

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. E864 OF 2024**

**EVANS APINY OMONDI ODERA.....CLAIMANT**  
**VERSUS**  
**KENYA KAZI SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

1. Through a Statement of Claim dated 4<sup>th</sup> October 2024, the Claimant asserts that he was employed by the Respondent as Head of Sales from 22<sup>nd</sup> April 2019 until his redundancy on 3<sup>rd</sup> September 2024. He further states that his role was redesignated to Head of Business and Development on 26<sup>th</sup> June 2023. The Claimant contends that the termination of his employment was unlawful and lacked a *bona fide* basis. Accordingly, he seeks the following reliefs against the Respondent:

- i. An order for reinstatement of the Claimant to his former employment and position without any loss of benefit and/or seniority.*
- ii. In the alternative, the payment of actual pecuniary loss suffered since his date of declaration of redundancy, including payment for salary/wages as would have been earned, housing allowance and together with all accruing allowances.*
- iii. A certificate of service reflecting the true positions held by the Claimant.*
- iv. A declaration that the Claimant has suffered unfair wrongful redundancy exercise in the first instance.*

- v. ***Declaration that the Respondent intentionally breached the provisions of the Employment Act, 2007, Articles 2, 10, 20, 26, 27, 28, 43, 47 and 50 of the Constitution, 2010.***
- vi. ***Maximum compensation for loss of employment.***
- vii. ***Special Damages in the amount of Kshs. 2,328,000/- on account of commission.***
- viii. ***Punitive damages.***
- ix. ***Any other and further relief the Honourable Court may deem fit and grant.***
- x. ***Costs of the suit with interest.***

2. In its response to the Claim, the Respondent avers that on 2<sup>nd</sup> May 2023, it announced and began a restructuring exercise that resulted in operational changes within the company. According to the Respondent, it notified the Claimant on 26<sup>th</sup> June 2023 of the changes which reduced his role from that of Head of Sales to Head of Business Development, responsible only for the agriculture, construction, energy, and estate sectors.

3. In its Response to the Claim, the Respondent avers that on 2<sup>nd</sup> May 2023, it announced and commenced a restructuring exercise that led to operational changes within the company. The Respondent states that the Claimant was notified on 26<sup>th</sup> June 2023 of the resulting adjustments, which altered his position from Head of

Sales to Head of Business Development, with responsibility limited to the agriculture, construction, energy, and estate sectors.

4. The Respondent further asserts that in July and August 2024, it undertook an additional restructuring process that necessitated the reorganization of various departments and employee roles. As a result, certain positions within the company were declared redundant. The Respondent contends that on 6<sup>th</sup> August 2024, the Claimant was issued with a redundancy notice dated 5<sup>th</sup> August 2024.
5. The Respondent maintains that the Claimant's termination was lawful and procedurally fair, and that he is therefore not entitled to the reliefs sought. Consequently, the Respondent prays that the Claim be dismissed with costs.
6. The matter proceeded for hearing on 23<sup>rd</sup> October 2025, during which both parties presented oral evidence in support of their respective cases.

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

7. 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.
8. The Claimant testified that at the beginning of 2024, he was subjected to disrespectful and demeaning treatment by the Managing Director, East Africa, *David Marshall*. He stated that on several occasions, the Managing Director

deliberately humiliated him, including shouting at and reprimanding him in the presence of junior staff.

9. He further stated that he was subsequently assigned the task of securing a major client, and it became common knowledge within the office that failure to secure this client would lead to the termination of his employment on the grounds of poor performance.
10. The Claimant testified that after successfully bringing in the major client, several significant contracts followed. Despite this consistent flow of major business opportunities, his efforts went unacknowledged, and instead, he continued to face reprimands during the weekly East Africa Sales calls.
11. The Claimant further stated that the Managing Director unilaterally decided to terminate more than 65 clients or contracts, citing operational constraints, despite the fact that part of the Claimant's job description included client recruitment and business growth in Kenya.
12. He indicated that he expressed his concerns about this decision through his local representative, *Rishi Ahluwalia*. On 26<sup>th</sup> July 2024, they were invited to a “*Right Sizing*” meeting convened by the Managing Director, which was intended to

outline the clients to be affected, particularly in the Western Region, namely Nakuru, Naivasha, Eldoret, Kericho, Kisumu, and Kakamega.

13. According to the Claimant, they were expressly assured during the meeting that the exercise would affect only the Company's operations in the Western Region. He further stated that the Managing Director chose to attend the meeting with his Customer Service Manager, *Fredrick Okene*, who was junior to the Claimant.

14. The Claimant averred that in August 2024, he proceeded on 14 days of leave, relying on the assurances received during the rightsizing meeting and believing that he would not be affected by the exercise.

15. He testified that on 30<sup>th</sup> August 2024, he attempted to access his company facility, only to discover, much to his surprise and dismay, that it had been cancelled.

16. He further stated that prior to the notice dated 5<sup>th</sup> August 2024, the Respondent had invited employees to a town hall meeting where they were informed of an impending restructuring. They were advised that the restructuring would only affect the Western Region and that operations in Nairobi and Mombasa would remain unaffected.

17. The Claimant stated that shortly after the town hall meeting, on or about 5<sup>th</sup> August 2024, he received a formal communication from the Respondent indicating that a restructuring exercise was imminent due to a *‘difficult operating environment and loss of business from various clients.’*

18. By a letter dated 3<sup>rd</sup> September 2024, the Respondent confirmed the termination of his employment, citing the earlier notice dated 5<sup>th</sup> August 2024.

19. In the Claimant’s view, the termination of his employment was unlawful. He contends that the sequence of events demonstrates a premeditated effort by the Respondent to hound him out of employment through discriminatory and targeted actions.

### **Respondent’s Case**

20. The Respondent presented oral evidence through **Roselyne Kweyu**, who testified as RW1. She identified herself as the Respondent’s Head of Human Resources, Kenya. Similarly, RW1 adopted her witness statement to constitute her evidence in chief and produced the initial and supplementary lists and bundles of documents filed on behalf of the Respondent as her exhibits before the Court.

21. RW1 testified that between 1<sup>st</sup> and 5<sup>th</sup> August 2024, the Respondent conducted town hall meetings with all employees to inform them of the impending

reorganization and its anticipated impact. During these meetings, employees were advised that approximately 400 staff members across all cadres would be affected by the restructuring exercise.

22. She stated that on 6<sup>th</sup> August 2024, the Respondent issued the Claimant with a redundancy notice dated 5<sup>th</sup> August 2024. RW1 averred that contrary to the Claimant's assertions, the notice expressly indicated that more than 400 employees across all levels were affected by the redundancy.

23. RW1 further testified that a copy of the redundancy notice was also served on the labour office.

24. She stated that the Respondent thereafter engaged in a series of consultative meetings with employees to explain the impact of the intended redundancy and to outline the criteria and method that would be used in selecting the departments and employees to be declared redundant.

25. According to RW1, following extensive consultations, the Respondent identified the departments and roles that were to be declared redundant, including the Claimant's position.

26. She testified that by a letter dated 3<sup>rd</sup> September 2024, the Claimant was notified of the termination of his employment on account of redundancy, and the redundancy package due to him was outlined in the said letter.

27. RW1 stated that the Respondent computed and paid all dues owed to the Claimant, which amounted to Kshs 6,275,747.95, comprising salary for days worked, leave pay, severance pay, and notice pay. The Respondent also issued him with a certificate of service.

28. She further averred that the Respondent did not offer or promise any commission to the Claimant at any point. She asserted that no such benefit appeared in the offer letter, employment contract, or the letter dated 26<sup>th</sup> June 2023, and that no benefit due to the Claimant was cancelled or withheld prior to his redundancy.

29. Regarding the termination of its commercial contracts, RW1 stated that the Respondent routinely reviews its operations and customer contracts to enhance service efficiency, ensure profitability, and improve working conditions for its employees. Following such reviews in July 2024, the Respondent identified several customer contracts requiring renegotiation or restructuring.

30. She added that in July 2024, the Claimant made a presentation acknowledging that the Respondent had an unfocused sales approach and numerous single contracts

with tier 3 clients that were not profitable. Consequently, during a meeting held on 29<sup>th</sup> July 2024 between the management team and the sales team, it was agreed that several tier 3 client contracts would be terminated. The Respondent subsequently identified and terminated the earmarked contracts.

31. RW1 was categorical that the termination of the contracts was undertaken solely for the purpose of redirecting the Respondent's business focus toward more suitable and profitable clients.

### **Submissions**

32. The Claimant submitted that the Respondent deliberately and without justification undertook a downsizing of its client base, claiming that the business had become too large for its operational capacity. According to the Claimant, the ensuing declaration of redundancy, particularly in respect of his position, was neither warranted nor genuine. To support this contention, he relied on the decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR.

33. The Claimant further argued that the Respondent had not demonstrated that the redundancy was occasioned by any reorganization intended to maintain the company's competitiveness in the market.

34. It was further submitted that the Respondent failed to comply with the mandatory

procedural requirements under Section 40 of the Employment Act, and therefore erred in proceeding with what the Claimant termed a premature declaration of redundancy.

35. The Claimant maintained that no prior consultations were held with him. He posited that any consultation purportedly undertaken by the Respondent was a mere formality, *a fait accompli* designed as window dressing rather than a meaningful engagement. He argued that the Respondent ought to have consulted, negotiated, and bargained with him before embarking on the redundancy process.

36. The Claimant further challenged the selection criteria employed by the Respondent, describing it as subjective, opaque, and lacking transparency and accountability. He contended that the criteria did not align with the objectives of restructuring, noting in particular the failure to apply the “Last In, First Out” (LIFO) principle in the affected areas. He added that the Respondent did not specify the number of employees targeted for separation, rendering the process illegal and arbitrary.

37. On its part, the Respondent relied on the case of *Jane Khalechi v Oxford University Press E.A. Ltd (2013) eKLR*, submitting that cost-saving and improvement of operational efficiency constituted legitimate grounds for declaring redundancy. On this score, the Respondent posited that it had valid reasons for undertaking the redundancy.

38. The Respondent further submitted that the redundancy notices issued to both the Claimant and the labour office were compliant with Section 40 of the Employment Act. Citing the case of *Makoha v Deloitte Limited (2023) KEELRC 723 (KLR)*, the Respondent contended that it satisfied the consultation requirements stipulated under the law.

### **Analysis and Determination**

39. 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?**

40. It is not in dispute that the Claimant's employment was terminated on the grounds of redundancy. The key issue for determination is whether the redundancy was substantively justified.

41. The Respondent asserts that on 2<sup>nd</sup> May 2023, it commenced a restructuring exercise that led to operational changes within the company. The Respondent states that this restructuring process continued through July and August 2024, necessitating the reorganization of various departments and the alteration of roles for several employees. The Respondent contends that the Claimant was affected by this process as his position was declared redundant.

42. To support its position, the Respondent produced a letter dated 26<sup>th</sup> June 2023, indicating that following the restructuring exercise, the Claimant's role was redesignated to Head of Business Development and Key Account Management – Agricultural, Construction, Energy and Real Estate, effective 1<sup>st</sup> July 2023.

43. The Claimant has similarly acknowledged that the Respondent was engaged in a restructuring exercise referred to as “right sizing”.

44. In an email dated 26<sup>th</sup> July 2024, titled “Right-sizing strategy” sent by Ahluwalia Rishi to the Claimant and other staff members, it was stated as follows:

*“As we gear up for the Kenya rebrand and reposition the business to a more agile profile, there is a requirement to right-size the footprint of certain smaller clients. Over the next month, there will be a focus on the western region. Certain tier 3 clients have been identified for offloading and there will be a restructuring of operations as a result of that...”*

45. The record further demonstrates that the Respondent had identified specific clients it had classified as tier 3 and whose contracts it intended to terminate.
46. Further to the foregoing, in the general notice dated 5<sup>th</sup> August 2024, communicating the intended redundancy, the Respondent stated that an estimated 400 employees across all cadres would be affected by the restructuring exercise.
47. From the foregoing, it is evident that the Respondent had embarked on a restructuring exercise as early as 2023, which continued into July and August 2024. It is further evident that the restructuring exercise was broad-based and not directed at any specific cadre of employees. Indeed, the Claimant has not contested the fact that the Respondent was undertaking a restructuring exercise.
48. The question of whether the Respondent's commercial judgment in "*right sizing*", thereby reducing its client portfolio as part of the restructuring, was prudent is a separate matter and one that does not fall for determination by this Court.
49. Emerging jurisprudence affirms that courts should refrain from curtailing an employer's discretion in making and implementing strategic business decisions within its operations.
50. Accordingly, the Court finds that the Claimant's termination on account of redundancy cannot be characterised as substantively unfair or lacking in substance.

51. Therefore, the Court is satisfied that the Respondent has demonstrated, to the required standard, that the Claimant's termination on account of redundancy was based on a fair and valid reason and was connected to its operational requirements.

### **Procedural fairness?**

52. With respect to procedural fairness in cases of redundancy, Section 40(1) of the Employment Act sets out the following preconditions that an employer must satisfy 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.*

53. In this case, the record shows that the Respondent issued a notice of intended redundancy dated 5<sup>th</sup> August 2024. In that notice, the Respondent indicated that approximately 400 employees across all cadres would be affected by the redundancy. A similar notice was also served upon the labour office.

54. The Court finds that the said notice complies with the requirements of Section 40(1)(a) and (b), as it communicated the general intention to terminate employment on account of redundancy, identified the number and categories of employees to be affected, and was issued within the prescribed 30 day period.

55. Another requirement implied under Section 40(1) of the Employment Act concerns the obligation to undertake consultations.

56. It is not in dispute that the Respondent conducted town hall meetings with its employees prior to implementing the redundancy exercise. The Claimant confirmed that he attended these meetings, during which employees were informed of the impending restructuring. Notably, these town hall meetings were held before the issuance of the redundancy notice dated 5<sup>th</sup> August 2024. It is also clear that although the Claimant attended the meetings, he was not made aware that his position was at risk or had been earmarked for redundancy.

57. Consequently, it is unclear from the record whether, once the Claimant was notified that his position was at risk and would be affected by the redundancy exercise, any further consultations were undertaken in accordance with **Article 13 of Convention No. 158 and Recommendation No. 166 of the International Labour Organisation (ILO)**.

58. As held in **Kenya Airways v Aviation & Allied Workers Union Kenya & 3 Others (2014) eKLR**, consultations are intended to provide a forum for the parties to discuss and, where possible, negotiate alternatives to the proposed redundancy, or to determine the most appropriate way to implement it if unavoidable. Consequently, pre-redundancy consultations are a crucial element of the redundancy process and must be substantive rather than merely formal and cosmetic.

59. Notably, the Respondent did not produce minutes of the town hall meetings. From the material on record, it is apparent that the primary purpose of these meetings was simply to inform employees of the impending redundancy.

60. As stated above, consultations as envisaged under **Article 13 of Convention No. 158 and Recommendation No. 166 of the ILO** are intended to prevent, or at least minimize, terminations resulting from a proposed redundancy.

61. In this case, there is no evidence to confirm that the Claimant, having been identified for redundancy, was actively engaged or given an opportunity to explore alternatives to the redundancy. Such alternatives could have included agreeing to a pay reduction, accepting suitable redeployment, or proposing other cost-saving measures, all aimed at avoiding or minimizing the terminations.

62. Consequently, while the Respondent did hold town hall meetings with its staff, including the Claimant, there is no evidence that these discussions addressed possible measures to avert or reduce the impact of the redundancy exercise.

63. In effect, the consultations conducted by the Respondent through the town hall meetings did not fulfill the purpose envisaged under Article 13 of the aforementioned ILO Convention.

64. The Claimant has also challenged the selection criteria applied by the Respondent in effecting the redundancy.

65. To my understanding, **Section 40(1)(c) of the Employment Act** provides the selection criteria applicable where there is more than one employee within the same category affected by redundancy. In the present case, there is no evidence that at the material time there was another employee serving in the same category as the Claimant. Therefore, it is my respectful view that the requirement to apply selection criteria is inapplicable here.

66. Regarding statutory payments under **Section 40(1)(e), (f), and (g) of the Employment Act**, the Respondent's termination letter dated 3<sup>rd</sup> September 2024 informed the Claimant that he would receive salary up to 4<sup>th</sup> September 2024, six months' pay in lieu of notice, accrued leave, and severance pay.

67. During cross-examination, the Claimant confirmed receipt of **Kshs 6,275,747.95**, representing his redundancy benefits.

68. The Claimant has not contended that any of these payments were below his entitlement. Accordingly, the Court finds no reason to conclude that the Respondent failed to pay the Claimant his statutory benefits under **Section 40(1)(e), (f), and (g) of the Employment Act**.

69. Nonetheless, the Court finds that the Respondent did not substantially comply with the procedural requirements under Section 40(1), as it failed to demonstrate that meaningful pre-redundancy consultations were conducted, as envisaged under **Article 13, Convention No. 158, and Recommendation No. 166 of the ILO**. To this extent, the Claimant's termination on the grounds of redundancy was procedurally unfair within the meaning of Section 40(1) of the Employment Act.

### **Reliefs?**

70. The Court, having found that the Respondent did not substantially comply with the procedural requirements relating to pre-redundancy consultations prescribed under **Article 13 of Convention No. 158 and Recommendation No. 166 of the ILO**, awards the Claimant compensatory damages equivalent to two (2) months' gross salary. In determining this award, the Court has taken into account that the Respondent has proved to the requisite standard that the Claimant's redundancy was based on a valid and fair reason, connected to its operational requirements. Accordingly, the damages awarded are nominal.

71. The Claimant's request for reinstatement is declined, as the Court is persuaded that the termination of his employment was fair, valid, and based on the Respondent's operational requirements.

72.The Claim for Kshs 2,328,000/- on account of commission is also declined. The Claimant failed to provide evidence demonstrating entitlement to this sum or to show how the amount was calculated. The claim, therefore, consists merely of unsupported figures, and the Court cannot speculate in the absence of proof.

73.The claim for punitive damages is similarly declined.

### **Orders**

74.In the end, the Court awards the Claimant compensatory damages of **Kshs 1,400,000/-**, representing two (2) months' gross salary. Interest shall accrue on this amount at the applicable court rates from the date of judgment until payment in full.

75.The Claimant shall also have the costs of the suit.

**DATED, SIGNED and DELIVERED** at NYERI this 17<sup>th</sup> day of February 2026.

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**STELLA RUTTO**

**JUDGE**

### **In the presence of:**

For the Claimant      Mr. Wara

For the Respondent    No appearance

Court Assistant      Ndati

## **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 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**