

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

CAUSE NO. E935 OF 2024

DAVID NJUGUNA

.....CLAIMANT

VERSUS

SPIRAX SARCO EAST AFRICA LIMITED.....

.....RESPONDENT

JUDGMENT

Introduction

1. Before the Court is the Claimant's Memorandum of Claim dated 23rd October, 2024, and filed on 21st November, 2024, wherein the Claimant seeks the following reliefs as against the Respondent: -

- a) Unpaid and outstanding house allowance
Kshs.2,194,656
- b) Unutilized leave days Kshs.1,270,299
- c) Compensation for unfair termination Kshs.6,955,310
- d) Damages for violation of constitution right
Kshs.5,000,000
- e) Costs of this suit
- f) Interest on (a) to (d) at court rates till payment in full
- g) Any other relief the court may deem fit and just to award

2. The Respondent filed an Amended Memorandum of Defence dated 19th March, 2025, in response to the Claimant's claim.
3. The Claimant's case was heard on 1st October, 2025, when the Claimant (CW 1) testified in support of his case. He adopted his witness statement dated 23rd October, 2024, and produced his list and bundle of documents of the same date as exhibits in the matter, and were marked as Claimant's exhibits Nos. 1-14.
4. The Respondent's case was heard on even date when the Respondent's witness (RW1) Mr. James Mburu testified in support of the Respondent's case. He adopted his witness statement dated 4th March, 2025, and produced his list and bundle of documents dated 24th January, 2025, and a further list of documents dated 19th March, 2025, as exhibits in the matter and were marked as Respondent's exhibits Nos. 1-18.
5. Submissions were received from both parties.

The Claimant's case

6. The Claimant's case is that he was employed by the Respondent as a Finance Manager pursuant to a contract of employment dated 3rd December 2015, which took effect on 4th January 2016. He avers that at the time of employment, he earned a basic salary of Kshs. 235,000 per month, which was later revised to Kshs. 504,008 per month by the time his employment was terminated.

7. The Claimant avers that in January 2017, the Respondent established a subsidiary company in Kenya known as Spirax Sarco East Africa Limited and proposed changes to his employment contract. He states that he continued to serve as Finance Manager, reporting to the General Manager, with responsibilities outlined in his job description.
8. The Claimant contends that he served the Respondent diligently from the commencement of his employment until 20th June 2024, when the Respondent issued him with a notice of redundancy and informed him that his position had been declared redundant following restructuring arising from the company's growth and the introduction of complex reporting requirements associated with the Spirax Group being part of the FTSE 100 and the implementation of G3 compliance controls.
9. The Claimant disputes the justification for the redundancy and asserts that the reasons advanced by the Respondent were unsatisfactory. He states that the G3 controls were introduced in 2022 and that by 2023, he had successfully completed all the required controls.
10. It is his further case that by May 2024, he had submitted all the required controls for that year within the stipulated

timelines. He maintains that the alleged business growth and restructuring did not warrant the abolition of his position and that, if anything, the growth should have resulted in his promotion or improved terms of service.

11. The Claimant further avers that the Respondent advertised a position of Finance Partner through a recruitment agency known as Summit Recruitment Firm, with responsibilities substantially similar to those he had been performing as Finance Manager, including handling financial matters for several countries within the region.

12. He states that the Respondent subsequently hired a Finance Partner who reported to work on 26th August 2024, which, in his view, demonstrates that the redundancy was merely a pretext to terminate his employment.

13. The Claimant contends that the Respondent acted in bad faith, maliciously, and with ill intention, as he was not given a meaningful opportunity to discuss the alleged redundancy, nor was the statutory procedure for redundancy followed.

14. He also avers that no other position within the Respondent's organization was declared redundant and that he had not

faced any disciplinary or performance issues during his employment.

15. It is his position that throughout his employment, he was not provided with housing or paid a house allowance, which he argues was in breach of the Employment Act, 2007.

16. The Claimant alleges that the Respondent acted in bad faith, with malice and ill intention in declaring his position redundant. In particular, he contends that the Respondent failed to accord him a proper opportunity to discuss the alleged redundancy or to explain how the company's growth necessitated restructuring of its operations.

17. He maintains that the restructuring ought to have resulted in positive changes, such as promotion or enhanced responsibilities, rather than termination.

18. The Claimant further asserts that the Respondent failed to comply with statutory requirements and principles of good industrial relations when effecting the redundancy.

19. He avers that the Respondent violated the provisions of the Employment Act, 2007 and International Labour Organization Convention No. 158, particularly by failing to

properly communicate the impending redundancy in writing prior to the termination and by failing to give him adequate notice or counselling to enable him consider alternative options.

20.The Claimant states that the Respondent failed to provide valid and justifiable grounds for the termination, as the reasons given did not amount to a genuine redundancy or any other lawful basis for termination.

21.He further contends that despite alleging positive business growth, the Respondent did not evaluate the possibility of offering him alternative employment within the organization, notwithstanding his competence and over eight years of service.

22.On cross-examination, the Claimant told the court that prior to termination by redundancy, he was invited to a meeting by the Respondent on 24th June, 2024, to discuss the decision by the Company to declare his position redundant.

23.The Claimant further confirmed that his terminal dues were partially paid.

24.The Claimant's prayer is that the Court grant the reliefs sought in his memorandum of Claim.

The Respondent's Case

25. In Response to the claim, the Respondent avers that the Claimant was initially employed by its parent company, Spirax-Sarco Limited, as a Finance Manager under a contract dated 3rd December 2015, and was later transferred to the Respondent, Spirax Sarco East Africa Limited, by a letter dated 16th January 2017 to continue serving in the same capacity.
26. The Respondent avers that the Claimant's role was largely focused on Kenya, with limited support to other countries. It avers that his duties included supporting the company's business growth and ensuring compliance with applicable legal and regulatory frameworks.
27. The Respondent avers that in 2024 it undertook a restructuring of its Finance Department due to business expansion and changing market realities.
28. It states that the regulatory and compliance framework had become increasingly complex, particularly with the introduction of new internal reporting mechanisms such as G3 controls and expanded operations across several East African jurisdictions.

29. It avers further that the company required a more advanced role of Finance Partner, with significantly broader responsibilities and higher levels of expertise and experience than those required for the position of Finance Manager.

30. The Respondent maintains that the Claimant did not possess the experience, knowledge, and capability required for the new role, and therefore his position of Finance Manager was declared redundant.

31. It is the Respondent's case that on 20th June 2024, it issued the Claimant with a notice of intention to declare redundancy and also notified the Ministry of Labour as required by law. The Respondent further states that it held meetings with the Claimant to discuss the proposed redundancy and to explore possible alternatives.

32. The Respondent further states that on 19th July 2024, the Claimant was issued with a notice of termination on account of redundancy, and paid all his terminal dues, amounting to Kshs.7,669,524, comprising salary and benefits up to 22nd July 2024, payment for 10.5 accrued leave days, 3 months' salary in lieu of notice, severance pay for eight completed years of service, and housing allowance provision accrued under the employment contract.

33. The Respondent states that the Claimant was also issued a certificate of service and a confirmation of payment of his terminal dues. It contends that there were no suitable alternative positions available in the organization where the Claimant could reasonably have been placed.
34. The Respondent denies the Claimant's allegations that the redundancy was malicious or undertaken in bad faith and asserts that the process was conducted lawfully, fairly, and in compliance with statutory requirements, including consultation and notice.
35. The Respondent also disputes the Claimant's assertion that his performance had been satisfactory, stating that the Claimant had performance challenges, including failing to complete certain G3 controls within the required timelines and standards, which required intervention from other finance colleagues.
36. Further, the Respondent denies the Claimant's monetary claims and states that the claim for house allowance is unfounded since Kshs.3,595,500 was already paid to him as part of his redundancy package, and the claim for leave pay of Kshs. 1,270,299 is unsupported as the Claimant was only entitled to Kshs. 176,400 for 10.5 accrued leave days, which

was paid, that the claim for 12 months' compensation for unfair termination is baseless because the redundancy process was lawful and justified, and finally, the claim for Kshs. 5,000,000 for violation of constitutional rights lacks legal and factual basis as the Claimant suffered no discrimination or violation of labour rights.

37. On cross-examination, the Respondent's General Manager affirmed that the Claimant was involved in G3 controls and could have been the best person to handle the new position.

38. Further, he confirmed that the Claimant, as part of his job, was serving other countries as well. The witness further told the court that the Claimant's position no longer exists, and that what currently exists is supporting staff at the finance office and a General Manager based in South Africa.

39. RW1 further told the court that he could not confirm that the Claimant utilized all his leave days and that what was paid at termination was 10.5 days of leave not taken.

40. The Respondent's witness further told the court that there were critical gaps which made the Claimant incapable of taking up the new position, such as his inability to generate

exceptional reports and failure to open regional bank accounts in time.

41. In re-examination, the witness told the court that the Claimant was not replaced as the position no longer existed.

42. The Respondent maintains that the Claimant has already received all his lawful dues and is not entitled to any further payments.

43. It consequently prays that the Claim be dismissed with costs.

The Claimant's Submissions

44. The Claimant submits that he was employed by the Respondent as a Finance Manager under a written contract dated 3rd December 2015, which took effect on 4th January 2016, and that he served the Respondent diligently until 20th June 2024, when his employment was terminated on grounds of redundancy.

45. The Claimant submits further that his termination was substantively unfair and contrary to section 45 of the Employment Act, 2007, which provides that a termination is

unfair where the employer fails to prove that the reason for termination is valid and fair. According to the Claimant, the Respondent failed to provide any valid or fair reason to justify the declaration of redundancy.

46. The Claimant further submitted that the decision to declare his position redundant came as a shock, as there had been no concerns regarding his performance or discipline.
47. He argued that the Respondent's business had actually grown, and therefore the logical response would have been promotion or improved remuneration rather than termination.
48. The Claimant maintained that the alleged redundancy was unjustified as he had successfully complied with the Respondent's regulatory requirements, including the G3 controls introduced in 2022, completing all required controls in 2023 and submitting those for 2024 within the required timelines.
49. It is the Claimant's submission that the redundancy process was not genuine as the Respondent had already predetermined the outcome. He relied on the wording of the notice of intended redundancy, which stated that the company would declare his position redundant effective 20th July 2024, arguing that the decision had already been made before any consultation took place.

50. The Claimant contended that this rendered the consultation process a mere formality and violated the legal requirement for genuine consultation in redundancy situations. In support of this argument, the Claimant relied on the decisions in ***Mwarangu v Cathmed Limited (Cause E003 of 2024) [2025] KEELRC 2681 (KLR) (30 September 2025)*** and the ***German School Society & another v Ohany & another [2023] KECA 894 (KLR)***.

51. Further, the Claimant submitted that the termination was procedurally unfair as the Respondent failed to comply with the mandatory procedural safeguards under sections 41 and 43 of the Employment Act, 2007. He argued that the Respondent failed to explain the reasons for termination in a meaningful manner, failed to accord him an opportunity to make representations, and failed to prove the reasons for termination as required by law.

52. The Claimant also argued that the Respondent acted in bad faith by advertising a position known as “Finance Partner” in March 2024, which allegedly carried responsibilities similar to those performed by the Claimant as Finance Manager. According to the Claimant, this demonstrated that the redundancy was merely a disguise to remove him from employment rather than a genuine restructuring exercise.

53. On the second issue, the Claimant submitted that he was entitled to the reliefs sought in the claim. First, on the claim for unpaid house allowance, the Claimant submitted that the

Respondent breached section 31 of the Employment Act, 2007, which obligates an employer either to provide housing to an employee or to pay a housing allowance.

54. On this point, the Claimant argued that he was neither provided with housing nor paid the statutory housing allowance during the period of his employment and that his salary was not expressed to be a consolidated salary inclusive of house allowance.
55. He further submitted that the housing allowance should be calculated at 15% of the basic salary as provided under the Regulation of Wages (General) Order. Although the Respondent paid Kshs. 3,595,500 as housing allowance upon termination, the Claimant contended that this computation was based on the initial salary and failed to account for subsequent salary increments.
56. According to the Claimant's tabulation, the correct total house allowance payable was Kshs. 5,790,155, leaving a balance of Kshs. 2,194,656 due to him. In support of this claim, the Claimant relied on ***Andrew Waithaka Kiragu v Grain Pro Kenya Inc Ltd [2017] eKLR.***
57. The Claimant further submitted that he was entitled to payment for untaken leave days. He relied on section 28 of the Employment Act, 2007, which entitles an employee to at least twenty-one days of annual leave per year, and section 40(1)(g) of the Act, which requires an employer to pay the cash equivalent of accrued leave upon termination.

58. The Claimant contended that the Respondent's tabulation of Kshs.176,400 for 10.5 leave days was incorrect, and that he had accumulated 115.5 leave days, amounting to Kshs.1,270,299. He argued that the Respondent bore the statutory duty under section 74 of the Employment Act to keep employment records and prove that leave had been taken.

59. The Claimant further submitted that he was entitled to compensation for unfair termination under section 49(1)(c) of the Employment Act, 2007, which permits the Court to award up to twelve months' salary where termination is found to be unfair. Considering his length of service and the senior capacity in which he served, the Claimant urged the Court to award the maximum compensation of twelve months' salary. In support of this submission, the Claimant relied on *Abisalom Ajusa Magomere v Kenya Nut Company Limited* [2014] eKLR, where the Court awarded twelve months' salary as compensation after finding that the termination was substantively and procedurally unfair.

60. In a nutshell, the Claimant submitted that the Respondent violated his constitutional right to fair labour practices under Article 41(1) of the Constitution of Kenya, 2010, by wrongfully terminating his employment. The Claimant therefore sought general damages of Kshs. 5,000,000 for violation of his constitutional rights, urging the Court to grant the relief sought in the Claim.

The Respondent's submissions

61. The Respondent submitted that the decision to declare the Claimant's position redundant was justified as it resulted from a legitimate restructuring of the Respondent's finance function.
62. It was submitted that the Respondent introduced a new position of Finance Partner following the expansion of its business operations and the increasing complexity of regulatory and compliance requirements across multiple jurisdictions in East Africa. According to the Respondent, the new role required broader expertise in cross-border compliance, tax reporting, and regulatory oversight, which significantly differed from the Claimant's role as Finance Manager.
63. The Respondent further submitted that the Claimant admitted during cross-examination that his job description did not involve responsibilities in other jurisdictions and that he did not possess some of the qualifications required for the Finance Partner role. It was therefore contended that the abolition of the Claimant's position was a legitimate operational decision aimed at improving efficiency and avoiding duplication of roles.
64. In support of the employer's prerogative to restructure its business, the Respondent relied on ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others***, where the Court held that redundancy is a lawful

ground for termination if based on operational requirements of the employer.

65. The Respondent submitted that the redundancy process complied with Section 40(1) of the Employment Act. It was argued that the Claimant was issued with a notice of intention to declare his position redundant on 20th June 2024 and that the local labour office was simultaneously notified, thereby meeting the statutory requirement of one month's notice.
66. It was further submitted that the notice invited the Claimant to participate in consultations during the notice period and that meetings were held on 20th June and 24th June 2024 to discuss the proposed redundancy. According to the Respondent, the Claimant declined to attend further consultations despite being invited.
67. It was also submitted that the Respondent considered the Claimant's skill, ability, and reliability against the requirements of the new role and found that he did not meet the necessary qualifications. The Respondent relied on ***Thomas De La Rue (K) Ltd v David Opondo Omutelema***, where the Court of Appeal held that employers must give written notice to both the employee and the labour officer prior to redundancy, and ***Gladys Muthoni Mwangi & 20 Others v Barclays Bank of Kenya Limited***, which emphasized that consultation with employees is a key component of a lawful redundancy process.

68. On whether the Claimant was entitled to the reliefs sought, the Respondent disputed the Claimant's entitlement for reasons that his employment was lawfully terminated through redundancy, and he was paid all his terminal dues totaling Kshs. 7,669,524. The Respondent stated that this amount included salary up to the date of termination, three months' salary in lieu of notice, severance pay for eight completed years of service, payment for 10.5 accrued leave days, and housing allowance.
69. The Respondent argued that the claim for additional house allowance amounting to Kshs. 2,194,656 lacked legal basis since the Claimant had already been paid Kshs. 3,595,500, and that any claim relating to house allowance before 2021 was time-barred under section 90 of the Employment Act. In support of the limitation argument, the Respondent relied on *Cotec Security Group Ltd v Kenya National Private Security Workers Union* and *Trevar Marambe v For You Chinese Restaurant*, where the courts held that employment claims brought after three years are statute-barred.
70. Regarding the claim for leave pay of Kshs. 1,270,299, the Respondent submitted that the Claimant only had 10.5 outstanding leave days at the time of termination, which were paid at Kshs. 176,400.

71. It was argued that the Claimant's allegation that he had accumulated leave for several years was untenable because his employment contract required employees to take annual leave and did not permit indefinite accumulation.
72. The Respondent further submitted that the Claimant failed to provide evidence that the alleged accumulated leave had been approved or recorded in the company's financial records.
73. The Respondent submitted that the Claimant was not entitled to compensation for unfair termination or damages for violation of constitutional rights since the redundancy complied with the Employment Act.
74. The Respondent finally urges the Court to dismiss the claim with costs.

Analysis and Determination

75. Upon careful consideration of the pleadings, the witnesses' testimonies, and the parties' submissions, the following issues crystallize for determination: -
- i. Whether the Claimant's termination on account of redundancy was lawful and fair.
 - ii. Whether the Claimant is entitled to the remedies claimed
 - iii. Whether the Claimant is entitled to damages for constitutional violations.

Whether the Claimant's termination on account of redundancy was lawful and fair

76. The parties herein are in agreement that the Claimant's termination was for reason of redundancy. Redundancy procedures are governed by Section 40(1) of the Employment Act, which requires that one month's written notice be given to the employee and the Labour Officer, consultation with the employee on the need to declare redundancy and possible mitigation, consideration of the selection criteria taking into account the employee's skills, ability, and reliability, and payment of severance pay and any other statutory dues.

77. In ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR***, the Court of Appeal emphasized that compliance with Section 40 is mandatory.

78. 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.

79. The Respondent's position is that it did issue notice to the Claimant of its intention to declare redundancy on 20th June 2024, and that the Labour Office was similarly

notified, and meetings to discuss the redundancy were held on 20th June and 24th June 2024.

80. On his part, the Claimant argues that the notice issued to him predetermined the outcome, having stated that the position would be redundant effective 20th July 2024.

81. The record shows various correspondences between the parties on the redundancy, including proof that indeed notices were issued to both the Claimant and the labour office.

82. On the criterion applied, it is evident that only one position was declared redundant. In such a scenario, courts have held that selection criteria may not apply since there was no selection pool. In ***Nyagah v Finn Church Aid Kenya (2023) eKLR***, the court found that the Claimant held a unique administrative position, hence selection criteria did not arise.

83. Further, in such a situation, the employer mainly needs to prove that the position in issue was abolished, that the redundancy was genuine, and that the legal procedure was followed for the redundancy to pass muster.

84. The issue of the criterion followed in this case, therefore, does not arise on the simple basis that the only position declared redundant was held by one individual, the Claimant herein.

85. On consultation, the notice of redundancy issued to the Claimant was dated 20th June, 2024, and the same was to take effect on 20th July, 2024. There is no doubt that the Respondent announced the redundancy as a final decision without discussion, as consultations appear to have occurred only after the decision had already been made. The purported consultations were thus merely a notice rather than a dialogue.

86. In the premises, I find and hold that termination of the Claimant's employment on account of redundancy does not meet the requirements of Section 40 of the Employment Act.

87. I therefore rule that the termination was procedurally unfair.

88. On whether the redundancy met the substantive fairness test, Section 45 of the Employment Act, 2007, provides that termination is unfair where the employer fails to prove a valid reason for the termination, and that the reason is fair and related to operational requirements of the employer.

89. Redundancy is recognized as a legitimate ground for termination under section 2 of the Employment Act. The Court of Appeal in ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others (supra)*** held that: -

“An employer has the managerial prerogative to restructure its business and declare positions redundant, provided the decision is based on genuine operational requirements and is not a disguise for unfair termination.”

90. Similarly, in ***Thomas De La Rue (K) Ltd v David Opondo Omutelema (supra)***, the Court of Appeal stated that redundancy must be genuine and not a sham designed to remove a particular employee.

91. The Respondent asserts that its finance function was restructured, and a new role of Finance Partner with broader regional responsibilities was created. It further contends that the Claimant lacked the expertise required for the new role.

92. The Claimant, on his part, produced evidence that the new Finance Partner role had responsibilities substantially similar to his previous role. Further, RW1 admitted on cross-examination that the Claimant was involved in G3 compliance controls, and he could have been the best person to handle the new position.

93. RW further admitted that the Claimant supported other countries, contradicting the Respondent’s assertion that his work was limited to Kenya. The Claimant testified that a Finance Partner reported to work in August 2024, shortly

after his termination, and the Respondent did not controvert this assertion.

94. Courts have consistently held that where an employee is replaced shortly after redundancy, the redundancy may be a disguised termination. In ***German School Society & Another v Ohany & Another [2023] KECA 894 (KLR)***, the Court of Appeal held that redundancy cannot be genuine where the employer abolishes a role only to recreate a substantially similar one immediately thereafter.

95. Further in ***Mwarangu v Cathmed Limited [2025] KEELRC 2681 (KLR)***, it was held that redundancy is invalid where the evidence shows the position continued to exist in substance.

96. Given the similarity between the Finance Manager role that was held by the Claimant and the Finance Partner role that was newly established, coupled with the Respondent's admission regarding the Claimant's competence, and the subsequent recruitment into a closely similar role, I am led to conclude that the Respondent has failed to demonstrate that the Claimant's position genuinely became redundant.

97. In the circumstances, I find and hold that the redundancy does not meet the substantive fairness test.

Whether the Claimant is entitled to the remedies sought

House Allowance

98. Section 31 of the Employment Act requires an employer to either provide housing or pay a housing allowance. Where salary is not consolidated, courts may award a housing allowance.

99. In **Andrew Waithaka Kiragu v Grain Pro Kenya Inc Ltd [2017] eKLR**, the Court held that failure to provide housing or pay housing allowance entitles the employee to compensation.

100. The Respondent's position is that the Claimant was already paid Kshs 3,595,500 on account of house allowance, and that claims dating back to before 2021 are time barred under Section 90 of the Employment Act.

101. The Court of Appeal in **Cotec Security Group Ltd v Kenya National Private Security Workers Union [2018] eKLR** confirmed that employment claims older than three years are statute barred.

102. The Claimant has not shown that the calculations in respect of the house allowance paid were erroneous. Further, since payment has already been made and earlier claims are time-barred, the additional claim has no basis and it fails.

Leave Pay

103. Under Sections 28 and 74 of the Employment Act, employees are entitled to annual leave, and employers are obligated to keep leave records. In **Hesbon Ngaruiya**

Waigi v Equatorial Commercial Bank Ltd [2013]

eKLR, the Court held that where an employer fails to produce leave records, the employee's claim may be accepted.

104. RW1, on cross-examination, admitted that he could not confirm whether the Claimant utilized all leave days. He however confirmed that the Respondent paid the Claimant Kshs.176,400 on account of 10.5 outstanding leave days at the time of termination.

105. From the Claimant's evidence, it is clear that in the last three years to termination, he had a total of 15 outstanding leave days, for which the Respondent has made payment for 10.5 days, leaving only 4.5 days.

106. The Claimant is thus in the circumstances entitled to payment for the 4.5 leave days not utilized, and this claim thus succeeds to that extent.

Compensation for unfair termination

107. Sections 49 and 50 of the Employment Act empower the Court to award up to 12 months' salary as compensation for unfair termination.

108. In ***Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR***, the court pointed out that an award of the maximum of 12 months' pay must be based on sound judicial principles, and that the trial judge must

justify or explain why a Claimant is entitled to the maximum award.

109. Taking into account the factors under Section 49(4), specifically the Claimant's length of service, his conduct, and the circumstances of the termination of his employment, I deem an award of 8 months' salary sufficient compensation for the unfair termination.

Whether the Claimant is entitled to damages for constitutional violations

110. The Claimant seeks Kshs 5,000,000 for violation of Article 41. It is now settled that where a dispute is adequately addressed under the Employment Act, constitutional damages should not be awarded. In ***Environmental Public Health Association of Kenya (EPHAK) v Public Service Commission & 2 Others [2019] eKLR***, the Court held that employment disputes should ordinarily be resolved under the statutory framework rather than through constitutional litigation. Further, in ***Anarita Karimi Njeru v Republic [1979] eKLR***, the court held that constitutional violations must be pleaded with precision.

111. The Claimant did not demonstrate a distinct constitutional violation beyond unfair termination, which has been addressed and remedies awarded under the Employment Act, 2007.

112. This claim thus lacks merit and is dismissed.

113. In whole, the Claimant's claim succeeds and orders granted as follows:-

- a) A declaration that the termination of the Claimant's employment on account of redundancy is unlawful and unfair.
- b) That the Respondent shall pay the Claimant eight (8) months' salary as compensation for the unfair termination at Kshs. 4,636,873/-
- c) That the Respondent shall pay the Claimant in lieu of 4.5 outstanding leave days at Kshs. 73,102.50/-
- d) The Respondent shall bear the costs of the suit and interest from the date of this judgment until payment in full.

114. Judgment accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 12TH DAY OF MARCH, 2026.**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Acholla h/b for Mr. Nyasimi for the Claimant

Mr. Wasonga present for the Respondent

Ms. Esther S- C/A