



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

(ON Makau J on 3rd March, 2026)

CAUSE NO. E580 OF 2022

MELANIE
GICHUKI.....CLAIMANT

MUTHONI

-VERSUS-

TETRA
LIMITED.....RESPONDENT

PAK

KENYA

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 4th August 2022, the Claimant instituted this suit against the Respondent alleging unfair termination of her employment, discrimination on account of pregnancy and non-payment of contractual dues.

The Claimant prayed for the following reliefs:-

a) A declaration that the termination of the Claimant's contract by the Respondent violated her right not to be discriminated against on account of pregnancy, under the Constitution of Kenya 2010 and the Employment Act 2007.

b) Terminal dues of Kshs 32,801,669.00 tabulated as follows: -

- i. One month's salary in lieu of notice being Kshs 708,671.00**
- ii. Unpaid house allowances at 15% of basic salary being Kshs 5,628,168.00**
- iii. Unpaid leave days assessed at Kshs 330,713.00**
- iv. Unpaid severance based on the internal redundancy policy (@3 months' salary for each year of service being Kshs 10,630,065.00**
- v. Compensation for unfair termination being 12 months' gross salary totaling Kshs 8,804,052.00**

vi. Punitive damages for discrimination based on pregnancy being Kshs 7,000,000.00

c) Certificate of service.

d) Exemplary damages for discrimination.

e) A declaration and orders instructing the Respondent to surrender to the Claimant her pension.

f) Costs of this Claim and interest thereon at court rates.

g) Any other relief that the Honourable Court may deem fit to grant.

2. The Respondent filed a Reply to Memorandum of Claim dated 21st September 2022 admitting that the Claimant was employed by the Respondent from January 2016 but denying that the termination was unfair or discriminatory. The Respondent averred that the Claimant's employment was terminated on account of redundancy following a genuine restructuring exercise.

3. The Respondent further averred that the Claimant was issued with a notice of intended redundancy on 19th November 2021 and a 60-day consultation period was undertaken. The Respondent contended that the Claimant's role ceased to exist in the new organizational structure and no suitable alternative employment was available for her. The Respondent denied any discrimination on account of pregnancy and averred that the Claimant was paid all her terminal dues including notice pay, severance pay at 15 days per year worked, leave days and was issued with a certificate of service. Therefore, the Respondent prayed that the Claimant's suit be dismissed with costs.

Evidence

4. The hearing commenced on 1st December 2025 before this Court. The Claimant testified as CW1 and she adopted her written statement dated 5th August 2022 as her evidence in chief. She then produced 19 documents in the list dated 4th August 2022 as exhibits and Counsel for the Respondent

had no objection. The Court marked the 19 documents as exhibits 1-19 respectively.

5. On cross examination the Claimant testified that she was employed as Customer Service, Design and Logistics Manager for East Africa and was the only person in the region with that title. She confirmed being aware of the restructuring process announced in September 2021 which was to affect the establishment globally. However, she did not know whether her supervisor sat on the global Board. She confirmed that the restructuring was announced when she was on maternity leave between 2nd August 2021 to 24th January 2022.
6. While away on leave, her role was assigned to Diana Kamau, who was her junior reporting to her as Line Manager. Her reporting line was also changed from Alpher as the Line Manager but admitted that paragraph 19 of her statement indicated that Alper had told her that due to organizational changes, reporting lines would change effective 1st January 2022.

7. She confirmed that she attended a meeting on 19th November 2021 where she was informed about the intended redundancies and she was told that consultations would be held. She felt targeted because she was on maternity leave. She clarified that during the meeting was on 19th November 2021, she was told her role was being considered for redundancy.

8. On 20th December 2021 she wrote an email seeking clarification about the promised consultations and on 26th January 2022 the Respondent asked if she had questions on the redundancy. She maintained there were no consultations. She further stated that Diana Kamau took over her role save that the job title changed to Customer Service and Design Lead.

9. Regarding severance pay, she claimed the company had a severance policy but admitted she did not know whether it applied to her contract and was seeing the policy for the

first time. She confirmed that her pension issue was resolved and she had no further claims on pension.

10. On re-examination, the Claimant stated that her role was created by the Respondent. Her Line Managers were Alper and Suhail and clarified that she did not report to Kinisu. She reiterated that she was on maternity leave when the restructuring was done. She maintained that the meeting of 19th November 2021 was not consultative meeting as she was just issued with a letter and she had no option to reject the redundancy.
11. She contended that her going on maternity leave did not warrant changes to the company organogram. She reiterated that the severance policy was never given to her and when she demanded to see it, she was told it was restricted to Human Resource.
12. CW2 was Alper Ozel and adopted his written statement dated 16th November 2022 as his evidence in chief. On

cross-examination CW2 testified that he was sitting in the Global Board of the company during the restructuring process and was consulted during the redundancy process. He confirmed that the Claimant was the only Customer Service and Design Manager in East Africa and there was no other manager with that role in East Africa. He clarified that he sat in the global Board only in the supply chain section.

13. On re-examination CW2 stated that he had no information that the Claimant's role would fall off. As her supervisor, the redundancy should not have been made without his knowledge. He contended that the Board had mandate to make structural decisions but could not make specific decisions in the Clusters, and that it was upon each Cluster to decide on specific restructuring. He was not involved in the decision affecting the Claimant. He considered it unfair for the Claimant to be laid off . He added that the procedure followed was unfair and he had not witnessed such an unfair process in his 22 years with the company.

14. On 2nd December 2025, the Court noted that page 9 of the Respondent's Supplementary Bundle post restructuring indicated the role of Customer Service was more junior to that held by the Claimant pre restructuring. He confirmed that the decision by global management to restructure was made while Claimant was on leave but the final decision was made when she was back to work.

15. RW1 was Marlene Ngatia and she adopted her witness statement dated 21st September 2022 as her evidence in chief. She then produced a list of 9 documents dated 21st September 2022 and 5 documents in the list dated 27th March 2024 as exhibits D.1-14 respectively.

16. On cross-examination she confirmed that the Claimant was Customer Service and Design and Logistics Manager and her Line Manager was Alper. She stated that the Claimant's salary was consolidated because the appointment letter stated it was gross salary.

17. As regards the redundancy, she confirmed that the Claimant was notified about global restructuring via the intranet page for all employees. Thereafter she was served with the proposed redundancy letter on 19th November 2021. The letter did not question her performance and it promised her discussion on alternative positions. She was given liberty to reach out to her Line Manager. RW1 did not know whether CW2 was aware of the redundancy or not.

18. Shown the email dated Friday 19th November 2021, RW1 confirmed it was the one she forwarded the redundancy notice, and the Claimant acknowledged by email dated 22nd November 2021 Monday. She admitted that she never informed the Claimant about any alternative job because there was none suitable for her. She stated that the criteria for determining the Claimant's suitability in the new structure was the employer's discretion.

19. On being shown the structure on page 7 of the Respondent's documents, she confirmed that it was the

structure for Supply Chain East Africa and that the structure was not merely splitting the Claimant's position. She confirmed that Page 10 showed that the Customer Service and Design Leader for East Africa was given to Diana Kamau who previously reported to the Claimant. However, RW1 stated that the position was given to Diana because it was a junior position contending that giving it to the Claimant would have meant demotion. She maintained that the Claimant was not offered the position because of her seniority.

20. RW1 confirmed that after 31st January 2022, the Claimant was still enquiring whether there was an alternative position for her. She confirmed that the email by Kinisu dated 14th February 2022, stated that candidates to fill the positions were not yet closed. She admitted the notice for redundancy was done while the Claimant was on leave and further that she had no document to show that the Claimant's performance was wanting.

21. On re-examination RW1 stated that the communication of restructuring dated 30th September 2021 was to all staff including CW2. She personally did not make the decision to declare redundancies, nor was it a decision of the local office. She stated that the proposed redundancy notice indicated that the Claimant could contact the Human Resource Country Representative or Line Manager. As the Country Human Resource Representative, the Claimant contacted her and she gave the necessary support. Finally, she reiterated that the role of Customer Service and Design and Logistics was a unique role and it was not available in the local company.

22. RW2 was Jonathan Kinisu and he adopted his written statement dated 27th March 2024 as his evidence in chief. On cross-examination he confirmed that he is the Managing Director for the Respondent based in Kenya. He confirmed that the criteria for determining that the Claimant was not fit under the new structure was that the position was a junior position. The secondary criterion was that she had

performance gaps. Referring to bullet 2 in his letter dated 14th February 2022, he stated that the role was being dissolved and was not available.

23. The restructuring brought about the Customer Service Design Leader position, which was given Diana Kamau, who was the Claimant's junior. Bullet 3 of the said letter stated that the new position had reduced responsibility. Page 9 of the supplementary bundle showed the logistics manager became Production and Logistics Manager. He confirmed that there was no alternative position for the Claimant. He admitted that he never enquired from the Claimant's Line Manager about her performance, but averred that he believed that the Line Manager knew about the redundancy process.

24. On re-examination RW2 stated that the role held by the Claimant before restructuring was not the one given to Diana after the restructuring. He maintained that the Claimant's role was unique to East Africa. The restructuring

was done to enhance customer centricity and improve performance and had nothing to do with the performance of any individual employee.

25. After the close of the hearing, the Claimant filed her submissions dated 14th January 2026 while the Respondent filed its submissions dated 3rd February 2026. Having considered the pleadings, evidence on record, and submissions by both parties, the following issues fell for determination:-

- a) Whether the termination of the Claimant's employment was unfair and unlawful.
- b) Whether the Claimant was discriminated against on account of pregnancy.
- c) Whether the Claimant is entitled to the reliefs sought.

Analysis

Unfair and unlawful termination

26. The Claimant's case is that her employment was unfairly and unlawfully terminated by the respondent.

Section 45 (1) & (2) of the Employment Act, 2007 provides that:-

“(1) No employer shall terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove: -

a) that the reason for the termination is valid;

b) that the reason for the termination is a fair reason

i. related to the employee's conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c) that the employment was terminated in accordance with fair procedure.”

Reason for termination.

27. The reason cited for termination in this case was redundancy. The Section 2 of the Employment Act defines redundancy as:-

" the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment."

28. The above definition is clear that the termination of employment on account of redundancy is never at the employee's fault. The reason has everything to do with the employer who must prove that a redundancy situation has occurred. Once the employer establishes that a redundancy situation exists, the statutory procedure prescribed by section 40 of the Act must be strictly followed.

29. The Claimant contended that her lay off was unfair because there was no genuine reason for the redundancy and the procedure adopted was flawed. The Respondent on the other hand maintained that the termination was on account

of a genuine redundancy arising from a global restructuring exercise and that the procedure under section 40 of the Employment Act was fully complied with.

Redundancy situation

30. The Claimant alleged that she was targeted for separation on account of her pregnancy and as such the redundancy was unjustified. She contended that she was the only person laid off and her role given to her junior. She further stated that her role remained in the new structure and only the job title changed.

31. However, the Respondent contended that on 31st August 2021, Tetra Pak Global announced a new operational model including new organizational structure which ultimately affected the Respondent. As a result of the said restructuring the Claimant's role as Customer Service Design and Logistics Manager ceased to exist after being divided into two, that is, Customer Service design function and Logistics function. The former was to be headed by

Customer Service Design Leader, and supervising customer service representatives and the design specialist. It was a junior role to what the Claimant held before the restructuring. The logistics role on the other hand, was move and was placed under the Factory Director.

32. The Court of Appeal in the case of **Kenya Airways Ltd v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 (KLR)** (Maraga, Murgor & M'Inoti JJA) held that: -

"A redundancy situation is established where, as a fact, the employer has restructured such that the employee's position is rendered unnecessary, and the termination is attributable to that operational change. As long as the employer genuinely believed there was a redundancy situation, it is not for the Court to substitute its own view of what the employer ought to have done, because the Court has no supervisory role over commercial restructuring choices."

33. In the instant case there is evidence that the Respondent did organizational restructuring globally and the Respondent was not spared. The said restructuring was a lawful business strategy done within the Respondent's managerial prerogative. In the above case of **Kenya Airways Limited**, the Court of Appeal further held:-

“ Thus, redundancy is a legitimate ground for terminating a contract of employment provided there is a valid and fair reason based on operational requirements of the employer and the termination is in accordance with fair procedure

The decision to declare redundancy has to be that of the employer. In the above New Zealand case of G. N. Hale & Son Ltd, it was held that so long as the employer genuinely believed that there was a redundancy situation, then any dismissal was justified, and it was not for the Court, or the union, to substitute their business judgment with that of the employer. The decision to declare redundancy, as I have said, is that of the employer based on purely commercial considerations and not principles such as

sustainable development, noble and lofty as it may be.”

34. In the circumstances, all the employer needed to demonstrate to this court is that the restructuring impacted on the Claimant’s role and it ceased to exist or it became superfluous. The court finds that the Claimant’s role ceased to exist after it was divided into two junior roles following the said restructuring. It was a unique role for East Africa region and not within the local company in Kenya. Consequently, I hold that the Respondent has proved that a redundancy situation existed, which justified the impugned redundancy.

Redundancy procedure

35. Section 40(1) of the Employment Act provides as follows:-

“(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions;

- a) where the employee is a member of a trade union, the employer notifies the union of the reasons for and the extent of the intended redundancy not less than a month before 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 on account of the termination;

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.”

36. The above provision emphasizes that the employer must serve one-month prior notice to the employee and the area labour officer indicating the reason, and the extent of the intended redundancy. The said procedure has its roots in the ILO Convention 158 though not ratified by Kenya. Article 13(1) of the Convention states that:-

“ (1) When the employer contemplates termination for reason of an economic,

technological, structural or similar nature, the employer shall:

- (a) Provide the workers representatives concerned, in good time, with relevant information including the reason for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;***
- (b) Give, in accordance with national law and practice the workers representatives concerned, as early as possible an opportunity for consultation on measures to be taken to avert or minimize the terminations and measures to mitigate the adverse effects of any termination on the workers concerned such as finding alternative employment.”***

37. Article 14 of the convention provides for a similar notice to be given to the competent government authority in accordance with national law and practice as early as possible. Under section 40 (1) (a) of the Employment Act, the competent authority is indicated as the Labour Officer of the area where the employee works. The Kenyan statute has further clarified in section 40(1) (b) that where an

employee is not a member of a trade union the notification will be given to him/her directly and the area labour officer.

38. The purpose of the redundancy notice and the consultations is meant to facilitate a discussion on measures of averting or minimizing the terminations or mitigating the adverse effects of any termination on the affected workers by where possible finding alternative employment. The Court of Appeal affirmed that that position in **Barclays Bank of Kenya Ltd & another v. Gladys Muthoni & 20 others [2018] eKLR** when it held that:-

“We respectfully agree with the views expressed by the two learned Judges. The Constitution in Article 41 is fairly loud on the rights to fair labour practices and we think it accords with the Constitution and international best practices that meaningful consultations be held pre-redundancy. We agree with the trial court that redundancy notices are not mechanical so as to satisfy the motions of the law, and that fair labour practice requires the employer to act in good faith.”

39. In **Cargill Kenya Ltd v. Mwaka & 3 Others [2021] KECA 115 (KLR)**, the Court of Appeal held that:-

“ The purpose of the notice under Section 40 (1) (a) and (b) of the Employment Act, was to give the parties an opportunity to consider measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment. The consultations were meant to cause the parties to discuss and negotiate a way out of the intended redundancy, if possible, or the best way of implementing it if it was unavoidable.”

40. In the case of **Germany School Society v. Helga Ohany [2023] KECA 894 (KLR)** the Court of Appeal held that:-

“ A notice to the employee/trade union/labour officer opens up the door for a consultative process with the key stakeholders.”

41. In the instant case, the evidence on record reveals the following chronology of events:-

a) On 19th November 2021, the Claimant was called to a meeting with the Managing Director (Jonathan Kinisu) and HR Country Manager (Marlene Ngatia) and she

was informed that due to the organisational change, her role was under consideration for redundancy. She was issued with a notice of intended redundancy dated 19th November 2021 which she signed. The notice indicated that there would be consultations for a period of 60 days on alternative positions to avert the redundancy before a final decision on 31st January 2022. Copies of the notice, email forwarding the notice and the Claimant's acknowledgment are at pages 8-10 of the Respondent's Bundle of Documents.

- b) On the same date, 19th November 2021, the Respondent served the Labour Officer in Nairobi with a notice of intended redundancy. Pages 11-12 of the Respondent's Bundle of Documents bear the official acknowledgment stamp of the Labour Office, confirming receipt.
- c) On 20th December 2021, the Claimant sent an email to Marlene seeking clarification on the announcement made on 30th November 2021 regarding the change of

her position to Customer Service and Design Team Leader and also information on the proposed consultations. Marlene responded on the same day stating that her role was still proposed for redundancy.

d) On 26th January 2022, Marlene emailed the Claimant asking if she had any questions since their last email. The Claimant responded on the same day stating that since she had not heard any news, she did not have any questions. A meeting was set for 31st January 2022.

e) On 31st January 2022, the meeting was held and the Claimant was informed that her position had been declared redundant. She was then issued with a termination letter dated 31st January 2022 which she signed.

42. The email trail at Pages 13-20 of the Respondent's Bundle of Documents shows correspondence between the parties

during the consultation period. The Respondent wrote to the Claimant on 20th December 2021 informing her that the consultation period would continue until the end of January 2022 and that if any alternative or suitable opportunities for redeployment were available, she would be informed. The Respondent also informed her they would be happy to meet to discuss any concerns.

43. The Claimant during, cross-examination, admitted that on 26th January 2022, the Respondent asked if she had questions on the redundancy, and she responded that she had no further questions. She also confirmed having a meeting on 30th November 2021 with Jonathan and Marlene.

44. The Claimant contended that there were no consultations and that the meeting of 19th November 2021 was not consultative. In **Gibson v Broll Kenya Limited [2024] KEELRC 13442 (KLR)** Wasilwa J held that despite the respondent denying there was consultation, email trails

pointed to the fact that the parties discussed the issue of redundancy, and consultations need not necessarily mean agreement.

45. Similarly, in **Ndungu v Robert Bosch East Africa Ltd [2024] KEELRC 786 (KLR)** the Court held that as regards consultations, email communication on record revealing significant engagement between the Claimant and the Respondent on the redundancy indicates that the Claimant had the opportunity to negotiate the terms of separation.
46. I concur with the above decision that consultations do not necessarily require that a physical meeting be held or that an agreement be reached. All that is required is a genuine opportunity for the employee to be heard and his/her representations considered on any options available to avert or mitigate the effects of the redundancy if it is inevitable.

47. The foregoing notwithstanding, I must also find that the respondent did not prove that it made any effort to give the Claimant an alternative job. There were alternative positions, albeit junior to what the Claimant held before the restructuring. When she resumed work on 24th January, 2022, she found the newly created role of Customer Service & Design Team Leader already given to Diana Kamau who was her junior. The reporting line had also changed.
48. RW1 admitted in evidence that the newly created position of Customer Service & Design Team Leader was never offered to the Claimant because of her seniority as giving her the position would amount to a demotion. RW2 on the other hand was categorical that the Claimant was found unfit and unsuitable for the newly created role of Customer Service & Design Team Leader because of her leadership behaviors and performance issues. However, he admitted that he never consulted with the Claimant's Line Manager to verify the alleged performance issues. The said admission by extension is a confirmation that the Claimant

was condemned unheard for the alleged managerial behavior and poor performance.

49. On 31st January she was called to a meeting with RW1 and RW2 where they made it clear that she was not the right candidate for the new role of Customer Service & Design Team Leader. In the circumstances I find that there were no meaningful consultations held with a view to averting or mitigating the effects of the intended redundancy. The Claimant was never given any option to chose the newly created positions even if it would amount to a downgrade. She was just thrown under the bus in favour of her juniors.
50. In view of the failure by the Respondent to facilitate meaningful consultations as contemplated in the statute and the international labour standards on redundancy, the redundancy herein was not done in accordance with a fair procedure and it amounted to unfair termination of employment. It was not enough for the Respondent to mechanically serve the Claimant with redundancy notice and thereafter pay the required dues, the law places a burden on the employer to act fairly since in a redundancy separation, the employee is at no fault.

Discrimination on account of pregnancy

51. The Claimant alleged that she was discriminated against on account of pregnancy, particularizing that the redundancy situation was created with the sole aim of dismissing her while away on maternity leave, terminating her employment on unclear grounds, failing to legitimately consider her for the role created with the same job description as her previous position, and subjecting her to a hostile working environment for no other reason but for being pregnant and taking maternity leave.
52. Section 5(3) of the Employment Act provides that an employer shall not discriminate directly or indirectly against an employee or prospective employee or harass an employee or prospective employee on grounds including pregnancy.
53. The Supreme Court in **Gichuru v Package Insurance Brokers Ltd [2021] KESC 12 (KLR)** defined discrimination as a situation where a person is treated

differently from others in similar positions on a prohibited ground, without any objective and reasonable justification.

54. In **G M V v Bank of Africa Kenya Limited [2013] KEELRC 162 (KLR)** Rika J set out the criteria for establishing a prima facie case of discrimination on account of pregnancy:-

"All the ladies are required to do, is establish a prima facie case, through direct evidence or statistical proof, that they have been discriminated against at employment, on account of their pregnancies. Courts have stated that the employee needs to:-

- i. Establish she belongs to a protected class.***
- ii. Demonstrate she qualified for the job she lost.***
- iii. Show she suffered adverse employment action, directly as a result of her pregnancy.***

iv. She must provide prima facie proof, that other explanations by the employer are pretextual, and the real reason for termination was the pregnancy.

v. Lastly, the employee must as a minimum, establish that there is a nexus between the adverse employment decision, and her pregnancy."

55. The Supreme Court in **Gwer & 5 others v Kenya Medical Research Institute & 3 others [2020] KESC 66 (KLR)** emphasized that a claimant bears the burden of proving a prima facie case of discrimination and only upon proving this does the burden fall on the Respondent to dispute the allegation.

56. In **Mokaya v Kithure Kindiki t/a Kithure Kindiki & Associates [2021] KEELRC 1 (KLR)** the court found that whichever way a litigant follows, the legal burden of proof of the alleged facts lies with the claimant or the petitioner

in terms of Sections 107 and 108 of the Evidence Act, Cap 80 Laws of Kenya.

57. Applying the above principles to the instant case, the Court makes the following findings:-

- a) It is not in dispute that the Claimant belongs to a protected class as she was on maternity leave at the time the restructuring announcement was made. Section 5(3) of the Employment Act expressly includes pregnancy as a protected ground.
- b) The evidence shows that the Claimant was qualified for the position she held. She testified to her accomplishments and positive performance evaluations. The Respondent did not produce any evidence to contradict her performance prior to the redundancy.
- c) There is no evidence showing that the adverse employment action taken was directly as a result of pregnancy. The evidence on record shows that the restructuring was a global initiative announced by the

President of Tetra Pak Global on 31st August 2021. The discussions on the proposed restructuring commenced in 2019 following the launch of Strategy 2030. The timing of the announcement while the Claimant was on maternity leave was coincidental and not within the control of the Respondent. The Respondent, being a subsidiary of a multinational corporation, was obligated to implement the global directive.

d) The global restructuring affected multiple roles and did not target the Claimant. CW2 confirmed that he was aware of other redundancies and that he himself exited the organization as part of the same restructuring process. The Respondent adduced evidence that a Key Account Manager in Kenya was also declared redundant. These facts demonstrate that the redundancy was not targeted at the Claimant individually. It was a global restructuring exercise therefore there was no nexus between the redundancy of the Claimant's job and her pregnancy.

58. Having considered the totality of the evidence, the Court finds that the Claimant has failed to discharge the burden of proving discrimination on account of pregnancy. The claim of discrimination therefore fails.

The reliefs sought

59. I have found that the termination on account of redundancy was not done in accordance with a fair procedure because the employer failed to facilitate meaningful consultations with a view to avert or mitigate the effects of the intended redundancy. However, she did not prove that she was discriminated on account of pregnancy. Consequently, I decline to award the Claimant declaration that she was a victim of discrimination.

60. As regards claim for monetary compensation, the Respondent produced the termination letter which set out a list of the dues payable to the Claimant upon redundancy. The dues itemized were salary due upto the date of

termination (28th February 2022), one month salary, monthly car allowance (28th February 2022), accrued leave, severance pay (15 day salary for a completed year of service for 6 years), variable pay (January 2021- December 2021), variable for January to 28th February 2022 less statutory deductions and liabilities owed to the company. The said dues were in addition to pension payable to the Claimant. The termination letter contained a section titled ACKNOWLEDGMENT below the authors signature stating as follows:-

“I, Melanie Gichuki National Identity Card Number 24706070 do confirm that I have read and understood the terms set out in this letter and I acknowledge that upon payment of my redundancy dues as set out in this letter, I shall have no further claims whatsoever against the Company in relation to my employment.

Sign:

Date:”

61. Subsequently, the Respondent computed and paid the said dues vide a Pay slip dated 24th February 2022. The gross amount was Kshs. 4,162,121 and after statutory deductions, the net amount paid and received was Kshs. 2,893,743. It follows that the claim for further terminal dues herein, in disregard of the said undertaking, is uncalled for and should be declined. The corollary to the foregoing is that the Claimant is estopped from suing the Respondent for further terminal dues.

62. The Claimant did not dispute that she acknowledged the items in the termination letter as her terminal dues upon redundancy and waived any further claims against the Respondent with respect to her employment. She voluntarily signed the acknowledgement as she did not challenge the same either in her pleadings or evidence.

63. As regards the termination, I have already made a finding that the redundancy was unfair and unlawful because the employer did not follow the procedure set out by the law

and the international labour standards. She was denied an opportunity to choose an available job without consulting her in order to avert the redundancy or mitigate its adverse effects on her. Consequently, I find that she is entitled to compensation for unfair termination of her employment by dint of section 49 (1) of the Employment Act.

64. The Claimant served the company for six years and the termination was not for any fault on her part. Considering the seniority in rank there was no probability of securing an alternative job within a short time. Consequently, I award her a compensation equal to four months gross salary for the unfair termination of her employment. Her salary was Kshs.708,671 x 4 = Kshs.2,834,685.28.

65. The prayer for Punitive/exemplary damages for discrimination based on pregnancy is also declined because I have already made a finding of fact the Claimant did not establish the alleged discrimination.

66. The prayer for Certificate of service is also declined because the Respondent adduced evidence at pages 27-28 of its Bundle showing that the Claimant was issued with a certificate of service on 20th September 2022.
67. The prayer for pension is also declined since the Claimant confirmed during cross-examination that her pension issue was resolved and she had no further claims on pension.
68. Costs are at the court's discretion but ordinarily they follow the events. The Claimant was entitled to bring the instant suit for the court to determine whether or not the redundancy was unlawful and she has succeeded on a balance of probabilities. Consequently, I award costs of the suit to her.

Conclusion

69. I have found that the termination of the Claimant's employment on account of redundancy was unlawful because the respondent failed to follow the statutory

procedure under section 40 of the Employment Act. I have however, the claimant that she was estopped from making any further claim for terminal dues against the respondent contrary to her undertaking signed on 1st February 2022. Finally, I have found that the prayer for compensation for unfair termination is warranted and awarded her four months gross salary. Consequently, I enter judgment for her against the Respondent as follows:-

a) CompensationKshs.

2,834,685.28

b) The award is subject to statutory deductions.

c) Costs plus interest at court rates from the date of this Judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 3RD DAY OF MARCH, 2026.

ONESMUS MAKAU

JUDGE

Appearance:

Domba for the Claimant

Amayo for the Respondent