 6th March 2020. She further states that her contract was initially extended to 8th March 2022 and later to 8th March 2027, by a letter dated 31st January 2024.

2. The Claimant asserts that she performed her duties with dedication, maintained cordial relationships throughout the organization, and consistently met all performance objectives in line with the organization's strategic goals.

3. The Claimant contends that she had a reasonable and legitimate expectation to serve as Regional Advocacy Director uninterrupted until 8th March 2027. She asserts that this expectation was breached when the 1st Respondent purported to terminate her employment on the grounds of redundancy through a process she considers unfair, unlawful, and illegal. It is on this account that the Claimant seeks the following reliefs against the Respondents:

    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. 23,071,102.7/-

    d) An Order that the Respondents pay the Claimant her accrued Pension allowance being the sum of Kshs 3,316,992/- plus all accrued interest thereon.

    e) An order that the 2nd 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) above at Court rates.

i) Any other/further relief this Honourable Court shall deem fit to grant.

4. The Claim did not go unopposed. Through a Memorandum of Response dated 20th June 2025, 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 have urged 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 concerning organizational changes.

8. On 22nd January 2024, the Chief Executive Officer of the 1st Respondent sent an email to all staff regarding the organization's future outlook, emphasizing the need to adapt its structure and optimize resource efficiency to ensure the Respondents remain *"fit for a future"* capable of delivering meaningful change.

9. The Claimant averred that on 31st January 2024, she received a letter from the then Regional Director, Mr. Ian Vale, extending her employment contract, which was due to expire on 8th March 2024, to 8th March 2027. She noted that the Respondents' restructuring process had already commenced, and the extension indicated that her role would not be affected. Consequently, she had a reasonable and legitimate expectation to continue serving as Regional Advocacy Director until her contract's expiry.

10. She further stated that she had been a member of the Senior Leadership Team since the start of her employment and had repeatedly sought clarification on whether redundancies during the restructuring complied with Kenya's labour laws, but received no response.

11. On 30th July 2024, she had a brief five-minute call with the new Regional Director, Ms. Yvonne Arunga, during which she was informed that her position was at risk of redundancy. She followed up with an email on 8th August 2024 summarizing their discussion and outlining next steps.

12. The Claimant stated that the news of her role being at risk came as a shock, as the restructuring, which began in October 2023, had provided no prior indication that her position would be affected. She added that this was reinforced by the 31st January 2024 letter extending her contract for an additional three years.

13. She further averred that the Respondents failed to notify the Labour Office of their intention to declare staff redundant, and did not provide a list of potentially affected employees, as required by law. A formal complaint was lodged on her behalf by Alekeen Kenja & Company Advocates.

14. The Claimant further stated that on 22nd August 2024, the Respondents held a *"Fit for Future"* briefing introducing a new Global Grading Framework, which proposed downward revisions to the applicable salary scales.

15. She contended that the new framework was unilaterally imposed by the Respondents to the detriment of herself and other employees. When concerns were raised, the Chief People Officer, Ms. Kate Brown, communicated on 19th September 2024 that the scales were withdrawn due to numerical errors, promising revised scales, which were still not provided at the time of filing the claim.

16. The Claimant stated that on 18th and 19th September 2024, she attended her first and second consultation meetings with Ms. Yvonne Arunga, during which she raised queries about her *"at risk"* status, safeguards in the selection process, comparisons between current and proposed job descriptions, job grades, salaries, income protection, and conflicting communications from the Global Senior Leadership Team, which caused mental fatigue.

17. She contended that the Respondents failed to provide clear or helpful responses, leaving her confused, anxious, and uncertain about how to proceed, as she lacked sufficient information on suitable available positions.

18. While awaiting clarity, she received an email on 31st October 2024 from the Regional Director attaching a letter dated 8th October 2024 to arrange a final consultation regarding potential redundancy, despite her outstanding queries. Less than an hour later, before she could respond, she received another email from the Regional Human Resource Director attaching a notice of termination by reason of redundancy dated 30th October 2024.

19. The Claimant maintained that the entire *"Fit for Future"* process leading to redundancies was unlawful, exclusionary, and discriminatory, despite assurances that it would be participatory and consultative.

20. She asserted that the process was exclusionary because it was top-down, with the Respondents communicating only what they deemed necessary while ignoring relevant questions. That consultations were superficial, with decisions seemingly predetermined, denying her meaningful participation. She further contended there was a lack of transparency, as crucial information regarding redundancy criteria, selection, and timelines was withheld, leaving her unable to assess her situation properly.

21. According to the Claimant, throughout the consultation processes, she repeatedly sought clarification about why her role was at risk and income protection under the new grading and pay scales, but received no answers.

22. She also inquired about the process for determining outcomes for the new roles, which remained unanswered, hindering her ability to decide whether to apply for alternative positions.

23. The Claimant further averred that the redundancy process was discriminatory, disproportionately affecting staff from the Global South, including regional employees in Africa, Asia, Latin America, the Caribbean, the Middle East, and Eastern Europe, compared to employees in the London office.

24. She stated that London employees were designated as holding "global" roles, while Global South employees held "regional" roles, though the nature of the work was essentially identical. Thus, the "*Fit for Future*" process disproportionately impacted employees in the Global South, making it discriminatory.

25. She contended that on 11th November 2024, while on official duty in Uganda, the Respondents shared her personal details, including her phone number and home address, with a third party to deliver her termination letter without her consent. She considered this unnecessary, counterproductive, a security risk to her children, and a breach of her privacy and the Respondent's data protection policy.

26. On 22nd November 2024, her colleague, Ms. Rachael Amondi Odongo, officially reported the data breach and associated security risks via the Datix platform and also emailed the Regional Director, copying the Claimant, to notify her of the official complaint.

27. The Claimant averred that while still in Uganda, she was informed that on 15th November 2024, a staff meeting was held where the Regional Director publicly read out the names of employees, including hers, allegedly leaving the organization. Review of the meeting recording confirmed this. She noted she had not consented to sharing this private information, which violated her contract and breached her right to privacy and dignity under Articles 31 and 28 of the Constitution of Kenya, 2010.

28. The Claimant stated that these events caused significant emotional and mental distress, with the Respondents' actions, ranging from lack of transparency and procedural lapses to breaches of privacy, subjecting her to unnecessary anxiety.

29. She further averred that the uncertainty surrounding her employment and the mishandling of the redundancy process severely impacted her overall well-being.

Respondents' Case

30. 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.

31. 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.

32. 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.

33. 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.

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

35. 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 Regional Head of Advocacy, Campaign, Communication and Media for Eastern and Southern Africa was rendered redundant because regional functions were reassigned into global roles.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. On 8th August 2024, the Respondents notified the Claimant by email that her position as Regional Head of Advocacy, Campaign, Communication and Media (ESA) 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.

42. RW1 further stated that there were no direct equivalents of the Claimant's previous position in the new structure. However, she was invited to apply for other available roles. The Respondents also identified potentially suitable positions within the global team structure and explained the applicable selection processes.

43. She testified that the Claimant was encouraged to apply for any alternative positions aligned to her skills, experience, or career interests. Despite this, the Claimant did not submit any applications for available roles and therefore did not pursue potential opportunities within the restructured organisation.

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

45. 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.

46. 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.

47. 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

48. The Claimant submitted that her role could not reasonably have been rendered redundant only for it to be split into several positions under the proposed Global Teams structure. She was categorical that this was inconsistent with the Respondents' own conduct in extending her employment contract after the restructuring process had already begun. According to her, this extension granted while the restructuring was ongoing directly contradicted the Respondents' assertion that her role had become unnecessary. To support her position, she cited the cases of ***Changalwa v Unga Limited (Cause 259 of 2017) [2025] KEELRC 1389 (KLR)*** and ***Teresa Carlo Omondi v Transparency International–Kenya [2017] KEELRC 1624 (KLR).*** She contended that, in the circumstances, she had a reasonable and legitimate expectation to serve her full contract term.

49. The Claimant further argued that the decision to target her position for redundancy was not driven by financial constraints or organisational restructuring, but by undisclosed factors. In her view, the Respondents failed to present before this Court the actual reasons that justified the termination of her employment, contrary to the requirements of Section 43 of the Employment Act.

50. Relying on the case of ***Margaret Mumbi Mwago v Intrahealth International [2017] eKLR,*** the Claimant submitted that the notification to the Labour Office was issued only after the Respondents had already decided to declare her position redundant and had begun implementing that decision.

51. She further contended that the consultations undertaken by the Respondents were neither genuine nor meaningful, asserting that by the time consultations were initiated, the decision to declare her position redundant appeared to have already been finalized. To reinforce this argument, the Claimant relied on the case ***Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR.***

52. The Claimant further submitted that the redundancy process was tainted by both direct and indirect discrimination. She argued that employees based in offices within the Global South, including Kenya, were disproportionately targeted for redundancy, while those in the Global North were largely unaffected. She added that several regional roles previously held 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. On this score, she argued that the Respondents failed to provide any explanation as to why it was necessary to abolish a single regional role only to divide it and recreate multiple positions at the global level.

53. 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).***

54. 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).***

55. 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.

56. 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.

57. 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.

58. 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.

59. 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

60. 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?

61. It is evident from the termination letter dated 30th 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.

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

63. 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.

64. 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.

65. 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.

66. According to the Respondents, the Claimant's position as Regional Head of Advocacy, Campaign, Communication and Media for Eastern and Southern Africa was rendered redundant because regional responsibilities were either absorbed into or reassigned within global functions.

67. 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 8th March 2024 on 8th March 2027, she reasonably and legitimately expected that her role would not be affected by the restructuring exercise.

68. 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.

69. 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.

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

71. 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.

72. 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?

73. 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.

74. The record indicates that by an email dated 8th August 2024 addressed to the Claimant, RW1 expressed appreciation for her attendance at the meeting held on 30th July 2024, during which she was advised of the proposed changes to the Respondents' organizational structure and the potential individual impact, subject to collective consultation.

75. In the same email, the Claimant was informed that, as her current role might no longer exist in the proposed structure and there were no equivalent positions available, her position was placed at risk of redundancy. Further, RW1 undertook to share with the Claimant a tentative list of roles proposed to be opened for recruitment. She further outlined the subsequent steps in the process, particularly with respect to the consultation phase.

76. The record further indicates that, during the period leading up to the issuance of the termination notice on 30th October 2024, the Claimant participated in the consultative process.

77. 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.

78. 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 opening the door for the consultation process.

79. Regarding the consultative process, the Claimant contends that the consultations were superficial rather than participatory, with decisions appearing to have been predetermined.

80. In an email dated 22nd September 2024, the Claimant wrote to RW1 outlining the concerns she had raised on several issues when they had the individual consultations. She explained that due to insufficient communication, she lacked the information and clarity necessary to consider applying for the alternative roles.

81. In response, RW1 emailed the Claimant on 23rd September 2024, noting that during the first consultation on 18th September, the Claimant had raised several HR-related issues regarding the selection process for the open roles. RW1 stated that she had arranged for the Claimant to have a specific call on the selection process with

Sonia Gupta and asked the Claimant to confirm whether the meeting had taken place.

82. RW1 further explained that in the second consultation on 19th September, staff were free to express interest in the open roles and no one should feel pressured to apply. She also stated that she had offered the Claimant a third consultation, which the Claimant had declined, but invited her to indicate if she wished to hold a further session to revisit the issues.

83. The Claimant replied on 23rd September 2024, stating that Sonia Gupta had been unable to address her questions and that her request for a third meeting was because the new scales had completely thrown her off and Sonia was unable to clarify and she needed time to reflect. The Claimant further questioned what a third consultation could achieve in what she described as a *"broken telephone environment."*

84. The record does not clearly indicate what transpired following the Claimant's email of 23rd September 2024.

85. In an email dated 8th October 2024, RW1 informed the Claimant that she had been attempting to arrange a final consultation and asked her to indicate her availability at the earliest convenience.

86. In a subsequent email on 31st October 2024, RW1 noted that despite multiple attempts to reach the Claimant, she had not received a response regarding the proposed final consultation. RW1 indicated that, due to this lack of communication, she understood the Claimant did not wish to proceed with the concluding discussion, while urging her not to hesitate to reach out if she had any further questions or required clarification.

87. There is no evidence on record indicating that the Claimant followed up with RW1 after her email of 31st October 2024. Consequently, it appears that the consultation process did not reach a logical conclusion.

88. The email correspondence suggests that the Claimant was reluctant to engage in the consultation process beyond the second session.

89. During cross-examination, the Claimant confirmed that the Respondents had offered her alternative roles. She further testified that these positions were aligned with her salary, experience, and educational qualifications. Although she had alleged that the alternative roles lacked clarity, she conceded during cross-examination that the roles appeared similar to the one she held at the time.

90. In light of the foregoing, it is unclear why the Claimant would characterize the consultation process as superficial when she appeared unwilling to participate in further consultations or consider the alternative roles that had opened up following the restructure.

91. This is noted bearing in mind that the consultations contemplated under ***Article 13 of Convention No. 158 and Recommendation No. 166 of the International Labour Organization*** are intended to focus on measures to avert or minimize terminations, as well as to mitigate the adverse effects of any resulting terminations on affected employees, including exploring alternatives such as securing other suitable employment.

92. From the circumstances of this case, it is evident that through the consultative process, the Claimant was offered alternative roles as a measure to alleviate the adverse effects of the impending redundancy, but she declined to take them up without providing any legitimate reason.

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

94. 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 is of the view that the selection criteria under Section 40(1) (c) was inapplicable. In any event, the Claimant did not raise any concern regarding the selection criteria applied by the Respondents.

95. 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.**

96. 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

97. 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.

98. 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.

99. 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.

100. 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.

101. 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?

102. 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.

103. 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.

104. 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.

105. 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."***

106. 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 8th March 2027 as claimed.

Orders

107. 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