

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E305 OF 2021**

**FRANK MUSE.....**  
**CLAIMANT**

**VERSUS**

**JAMBOJET LIMITED.....**  
**.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant's Statement of Claim is dated 24<sup>th</sup> March, 2021, and filed on 14<sup>th</sup> April, 2021. He seeks the following reliefs as against the Respondent: -
  - i. A declaration that the termination of the Claimant's employment on account of the purported redundancy was unfair, wrongful, and unlawful.
  - ii. A declaration that the Respondent violated the Claimant's rights to fair labour practice and fair administrative action guaranteed under Articles 41 and 47 of the Constitution.
  - iii. Compensation equivalent to 12 months' remuneration (Kshs. 142,078.50X12 months), for unfair, wrongful, and unlawful termination of employment on account of the purported redundancy, equivalent to Kshs. 1,704,942.00/=.

- iv. The Respondents be compelled to sign the Claimant's Retrenchment cover to enable the Insurance Company take over the loans by the Claimant
  - v. Damages for breach of the Claimant's right to fair labour practice guaranteed under Article 41 of the Constitution.
  - vi. Damages for breach of the Claimant's right to fair administrative action guaranteed by Article 47 of the Constitution of Kenya.
  - vii. Damages for breach of the Claimant's legitimate and reasonable expectation
  - viii. General damages.
  - ix. Interest on all the damages payable to the Claimant.
  - x. Costs of this suit.
2. The Respondent entered an appearance on 5<sup>th</sup> May, 2021, and subsequently filed a Statement of Response to the claim dated 13<sup>th</sup> May, 2021, denying that the Claimant was unfairly terminated or that his rights were violated, and instead, avers that he was procedurally declared redundant.
  3. The Claimant's case was heard on 25<sup>th</sup> March, 2025, when he testified in support of his case, adopted his witness statement, and produced his documents as exhibits in the matter. The Respondent's case was subsequently heard on 14<sup>th</sup> October, 2025, when the Respondent presented Ms. Wandera Kweyu, its Head of People and Culture, to testify in support of its case. Ms. Kweyu adopted her witness statement and produced the Respondent's list and bundle of documents in support of their case.

4. Submissions were filed for both parties and have been duly considered.

### **The Claimant's Case**

5. The Claimant's case is that by an appointment letter dated 6th May, 2014, he was engaged by the Respondent with effect from 3rd June, 2014, to serve as a Flight Operations Officer reporting to the Manager, Operations support and at a monthly gross salary of Kshs. 100,000/=.
6. The Claimant states that he diligently and faithfully served the Respondent until on or about 1st November, 2020 when his contract of employment was unlawfully and unfairly terminated on account of purported redundancy. He avers that his last monthly salary as of October 2020 was Kshs.142,078.50/= (gross).
7. It is his case that he has filed this suit to challenge the unlawful termination of his employment on account of purported redundancy and breach of his fundamental rights. He states that by a letter dated 30<sup>th</sup> October 2020, the Respondent formally notified him of a redundancy exercise approved by its Board and implemented across the company, and that the letter stated that employee selection was based on seniority, skill, ability, and reliability.
8. The Claimant states that the letter went on to stipulate that following a review of his functional area, he was identified

for redundancy, and no suitable alternative role was available for his redeployment, and that his employment was set to terminate on 1st November 2020, subject to completing exit formalities, including clearance and handover of company property.

9. The Claimant states that his employment was thus terminated by the same letter dated 30<sup>th</sup> October, 2020.

10. It is the Claimant's case that the termination of his employment on account of the purported redundancy was manifestly unjustified, unlawful and unfair, and that the redundancy was not undertaken in good faith and cannot therefore stand the legal and constitutional muster considering the applicable provisions of both the Constitution and Employment Act, 2007.

11. The Claimant avers that the redundancy was not substantively justified in law, as the Respondents failed to demonstrate that it was genuine and valid. The Claimant argues that reliance on the effects of COVID-19 was improper, particularly given national efforts to preserve jobs, including the tripartite agreement of 20th April 2020 between the Government, trade unions, and employers, as well as public directives encouraging less drastic cost cutting measures.

12. It is his further contention that flight suspensions were lifted by July/August 2020, and that operations had resumed, and employees who had initially taken pay cuts were restored to

full salary, undermining claims of financial strain. He avers that the redundancy notice lacks transparency, citing vague, unspecified communications, thereby casting doubt on the genuineness and honesty of the justification.

13. The Claimant contends that the redundancy did not comply with Section 40 of the Employment Act 2007, and avers that he was given only one day's notice instead of the statutory 30 days, as the notice was issued on 30<sup>th</sup> October 2020 and the termination took effect on 1<sup>st</sup> November 2020.

14. It is his case that the notice also failed to provide for consultations, and the decision appeared predetermined, as he was invited to receive the letter through a meeting titled "CATCH UP."

15. The Claimant further states that the Respondent did not demonstrate compliance with the statutory selection criteria on skill, ability, reliability, and seniority, nor did it inform him of how his position was selected. He states that the failure to conduct consultations breached both Section 40 of the Employment Act and Article 13 of ILO Recommendation No. 166, thereby denying him an opportunity to discuss alternatives or mitigation measures.

16. It is his case that the redundancy was carried out in a degrading manner and in violation of Clause 15.3 of the Respondent's Human Resource Manual, which requires counselling, outplacement support, and prior group

communication. The Claimant asserts that he received no such support or prior communication and was not psychologically prepared for the redundancy.

17. The Claimant further avers that the redundancy also grossly breached his legitimate and reasonable expectations in that, being in an open-ended contract with no expectations of an abrupt end, he did not expect that his contract of employment would be terminated in the manner it was done.

18. The Claimant states that prior to being declared redundant, he was subjected to intimidation, victimization, and harassment by his supervisor and the Respondent's Human Resource Officer.

19. He avers that he was unfairly placed on a performance improvement plan despite never having been issued with a show cause notice for poor performance, and was subjected to discriminatory and frustrating treatment at work. It is his contention that these unlawful actions significantly contributed to the deterioration of his mental and physical health.

20. The Claimant states that his health deteriorated during his employment with the Respondent, and that he was diagnosed with depression, for which he continues to receive treatment. He avers that persistent, unsubstantiated accusations and pressure to resign by the

Human Resource Officer, followed by the redundancy, demonstrate that he was specifically targeted and that the Respondent acted in bad faith.

21. The Claimant avers that his selection for redundancy was driven by ulterior motives and extraneous considerations. He contends that after the redundancy, the Human Resource Officer unlawfully refused to sign his retrenchment claim form, as required by Heritage Insurance to facilitate repayment of his personal loan, further prejudicing him.

22. The Claimant avers that as a result of the Respondent's breach of his rights, he has, together with his family, continued to be subjected to untold financial hardship, sickness, torture, and embarrassment arising from the inability to satisfy his short and long term financial commitments.

23. The Claimant further states that the purported redundancy, violation of his right to human dignity, and the failure to pay his terminal dues breached his right to fair labour practice and fair administrative action as guaranteed under Articles 41 and 47 of the Constitution, respectively.

24. The Claimant states that he was paid Kshs.568,405.65/- as his terminal dues, comprising one month's salary in lieu of notice and severance pay, as shown by his final pay slip.

25. On cross-examination, the Claimant confirmed that

Covid.19 affected the sector he worked in, and that the Respondent's finances were affected. It is his testimony that he consented to the salary reduction as the Respondent was not in a position to pay the full amount.

26.The Claimant further confirmed that in his cadre, he was the only one declared redundant, but two pilots were also declared redundant.

27.The Claimant told the court that he was unfairly targeted by being placed on PIP, but that the PIP is not before the court, though its mention in email exchanges. The Claimant confirmed that he was paid terminal dues upon termination.

28.The Claimant further confirmed that forums with staff were held in September and October 2020, but the forums did not concern redundancy. He, however, confirmed, on re-examination, that a forum with staff regarding redundancy was held in October, 2020.

29.It is the Claimant's prayer that the Court allow his claim as drawn.

### **The Respondent's Case**

30.It is the Respondent's case that the Claimant was employed as a Flights Operation Officer vide a letter dated 6<sup>th</sup> May, 2014, and has been in the employ of the Respondent since then until his redundancy in November 2021.

31.The Respondent states that the employment contract permitted it to terminate the Claimant's services for any reason after issuing one (1) month's notice or paying to the Claimant one (1) month's salary in lieu of such notice.

32.It is the Respondent's case that the COVID-19 pandemic impacted all sectors, including the aviation sector in which the Respondent operates, with cessation of movement orders issued by the President at different times since the pandemic was first announced in the country on 12th March 2020, and which affected its revenue, and which fact the Claimant is alive to.

33.The Respondent states that at the onset of the pandemic, there was total closure of its businesses and subsequently a reduction in the number of flights, a reduction in the cost of flights as a result of which the costs of the business were increased significantly. It avers further that the pandemic led to the underutilisation of flights, which meant that the Respondent was accruing lease costs for each and every aircraft that was on hold and not being utilised, as well as accruing maintenance costs.

34.The Respondent states that it communicated with its employees through various means, including online staff forums, to update the employees on the general performance of the airline. It avers that it held an online staff forum in August 2020, during which it discussed the July performance with its employees, who were informed

that 3.5 aircraft were in idle capacity and that, from the 126-weekly target of the network, the Respondent only operated 62 weekly returns.

35. The Respondent states that it further informed its employees that the revenues for July 2020 were only 20% of the budget, which low budget had been attributable to low yields, load factor, utilization, and the general lack of demand.

36. It states that it informed its employees during the August 2020 online staff forum that if it was not able to attain 103 frequencies by September 2020, then both the payroll and staffing levels would be re-evaluated to match attainable operations and available funds.

37. The Respondent states that vide a letter dated 2nd September, 2020, it issued a notice to the Ministry of Labour and Social Protection, with the subject of the notice being 'Notice of intention to commence redundancy process'. It avers that the notice informed the Ministry of the pandemic's impact on its business and provided the reasons for the restructuring.

38. The Respondent avers that the notice communicated the decision of the Board of the Respondent to carry out a redundancy across the Company. The notice served as a formal notification that the Respondent will be commencing the redundancy process.

39. The Respondent states that on 8<sup>th</sup> October 2020, it held an online staff forum informing employees that although flight frequencies had increased, ticket prices were still being sold at Kshs.1,162 below the planned rate, resulting in yields below the budgeted target. It avers that employees were also informed that ten staff members had been released from regional workstations as part of a staff rationalization process.

40. The Respondent states that it further explained that rationalization had been minimized to preserve as many jobs as possible, and that the selection criteria applied across the organization included performance, disciplinary record, attendance and productivity, qualifications and versatility, and cultural fit and willingness to uphold the client's culture.

41. The Respondent states that the implementation of the rationalization was scheduled for October 2020. It avers that it conducted a webinar on management changes and redundancy preparedness for employees, including the Claimant.

42. The Respondent states that the employment contract expressly allowed it to terminate the Claimant's employment for any reason, provided that one month's notice was issued or one month's salary was paid in lieu of notice. It states further that Clause 15.3 of its Human Resource Manual, which formed part of the Claimant's

employment contract, authorized termination of employment on the grounds of redundancy.

43. The Respondent avers that the Claimant refused, declined, and/or neglected to complete the clearance process with the Respondent, thereby preventing the signing of the claim forms. The Respondent maintains that it had valid and lawful grounds to terminate the Claimant's employment contract.

44. The Respondent states that on 30<sup>th</sup> October 2020, it issued the Claimant with a notice of redundancy informing him that the pandemic had severely affected the airline and that the Board had approved redundancy measures across its network. The Claimant was further advised that, in selecting employees for redundancy, the airline had taken into account seniority, as well as each employee's skill, ability, and reliability.

45. The Respondent avers that the Claimant was further informed that the redundancy decision was based on performance, disciplinary record, attendance, individual productivity, qualifications, versatility, cultural fit, and willingness to uphold the airline's culture. That he was further advised that, upon further review, there was no comparable role or vacancy available for internal redeployment.

46. The Respondent avers that the Claimant was informed that his terminal dues comprise of salary and applicable

allowances up to and including 31<sup>st</sup> October 2020, severance pay at the rate of fifteen days for each completed year of service, accrued leave as at 31<sup>st</sup> October 2020, one month's salary in lieu of notice in accordance with his employment contract, provident fund contributions in line with the Provident Fund Rules and medical cover up to 31<sup>st</sup> December 2020 for himself and any eligible dependents on record as at 31<sup>st</sup> October 2020.

47. The Respondent states that on 30<sup>th</sup> October 2020, the Claimant acknowledged that he had read, understood, and accepted the redundancy notice issued to him.

48. The Respondent states that the Claimant was paid his terminal dues, and this assertion is supported by the court record.

49. The Respondent denies the allegations that, prior to the redundancy, the Claimant was intimidated, victimized, or harassed by his supervisor and the Human Resource Officer, terming the claims untrue and unsubstantiated. The Respondent further states that it did not discriminate against the Claimant and that he was fully aware of the criteria applied in selecting him for redundancy, as clearly set out in the letter dated 30<sup>th</sup> October 2020.

50. It is the Respondent's position that there existed a valid and fair reason for the termination, grounded in its commercial and operational requirements, and that the termination of

the Claimant's employment on account of redundancy was justified.

51. Accordingly, the Respondent maintains that the Claimant's employment was terminated lawfully and in full compliance with the applicable procedural requirements.

52. On cross-examination, RW1 confirmed that the Claimant was issued a redundancy notice dated 30<sup>th</sup> October, 2020, and which was effective 1<sup>st</sup> November, 2020. It is her testimony that flight rates had not recovered by the time the redundancy was declared.

53. It is her evidence that the Respondent has a standard discharge form, but is unsure whether the Claimant executed the form. She avers that the form provides that an employee will not sue the employer upon discharge.

54. RW1 confirmed that the Claimant was paid his terminal dues upon receipt of a demand letter from his lawyers. She avers that an email sent to the Respondent indicated that the Claimant was being treated for anxiety and depression, but she could not confirm that it was related to conditions at his work.

55. RW1 further confirmed that the Claimant started working in December 2017 and that the first breakdown he had was in 2017.

56.The witness in re-examination told the court that the Claimant was seen at the clinic on 21<sup>st</sup> February, 2020, and that he had fully recovered by the time of the redundancy.

57.The Respondent finally prays that the Claimant's claim be dismissed with costs.

### **Analysis and Determination**

58.Having carefully considered the pleadings, the evidence adduced, and the submissions of the parties, the Court distils the following issues for determination:

- i. Whether the termination of the Claimant's contract by redundancy was lawful and fair.
- ii. Whether the Claimant's constitutional rights under Articles 41 and 47 were violated.
- iii. Whether the Claimant is entitled to the remedies sought.

### **Whether the termination of the Claimant's contract by redundancy was lawful and fair**

59.Section 40(1) of the Employment Act sets out 7 steps that an employer must adhere to when considering a redundancy as follows: -

***"An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions:-***

***(a)where the employee is a member of a trade union, the employer notifies the***

***union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy:***

***(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;***

***(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;***

***(d) where there is in existence a collective agreement between an employer and a trade union setting out 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.**

60. As a general rule, redundancy is a legitimate ground for terminating an employment relationship, as long as the employer can show that actual redundancy was the reason for the termination. The role of the court is to balance commercial realities with statutory and constitutional safeguards meant to protect employees from arbitrary loss of livelihood.

61. Sections 43 and 45 of the Employment Act, 2007, demand that an employer demonstrate valid and fair reasons for termination, which requirements apply even in a redundancy situation.

62. Section 2 of the same Act defines redundancy as loss of employment through no fault of the employee, arising from operational requirements of the employer. The Court of Appeal in ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (2014) KECA 404 (KLR)*** affirmed that redundancy is a legitimate managerial prerogative provided it is grounded in genuine operational

requirements and not used as a disguise for ulterior motives.

63. It is public knowledge that the aviation sector was one of the hardest hit by the COVID-19 pandemic. The Claimant himself conceded on cross-examination that the sector and the Respondent's finances were adversely affected, and that salary reductions had been implemented with employees' consent.

64. It is also not disputed that the Respondent experienced reduced flight frequencies, depressed yields, and idle aircraft capacity owing to the Covid.19 pandemic.

65. In my considered view, while the Claimant argued that operations had resumed between July and August 2020, partial resumption does not equate to financial recovery. The law does not require an employer to wait until insolvency; it only demands a genuine operational reason for redundancy.

66. In the premise, and guided by the evidence before the court, I am persuaded that the Respondent has established a valid commercial rationale for restructuring, and the Claimant's assertion that the redundancy was a sham is not supported by evidence.

67. I therefore find the redundancy substantively fair and lawful.

68. On the question of procedural fairness, even where redundancy is substantively justified, strict compliance with Section 40 of the Employment Act is mandatory. The Court of Appeal in Thomas **De La Rue (K) Ltd v David Opondo Omutelema** [2013] KECA 492 (KLR) held that redundancy must comply strictly with statutory requirements, particularly notice and consultation.

69. Section 40 specifically requires that one month's prior written notice be given to the employee and the labour officer, that consideration of seniority, skill, ability, and reliability in selection be adhered to, and that severance pay and other terminal dues be paid to the affected employee.

70. The evidence before court shows that the Claimant was issued a notice of redundancy dated 30<sup>th</sup> October 2020, which was effective 1st November 2020. This, without doubt, confirms the Claimant's assertion that he was only given a one day notice.

71. Further, although the Claimant was paid one month's salary in lieu of notice, payment in lieu does not, in my view, cure failure to issue the statutory one month redundancy notice required under Section 40(1)(a) of the Employment Act.

72. On the requirement to consult, redundancy consultations must be meaningful and aimed at exploring alternatives to the redundancy, and not merely informational.

73. The Respondent's assertion is that it demonstrated that general staff forums were held, and that the Claimant attended. The Court of ***Appeal in Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others*** (supra), emphasized that consultation is a critical component of a fair redundancy process.

74. While the Respondent notified the Ministry of Labour on 2<sup>nd</sup> September 2020 of the intended redundancy, there is no evidence of individualized consultation with the Claimant prior to the decision taking effect. What the Respondent communicated in its letter of 30<sup>th</sup> October 2020 was a concluded decision.

75. In the circumstances, I find and hold that the Respondent fell short of the procedural threshold required under Section 40 of the Employment Act, and which renders the redundancy unprocedural and the termination unfair.

**Whether the Claimant's Constitutional rights were violated**

76. The Claimant alleged that prior to being declared redundant, he was subjected to intimidation, victimization, and harassment by his supervisor and the Respondent's Human Resource Officer. It is his assertion that he was unfairly placed on a performance improvement plan (PIP) despite never having been issued a show cause notice for poor performance, and that he was subjected to discriminatory and frustrating treatment at work.

77. He contends that these unlawful actions significantly contributed to the deterioration of his mental and physical health.

78. Allegations of bad faith must, in my view, be proved on a balance of probabilities. For starters, the PIP referred to was not produced in evidence before this court. The Court in ***Judicial Service Commission v Gladys Boss Shollei & another*** held that constitutional violations must be specifically pleaded and strictly proved.

79. The Claimant's evidence on harassment and discrimination was largely uncorroborated. Further, while the Respondent did not deny that the Claimant suffered health challenges, which are unfortunate and deserving of empathy, no evidence was led to show a link between the illness and the Respondent's unlawful conduct.

80. On the evidence presented, I am unable to find that Articles 41 and 47 were independently violated beyond the procedural shortcomings already addressed under the Employment Act.

### **Whether the Claimant is entitled to the remedies sought**

81. The court held that the Respondent fell short of the procedural threshold required under Section 40 of the Employment Act, in respect of notice and meaningful consultations, rendering the redundancy unprocedural and the termination unfair.

82.This finding entitles the Claimant to an award of compensation for the unfair termination pursuant to Sections 49 and 50 of the Employment Act.

83.Considering that the termination was for no fault of the employee/Claimant, and further considering that the same was substantively justified, I deem an award of five (5) months' salary sufficient compensation for the unfair termination.

84.The allegations of discrimination, harassment, and constitutional violations were not proved to the required standard. The claims for general damages and declarations arising from these breaches are therefore declined.

85.The Claimant also sought that the Respondent be compelled to sign his retrenchment cover to enable payment of his loans by the insurance company. The Respondent's only objection in this respect is that the Claimant did not sign a discharge form.

86.The Claimant is hereby directed to clear with the Respondent to enable it sign his retrenchment cover.

87.In conclusion, the Claimant's claim succeeds, and the following reliefs are granted:-

- a) A declaration that the termination of the Claimant's employment by redundancy is unlawful and unfair.

- b) That the Respondent shall pay the Claimant five (5) months' salary as compensation for the unfair termination at Kshs.710,392.50/-
- c) That the Respondent shall sign the Claimant's retrenchment cover within 30 days of this Judgment.
- d) That the Respondent shall bear the costs of the suit and interests thereon from the date of this Judgment until payment in full.

88.It is so ordered.

**DATED, SIGNED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 5<sup>TH</sup> DAY OF MARCH, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Mugania h/b for Mr. Ochiel Dudley for the Claimant

Ms. Leyla Ahmed present for the Respondent

Ms. Esther S - CA