



REPUBLIC OF KENYA



**Fawell v Mgh North Support Services Limited (Cause E151 of 2025)  
[2026] KEELRC 569 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 569 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E151 OF 2025  
SC RUTTO, J  
FEBRUARY 27, 2026**

**BETWEEN**

**OMAR FAWELL ..... CLAIMANT**

**AND**

**MGH NORTH SUPPORT SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Through a Statement of Claim dated 26<sup>th</sup> February 2025, the Claimant avers that he was employed by the Respondent as a CVM Outbound Optimization Manager with effect from 1<sup>st</sup> January 2021. He states that he performed his duties diligently and industriously, resulting in an increase in his salary from Kshs 578,566.00 to Kshs 595,923.00.
2. The Claimant contends that on 21<sup>st</sup> June 2021, he received a notification of redundancy which, in his view, amounted to a termination, as it conveyed the Respondent's decision to end his employment effective 30<sup>th</sup> June 2022, providing him with barely one week's notice.
3. The Claimant holds that his employment was terminated unfairly and unlawfully.
4. He further asserts that the Respondent provided erroneous information in his P9 form, resulting in additional tax liabilities. He avers that the Respondent failed, neglected, or refused to remit taxes amounting to Kshs 597,122.10 to the Kenya Revenue Authority (KRA), causing him economic hardship as he had to incur expenses to settle the outstanding tax.
5. In light of the foregoing, the Claimant seeks the following reliefs against the Respondent:
  - a. A declaration be and is hereby issued that the termination of the claimant's employment was unlawful and unfair.



- b. Compensation for wrongful, unfair and illegal termination amounting to twelve (12) months' salary of Kenya Shillings Seven Million One Hundred and Fifty-One Thousand and Seventy-Six (Kshs.7,151,076)
  - c. Payment of Kenya Shillings Five Hundred and ninety-five Thousand, Nine Hundred and Twenty-Three (Kshs.595,923) being the gratuity pay at the rate of 1 month's salary for every year worked in tandem with the *Employment Act* and Clause 1.2 of the employment contract.
  - d. General damage of Kenya Shillings Three Million (Kshs.3,000,000) for violation of the claimant's constitutional rights to fair labour practices and the right of fair hearing before termination.
  - e. Refund of Kenya Shilling Five Hundred and Ninety-Seven Thousand One Hundred and Twenty-Two and Ten cents (Kshs.597,122.10) being the tax amounts.
  - f. General damages for the mental torture and distress as a result of the non-payment of taxes by the Respondent as required by law.
  - g. Costs of this suit.
  - h. Interests on (b), (c), (d), (e), (f) and (g) above at court rate until payment in full.
  - i. Any other relief that this court may deem just.
6. In its response to the Claim, the Respondent states that the termination resulted from a legitimate redundancy necessitated by an operational restructuring of its Customer Value Management (CVM) Department.
  7. The Respondent asserts that the Claimant had been the first and only holder of the CVM control function prior to the restructuring, which was undertaken for cost management and functional consolidation. Consequently, the stand-alone role was abolished and its responsibilities were merged into the existing CVM management function.
  8. According to the Respondent, the Claimant's employment was lawfully terminated with effect from 30<sup>th</sup> June 2022, and all statutory requirements were duly complied with.
  9. The Respondent further denies any negligence, tax remittance failures, tax liability, or resulting damages.
  10. On the basis of the foregoing, the Respondent has urged the Court to dismiss the claim with costs.
  11. In his Reply, the Claimant maintains that no restructuring took place and that there was no lawful justification for the alleged reorganization. He maintains that his employment was unlawfully terminated.
  12. The Claimant reiterates that his termination was unfair and unlawful.
  13. He further maintains that the Respondent failed to remit taxes due to the KRA.
  14. In the Claimant's view, the Response discloses no triable issues and has urged the Court to strike it out with judgment being entered in his favour.
  15. The matter proceeded for hearing on 22<sup>nd</sup> July 2025, 13<sup>th</sup> October 2025, and 5<sup>th</sup> November 2025, during which both parties presented oral evidence in support of their respective cases.



## Claimant's Case

16. The Claimant testified in support of his case, and for starters, he adopted his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents, filed on his behalf as exhibits before the Court.
17. It was the Claimant's testimony that he believes that a redundancy notification should be issued generally to all employees, informing them of the employer's intention to undertake a redundancy process. He further stated that he was not informed of any reason for the termination of his employment, and that the basis of the alleged redundancy remains unknown to him.
18. He further stated that the notification issued by the Respondent was addressed solely to him and communicated a unilateral decision to terminate his employment. He added that he was given barely one week's notice.
19. The Claimant averred that he was not accorded a fair hearing prior to the termination of his employment, nor was he invited to any consultative meetings to explore ways of avoiding redundancy or termination.
20. He also asserted that he was not made aware of the criteria used by the Respondent in selecting him for redundancy. In his view, this demonstrated that the Respondent had predetermined his termination under the guise of redundancy.
21. The Claimant further contended that the statutory redundancy procedure was not followed. Specifically, he averred that the Respondent failed to issue the mandatory one-month redundancy notice to the Labour Officer as required by law.
22. He stated that the loss of his employment without any known reason caused him immense psychological distress, including self-doubt and feelings of inferiority.
23. The Claimant avers that upon termination, he received Kshs 5,357,632.00 as part of his terminal dues. He added that his package was expected to include, among other items, certain discretionary payments made at the management's discretion.
24. He stated that, upon receiving the payment, he legitimately expected that the amount represented his net pay after all statutory deductions had been made.
25. The Claimant further testified that in or about May 2023, over nine months after termination, the Respondent issued him with a P9 form for purposes of filing his tax returns. He noted several discrepancies, in that the form listed his monthly salary as Kshs 604,207.29, contrary to the benefits statement, which reflected a salary of Kshs 595,923.00. Further, the P9 form also showed salary income for July 2023, even though his last working day was indicated as 30<sup>th</sup> June 2022. Additionally, the total amounts reflected in the P9 exceeded those set out in the benefits statement.
26. The Claimant averred that he was surprised to learn that the Respondent had not remitted taxes as required under the *Income Tax Act* and the *Employment Act*. He only discovered this when filing his tax returns in June 2023. The unremitted tax amounted to Kshs 597,122.10, a sum that was beginning to accrue interest and penalties.
27. He wrote to the Respondent seeking clarification and correction of the anomaly. The Respondent replied, stating that it had split the severance pay across two years and that, as a result, he was liable to pay the tax shortfall of Kshs 597,122.10 to the KRA.



28. The Claimant asserted that the Respondent did not explain the basis for splitting the severance pay, nor did it justify its failure to remit taxes as required by the *Income Tax Act*. He believed this to be a calculated attempt to evade tax obligations.
29. He further averred without prejudice that if the Respondent failed to deduct and remit taxes as required by law, then it was negligent, and he unfairly suffered financial loss by having to settle liabilities that ought to have been borne by the Respondent.
30. The Claimant further stated that the Respondent failed to identify and notify him of the miscalculations in good time, thereby exposing him to penalties and interest. He contended that he was forced to absorb the tax burden at a time when he had been unemployed for over nine months and was already experiencing economic hardship.

### **Respondent's Case**

31. The Respondent presented oral evidence through Wycliffe Omondi and Vincent Opiyo, who testified as RW1 and RW2, respectively. Mr. Omondi, who was the first to go, identified himself as the Respondent's Head of Human Resources. Similarly, RW1 adopted his witness statement with minor amendments to constitute his evidence in chief. He further produced the initial and supplementary lists and bundles of documents filed on behalf of the Respondent as his exhibits before the Court.
32. RW1 testified that the Claimant's salary progression was not based on individual performance but on a standard annual salary review uniformly applied to all employees.
33. He further stated that in June 2022, the Respondent undertook an internal restructuring of the CVM function as part of a broader strategic realignment aimed at cost rationalization and streamlining of non-core roles.
34. It was RW1's testimony that the Claimant held the role of CVM Outbound Optimization Manager, a standalone position created to support a specific function within the Respondent's operational framework.
35. Following an internal review, the Respondent determined that the Outbound Optimization function no longer aligned with its evolving business priorities and could not be sustained within the operational structure. Consequently, the position was declared redundant and was not reassigned, restructured, or absorbed into any other role or department.
36. RW1 further averred that the Respondent fully complied with the redundancy notification requirements, tailored to the circumstances of the case. Since the Claimant's department and position were the only ones affected, the redundancy was role-specific, and there was no requirement to notify the entire organization.
37. He added that the Claimant was individually notified of the intended redundancy in full compliance with statutory requirements, which was appropriate in the circumstances.
38. RW1 stated that before issuing the formal termination notice dated 21<sup>st</sup> June 2022, the Claimant was invited to and attended a consultation meeting on 17<sup>th</sup> June 2022 to discuss the proposed organizational changes and their impact on his role.
39. During the consultation held on 17<sup>th</sup> June 2022, the Respondent explained the business rationale for abolishing the CVM Outbound Optimization Manager role, specifically the restructuring aimed at cost reduction and consolidation of functions.



40. The Claimant was informed of the intended redundancy and advised that no suitable redeployment opportunities existed, as the relevant departmental functions were being abolished entirely.
41. RW1 stated that following the meeting, the Claimant commenced the handover of reports and projects and confirmed completion of the process via email to his line manager and the Human Resource Manager.
42. He further testified that the Respondent notified the Labour Office of the redundancy through a letter dated 16<sup>th</sup> June 2022. The Claimant was also paid one month's salary in lieu of notice, amounting to Kshs 595,923.00, thereby satisfying the Respondent's legal obligations on notice.
43. RW1 denied that any unfair selection took place, explaining that the Claimant's role was selected for redundancy based on objective, transparent, and operationally justified criteria.
44. He added that no selection criteria were necessary because there were no comparable roles within the CVM function. As the Claimant was the sole holder of the affected role, the Last-In-First-Out (LIFO) principle applied. RW1 maintained that the redundancy was purely structural and strategic, unrelated to performance or misconduct.
45. RW1 testified that the Claimant received a total of Kshs 5,357,632.00 upon termination on account of redundancy, which amount comprised all contractual and statutory entitlements.
46. He maintained that the Claimant was not entitled to any additional payments and that the amount paid constituted a final settlement, which the Claimant duly accepted. RW1 added that all payments were subject to lawful statutory deductions.
47. RW1 further contended that this Court lacks jurisdiction to determine tax disputes, which fall exclusively within the mandate of the KRA or, in case of a dispute, the Tax Appeals Tribunal. It was his position that the Claimant's attempt to pursue a tax grievance before this Court is therefore misconceived.
48. Without prejudice, RW1 explained that the Statement of Benefits reflected gross amounts and clearly indicated that statutory deductions would apply, thereby showing that net payment would be subject to the necessary deductions.
49. He also contended that the Claimant's assertion of a "legitimate expectation" that certain payments, such as management discretion pay, were tax-free was unfounded, as taxability is determined by statute, not employer terminology.
50. RW2, Vincent Opiyo, who identified himself as the Respondent's Finance Director, adopted his initial and supplementary witness statements to constitute his evidence in chief.
51. It is worth pointing out that the testimonies of RW1 and RW2 were substantially similar.
52. RW2 testified that following the Claimant's correspondence dated 10<sup>th</sup> July 2023, the Respondent conducted an internal review in June 2023 and identified a computational error in the P9 Form for the 2022 tax year.
53. He explained that the issue was not a failure to deduct or remit PAYE on terminal dues, but a reporting error regarding income classification under the *Income Tax Act*. According to RW2, the Claimant had already been paid the full net terminal dues, including the disputed Kshs 597,122.10, in July 2022. Thus, the under-declared PAYE remained in the Claimant's possession and had not been withheld or remitted.



54. RW2 averred that upon discovering the error, the Respondent promptly notified the Claimant by email dated 8<sup>th</sup> August 2023, outlining the discrepancy and proposed remedial action.
55. The Claimant was informed that KRA had correctly identified the under-declaration and that he was required to settle the outstanding PAYE directly with KRA. The Respondent also undertook to reimburse any penalties or interest once verified by official KRA documentation.
56. RW2 was categorical that the matter was not a deliberate attempt to evade taxes. He maintained that the Respondent acted in good faith, disclosed the error, and took timely corrective steps.
57. He added that the Claimant had not provided evidence that he settled the tax deficit or any communication from KRA regarding penalties or interest. RW2 averred that despite the Respondent's willingness to address legitimate consequences, the Claimant had neither engaged nor substantiated his alleged financial loss.
58. RW2 explained that the Respondent cannot independently verify the Claimant's tax penalties or balances. It was his position that responsibility for clarifying the tax position rests with the taxpayer.
59. He reiterated that the PAYE issue is a tax dispute falling within the exclusive jurisdiction of KRA and the Tax Appeals Tribunal, not this Court.
60. RW2 further stated that the inclusion of discretionary amounts in the terminal dues did not create any expectation of non-taxation, as tax liability is governed solely by statute.
61. He clarified that the P9 Form's indication of salary income for July 2022 was due to the fact that terminal dues calculated as of 30<sup>th</sup> June 2022 were processed and paid through payroll in July 2022. RW2 added that in accordance with tax reporting rules, income is recorded in the month it is paid. Thus, the July entries reflected the lawful processing of the terminal payments.
62. RW2 maintained that the Respondent acted in good faith upon identifying the PAYE miscalculation, that the Claimant received the full benefit of the under-deducted tax.
63. In his supplementary statement, RW2 stated that from January to July 2022, the Respondent issued the Claimant monthly pay slips reflecting income, deductions, and net pay, all of which were deposited into the Claimant's bank account.
64. He added that although the Respondent believed that the PAYE deducted from the Claimant's terminal dues was correctly computed based on calculations by its payroll service provider, Axiomatic Advisory Service, a computation error resulted in an incorrect PAYE figure of Kshs 1,175,421.02.

#### Submissions

65. On his part, the Claimant submitted that the Respondent failed to provide any justification for his redundancy. On this score, he contended that no company resolutions were produced to show that the Respondent was undergoing restructuring, and no organogram was presented to illustrate the previous or desired company structure. In support of this argument, the Claimant relied on the cases of *Daniel Mburu Muriu v Hygrotech East Africa Ltd* [2021] KEELRC 316 (KLR) and *Kenafric Industries Limited v John Gitonga Njeru* [2016] KECA 67 (KLR).
66. The Claimant further argued that no evidence was presented to demonstrate any operational needs necessitating the redundancy, asserting that the entire process leading to his termination was a sham. To this end, he referenced the case of *Agnes Ongadi v Kenya Electricity Transmission Company Limited* (Cause 1406 of 2016) [2016] KEELRC 14 (KLR) to support this position.



67. Relying on the case of *The German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018, consolidated) [2023] KECA 894 (KLR), the Claimant contended that no consultation took place before his termination. He argued that receiving a notice of redundancy effectively terminated his employment immediately, confirming that the Respondent had already decided to terminate him and deemed consultation unnecessary.
68. The Claimant maintained that the Respondent acted in complete disregard of the law, failing to follow even a single procedural requirement for redundancy.
69. On the other hand, the Respondent submitted that it provided clear and uncontested evidence that the Claimant held a standalone role within the CVM function, which was abolished following a legitimate operational restructuring aimed at consolidating functions and improving efficiency. The Respondent further argued that the Claimant did not produce any evidence to challenge this explanation or demonstrate that the restructuring was a sham, targeted, motivated by bad faith, victimisation, or any ulterior purpose.
70. The Respondent further posited that the Court does not act as a super-manager or human resources department and will not substitute its own judgment for that of an employer. To buttress this position, the Respondent sought to rely on the case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR.
71. In further submissions, the Respondent faulted the Claimant's argument that audited financial statements were required to justify the redundancy, describing this as legally misconceived and based on an unduly narrow understanding of "operational requirements" under the *Employment Act*. On this point, the Respondent argued that redundancy is not limited to situations of financial distress or insolvency.
72. The Respondent further submitted that it substantially complied with the procedural requirements under Section 40 of the *Employment Act*, adding that procedural safeguards in redundancy are intended to ensure fairness rather than create technical obstacles for employers acting in good faith.
73. Further, the Respondent argued that any alleged procedural irregularities cannot invalidate a redundancy that is substantively justified, transparently communicated, and accompanied by full statutory compensation.
74. It was the Respondent's further submission that the Claimant was notified in advance and given an opportunity to be heard before the redundancy decision was implemented. It was the Respondent's view that the documented invitation and attendance at the consultation meeting satisfied the statutory requirement by evidencing prior notice and engagement on the reasons for and impact of the redundancy, thereby meeting the procedural threshold prescribed by law.

### **Analysis and Determination**

75. Flowing from the record, the Court has identified the following issues for determination:
  - a. Whether the Claimant's termination on account of redundancy was substantively justified;
  - b. Whether the Respondent complied with the procedural requirements governing redundancy; and
  - c. Whether the Claimant is entitled to the reliefs sought.



### **Substantive justification for the termination?**

76. It is common ground that the Claimant's employment was terminated on the basis of redundancy. The dispute, however, centers on whether the redundancy was substantively justified.
77. It is the Respondent's case that it undertook an internal restructuring of the Customer Value Management (CVM) function as part of a strategic business realignment aimed at cost rationalization and the streamlining of non-core roles.
78. According to the Respondent, the Claimant held the position of CVM Outbound Optimization Manager, a standalone role created to support a specific function within the Respondent's business framework. The Respondent has averred that following an internal review, it determined that the Outbound Optimization function no longer aligned with the business's evolving priorities and could not be justified within the operational structure. Accordingly, the position was declared wholly redundant and was neither reassigned, restructured, nor absorbed into any other role or department.
79. It is therefore evident from the Respondent's standpoint that the reason for the termination of the Claimant's employment was driven by operational requirements, thereby falling within the scope of Section 45(2)(b)(ii) of the *Employment Act*.
80. It therefore follows that the Respondent bore the duty to prove that the reason for the Claimant's termination was fair, valid, and connected to its operational requirements.
81. Given the Respondent's assertion that the Claimant's position was declared redundant and not absorbed into any other role, it was reasonably expected that the Respondent would lead evidence, such as the former and revised organizational structures, to demonstrate that the Claimant's position had indeed been abolished.
82. In *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR*, the Court of Appeal held that while there may be underlying causes leading to a true redundancy situation, such as reorganization, the employer must nevertheless show that the termination is attributable to the redundancy and that the services of the employee have been rendered superfluous or that the redundancy has resulted in the abolition of office, job or loss of employment.
83. In further considering the definition of the term "redundancy," the Court observed as follows:

"There are two broad aspects of this definition...The second aspect is that the loss of employment in redundancy has to be at no fault of the employee and the termination of employment arises "where the services of an employee are superfluous" through "the practices commonly known as abolition of office, job or occupation and loss of employment." In this case, what I understand as required to be determined in this aspect of the definition of redundancy is whether the appellant abolished the offices, jobs or occupations of the affected employees resulting in their services being superfluous hence their loss of employment. Corollary to that is the justification for that abolition, if the appellant indeed abolished their offices. Determination of these two aspects will, determine the first issue of whether or not the redundancy in this case was necessary." Underlined for emphasis
84. Applying the foregoing analysis to the present case, I find that the Respondent has failed to demonstrate that the Claimant's position became redundant, or that it was wholly abolished from the organizational structure and ceased to exist.



85. Whereas the *Employment Act* implicitly allows an employer to reorganize its operations as it deems appropriate, any termination on the basis of such reorganization must be genuine and credible. As such, an employer is precluded from terminating an employee's employment on the basis of redundancy without proper justification.
86. Based on the evidence before the Court, I am not persuaded that the Respondent undertook a genuine restructure or that, in the course of such a process, the Claimant's role as CVM Outbound Optimization Manager was abolished, thereby rendering the Claimant redundant.
87. In these circumstances, I am led to conclude that the Respondent has not demonstrated, to the requisite standard, that there was substantive justification for terminating the Claimant's employment on the grounds of redundancy.

### **Procedural fairness?**

88. Regarding procedural fairness in redundancy cases, Section 40(1) of the *Employment Act* outlines the following requirements that an employer must fulfill before terminating an employee: -
- 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.
89. The record shows that the Claimant was issued with a notification of redundancy dated 21<sup>st</sup> June 2022, informing him that his employment would be terminated on the grounds of redundancy, effective 1<sup>st</sup> July 2022. In effect, the Claimant was provided with only nine days' notice.
90. Under Section 40(1)(a) and (b) of the *Employment Act*, the Respondent was required to provide at least one month's notice prior to any termination on grounds of redundancy. In this case, the notice issued to the Claimant fell significantly short of the statutory period.
91. It is also instructive to note that, under Section 40(1)(a) and (b), the notice to be issued must indicate the employer's intention to declare redundancy, rather than serving as a final termination notice.



92. In the present case, the notice served on the Claimant functioned as a final termination notice rather than a notice of intention to declare redundancy, contrary to the statutory requirements under Section 40(1)(a) and (b) of the *Employment Act*.
93. The purpose of the notice envisaged under Section 40(1) (a) and (b) is to facilitate consultation between the parties, with a view to exploring possible alternatives to redundancy.
94. On this matter, I am guided by the decision in *Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others* (supra), where Maraga JA (as he then was) stated as follows:
- “My understanding of this provision is that when an employer contemplates redundancy, he should first give a general notice of that intention to the employees likely to be affected or their union. It is that notice that will elicit consultation between the parties, ....”
95. Similarly, in the case of *The German School Society & another vs Ohany & another* [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.
96. Given the final nature of the notice issued by the Respondent in this case, there was no opportunity for meaningful consultations, as the decision to let go of the Claimant had already been effectively made.
97. Further to the foregoing, the Respondent failed to meet the requirements of the second part of Section 40(1)(b) of the Act, as it is evident that the notice sent to the labour office on 16<sup>th</sup> June 2022 was short of the prescribed period of one month.
98. The Court does not agree with the Respondent’s argument that it was discharged from the legal requirement of notice merely because the Claimant was paid one month’s salary in lieu of notice.
99. It is important to note that compliance with Section 40(1)(f) of the *Employment Act* pertains to the payment of one month’s salary in lieu of notice, and does not act as a substitute for the issuance of a notice of intention envisaged under Section 40(1) (a) and (b).
100. On this point, the Court will follow the decision of the Court of Appeal in *Cargill Kenya Limited v Mwaka & 3 Others* (Civil Appeal 54 of 2019) [2021] KECA 115 (KLR), in which it was held as follows: -
- “In this respect, it is notable that a plain and contextual reading of subsection 1(f) shows that its express objective and purpose is the payment required to be made to employees affected by redundancy, and not the issuance of a notice. It is also notable that the legislative intention from the arrangement and content of the enactments in section 40 subsection (1) (d) to (g) was the provision of payments to be made to affected employees in a redundancy, and section 1(f) can only thus be construed within this context, as was done by Maraga JA in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* Nairobi Civil Appeal No. 46 of 2013 (supra)...” Underlined for emphasis
101. Needless to say, although the Respondent paid the Claimant one month’s salary in lieu of notice, this did not supplant the statutory requirement to issue a notice of intention to declare redundancy under Section 40(1)(a) and (b) of the *Employment Act*.
102. Ultimately, the Court finds that the Respondent failed to comply with the statutory requirements under Section 40(1)(a) and (b) regarding notice, and is therefore at fault.



103. On the issue of consultations, the Respondent referenced a discussion held between the Claimant, his line manager, and the HR Manager on 17<sup>th</sup> June 2022. It is noteworthy that the meeting held on 17<sup>th</sup> June 2022 was convened following an email from Nadine, the subject of which was “PO Discussion–FY22 Performance.”
104. It is therefore evident that the stated agenda of the meeting had no connection to the restructuring exercise. Based on this, it is apparent that the Claimant was not informed of the true purpose of the meeting and was effectively blindsided regarding the redundancy discussion.
105. For the foregoing reasons, the Court is not persuaded that the meeting convened on 17<sup>th</sup> June 2022 constituted the consultations contemplated under Article 13, Convention No. 158, and Recommendation No. 166 of the International Labour Organisation (ILO).
106. What’s more, no minutes of the meeting were produced in court. As a result, it cannot be determined that the discussions were conducted in the spirit of consultations envisaged under Article 13 of the aforementioned ILO Convention.
107. In the case of *Kenya Airways vs Aviation & Allied Workers Union Kenya & 3 Others* (supra), the Court held that consultations are 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 is unavoidable.
108. In the present case, there is no evidence that the discussions held on 17<sup>th</sup> June 2022 considered alternative measures to preserve the employment relationship, such as redeploying the Claimant to another department where his skills could have been utilized.
109. Accordingly, the Court finds that no pre-redundancy consultations, as envisaged under Article 13 of the ILO Convention No. 158, were conducted. The Respondent is therefore at fault for failing to comply with this requirement.
110. The Court finds that the requirement regarding selection criteria under Section 40(1)(c) of the *Employment Act* is not applicable in this case, as there is no indication that any other employee held a comparable position to that of CVM Outbound Optimization Manager.
111. Another statutory obligation before terminating an employee on grounds of redundancy relates to payments under Section 40(1)(e), (f), and (g) of the *Employment Act*. These include accrued leave, notice pay, and severance pay, calculated at a rate of not less than fifteen days’ pay for each completed year of service.
112. The Claimant was informed through the statement of benefits dated 30<sup>th</sup> June 2022 that he would receive salary up to 30<sup>th</sup> June 2022, pay in lieu of notice, encashment of earned but untaken leave, the 13<sup>th</sup> cheque, and a redundancy payment of fifteen days’ pay for each completed year of service.
113. It is therefore evident that the Respondent paid the Claimant the statutory benefits required under Section 40(1)(e), (f), and (g) of the *Employment Act*.
114. All in all, the Court finds that the Respondent did not substantially comply with the procedural provisions of Section 40(1) of the *Employment Act*. Consequently, the termination of the Claimant on the basis of redundancy was procedurally flawed and therefore unlawful.

### **Reliefs?**

115. The Court having found that the Respondent failed to prove that the Claimant’s termination on the grounds of redundancy was substantively justified and procedurally fair, awards the Claimant



compensatory damages equivalent to five (5) months' salary. This award takes into account the length of the employment relationship and the circumstances surrounding the termination.

116. The Claimant's claim for gratuity is declined, as the employment contract does not provide for such a benefit, and it is therefore not contractually due.
117. The Claimant's claim for general damages of Kshs 3,000,000.00, premised on alleged violations of his constitutional right to fair labour practices, is also declined. In reaching this conclusion, the Court is guided by the case of NEC Corporation v Samuel Gitau Njenga [2018] eKLR, which determined that "the court does not think, however, that violation of every conceivable contractual, statutory, or constitutional right warrants a separate award of damages." This reasoning equally applies to the Claimant's claim for general damages for mental anguish.
118. The Claimant further sought reimbursement of Kshs 597,122.10, being PAYE tax erroneously remitted to the KRA. The Respondent conceded that the PAYE remitted to the KRA was incorrect. According to the Respondent, the correct PAYE deduction should have been Kshs 1,783,393.14, whereas only Kshs 1,175,421.02 was remitted to KRA. It is the Respondent's assertion that the difference was inadvertently included in the Claimant's net pay. The Claimant did not dispute that the unremitted tax was received as part of his net salary.
119. During cross-examination, the Claimant confirmed that no penalties were levied against him by KRA in respect of the unremitted PAYE.
120. Accordingly, the Court finds no basis to order the Respondent to reimburse the alleged unremitted tax, as the amount was already paid to the Claimant as part of his net salary in error.

## Orders

121. In the final analysis, the Claim succeeds, and judgment is hereby entered in favour of the Claimant as follows:
  - a. A declaration that the Claimant's termination from employment on account of redundancy was unfair and unlawful.
  - b. The Claimant is awarded compensatory damages in the sum of Kshs 2,979,615.00, representing five (5) months of his last salary.
  - c. The amount in (b) shall accrue interest at the prevailing court rates from the date of judgment until full payment is made.
  - d. The Respondent shall bear the costs of this suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2026.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Abuga

For the Respondent Mr. Abong'o instructed by Mr. Omondi

Court Assistant Mohammed



## **ORDER**

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

**STELLA RUTTO**

**JUDGE**

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