

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
CAUSE NO. E034 OF 2025

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS AND HOSPITAL
WORKERS (KUDHEIHA).....CLAIMANT**

-VERSUS-

GRAND TURACO HOTEL LIMITED..... RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

I. INTRODUCTION

1. The claimant filed an amended notice of motion dated 30th September 2025 (the application) seeking for the following orders –

- a) Spent.***
- b) That the intended redundancy against the claimant’s members by the respondents be stopped immediately.***
- c) That the costs of this application be awarded to the claimant /applicant.***
- d) Any other relief the court deems fit.***

2. The application is expressed to be founded on **Section 40(1) of the Employment Act (“the Act”)**. It is based on the grounds on the face of it.
3. The application is supported with an affidavit of Thomas Mboya, the claimant’s branch secretary - Kakamega, sworn on 30th September 2025, with several annexures thereto.
4. In opposition to the application, the respondent filed a replying affidavit sworn by Esther Mumbe Muli, the respondent’s acting manager, on 10th December 2025(sic).
5. By consent, the court directed that the application be canvassed by way of written submissions. The claimant’s representative Mr. Shiraku filed written submissions on 9th December 2025. Mr. Shilisia for the respondent filed written submissions on 10th December 2025.

II. EVIDENCE

6. In the supporting affidavit it is stated that the claimant has recruited 21 employees of the respondent into its membership. That out of the 21, seven of them, namely – Moris Mukavale, Nicholas Omondi, Pamela Mulama, Lydia Otwero, Kevin Lubutse, Tabitha Pendo, and Milka Sieni – were issued with redundancy letters on diverse dates between 17th and 18th September 2025 intimating their termination by 30th September 2025.

7. It is further stated that the affected employees were verbally appointed and have served the respondent for periods ranging between six months and five years.
8. It is further stated that the respondent did not comply with the mandatory redundancy procedure under **Section 40(1)(a), (e), (f), & (g) of the Act** as the notice issued to the grievants fell short of the required 30-day notice and the severance pay was not paid. It is further stated that the affected employees have not been paid for their leave despite not having taken it. It is further averred that the respondent failed to serve the notice of redundancy on the claimant contrary to the law. It is stated that the intended redundancy is in violation of **Article 41(1) of the Constitution** on the right to fair labour practice, and unless the Court intervenes urgently the affected employees face imminent termination, loss of livelihood, and irreparable harm, and the suit shall be rendered nugatory.
9. In the replying affidavit, it is contended that the application is incompetent, frivolous, and discloses no reasonable cause of action and should therefore be dismissed with costs.
10. On the process leading to the redundancy, it is deponed that the affected employees were duly informed of the intended redundancy and were issued with a one month's notice following a consultative meeting between management and workers in which no objections were raised. It is further deponed that all affected employees were

paid their full terminal dues, including one month's salary in lieu of notice, which payments were received by mutual agreement without any complaint. Copies of the termination letters and proof of payments are annexed.

11. It is further deponed that there is no recognition agreement between the respondent and the claimant and that the respondent has never made any deductions or remittances to the claimant. It is further deponed that the affected employees never disclosed their union membership to the management and that management was unaware of any union contributions allegedly made by the employees.
12. It is further deponed that the redundancy notice was duly served upon the County Labour Office in compliance with the law.
13. It is stated that all terminal dues having been paid and receipt acknowledged, the affected employees ceased to be employees of the respondent. It is further deponed that the claimant had already filed a similar dispute before the County Labour office, which dispute is still pending under the conciliation process, rendering the present suit premature.
14. It thus urged that the respondent has been sued erroneously as there is no subsisting dispute between it and the former employees.

III. SUBMISSIONS

20. Counsel for the claimant submitted on three issues – ***Whether the redundancy was carried out in accordance with the Employment***

Act, 2007; Whether the respondent violated the rights of the affected employees under Article 41(1) of the Constitution; and Whether the affected employees are entitled to the reliefs sought.

21. On the first issue, it is submitted that the respondent failed to comply with the mandatory requirements of ***Section 40 of the Act***. In particular, it is submitted that there was no prior notice to the claimant or the County Labour Officer, no consultations were held, and no evidence was tendered to show that objective selection criteria were applied. It is submitted that the redundancy was therefore unilaterally implemented and hence the same was procedurally unfair.
22. It is submitted that the respondent did not demonstrate any genuine operational requirements to warrant redundancy, as no evidence of restructuring, re-organization, or financial strain was placed before the Court.
23. On constitutional compliance, the claimant contended that the failure to consult and issue a lawful notice violated the grievants' right to fair labour practices under ***Article 41(1) of the Constitution***. It is submitted that the letters of redundancy issued to the grievants were undated and unsigned and therefore legally defective, rendering the terminations unlawful.
24. It is further submitted that the respondent failed to issue certificates of service to the grievants as required under ***Section 51(1) of the Act***.

25. The Court is urged to find that the redundancy as executed was unlawful, both in procedure and substance, and grant appropriate remedies, including compensation, payment of any outstanding terminal dues, issuance of certificates of service, costs, and interest.
26. On the other hand, the respondent's counsel submitted on two issues – ***Whether the respondent complied with Section 40 of the Employment Act, 2007, in respect with terminating the employees on account of redundancy; and Whether the union has obeyed the doctrine of exhaustion, as they had filed a similar dispute before county labour office.***
27. On the first issue, it is submitted that the redundancy was genuine and occasioned by financial constraints and low business. It is contended that the affected employees were issued with one month's notice and were consulted prior to termination. It is further submitted that the redundancy notice was duly issued to the County Labour Office in compliance with the law.
28. The Respondent asserted compliance with ***Section 40(1)(a)–(g) of the Act*** including, the issuance of statutory notice; consultation with affected employees, payment of terminal dues comprising of notice pay, accrued leave, and severance pay; and adherence to fair procedure in the redundancy process.
29. Reliance was placed on the decision in ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya, Minister For Transport,***

Minister For Labour & Human Resource Development & Attorney General [2014] KECA 403 (KLR) in support of the proposition that redundancy is a legitimate ground for termination provided it is founded on valid operational requirements and implemented in accordance with fair procedure.

30. The respondent further contended that there was in place no recognition agreement with the claimant Union and no evidence was availed demonstrating that the respondent had been notified of the affected employees' union membership at the material time.

31. On the second issue, the respondent argued that the claimant had lodged a similar dispute before the County Labour Office that was still pending conciliation at the time of filing the present proceedings. It was contended that the suit was therefore premature and offended the ***doctrine of exhaustion***.

32. Reliance was placed on ***Speaker of the National Assembly v Karume (1992) KLR 21*** wherein the Court held that where a statute provides a procedure for redress, that procedure ought to be strictly followed before recourse to the Court.

IV. ANALYSIS & DETERMINATION

33. The court has carefully read and considered the application, the affidavit in support, the replying affidavit and the written submissions by or on behalf of the parties, alongside all the cited authorities. The following issue commends itself to the court

for determination – *Whether the application is premature for failure to exhaust statutory dispute resolution mechanisms, and, whether the application has merits.*

V. EXHAUSTION PRINCIPLE

34. The respondent argues that the claimant had first filed this dispute before the County Labour Office and that before it was resolved the claimant filed the present application. The respondent argues that the application is thus premature and the entire cause ought to be dismissed.
35. The court has perused the letter attached to the replying affidavit dated 17th September 2025 from the Ministry of Labour and Social Protection. The issues in dispute therein are “*Refusal by the management of the Hotel to sign the Recognition agreement contrary to section 54 of the Labour Relations Act 2007, and, refusal by the management to check-off system forms no. 006033 and 006048, contrary to Section 48 of the Labour Relations Act 2007.*”
36. The present application relates to termination on redundancy and is thus distinct from the dispute alluded to by the respondent. The present application seeks interim orders and the same is properly before the court. There is no pending dispute relating to the same subject before the Labour Office. The court thus finds and holds that the application is neither premature nor improperly before the court.

VI. REDUDANCY

37. The procedure applicable in declaration and execution of redundancy is set out under **Section 40 of the Act** which requires that –

- a) At least one month's notice should be given to the Labour Officer and, if applicable, the trade union, outlining the reasons for and extent of the redundancy.*
- b) For non-unionized employees, they must receive personal written notification, with courts having established that the one-month notice period applies to them as well.*
- c) The employer must consider seniority (Last In, First Out), skill, ability, and reliability when selecting employees.*
- d) Affected employees are entitled to pay for unused leave, one month's notice pay, and severance pay; and*
- e) The employer should engage in consultations to discuss alternatives to redundancy.*

38. The present application is dated 30th September, 2025. As pleaded by the claimant, the grievants were issued with letters of redundancy on either 17th or 18th September 2025 indicating that their services were to be terminated by 30th September 2025. A sample letter of termination on redundancy to one of the grievants read as follows –

Grand Turaco Hotel

KAKAMEGA MUMIAS ROAD, Mobile 0110703751 Email:hotelgrandturaco@gmail.com

LETETR OF TERMINATION DUE TO REDUNDANCY

REF: PAMELA MULAMA

Dear Pamela,

We're sorry to inform you that your job with Grand Turaco Hotel will end on 30th September 2025 due to redundancy.

The decision to eliminate your position was based on the company's current financial constraints & due to low sales. It is unrelated to how successfully you performed your duties or how you conducted yourself in any way.

We know the news may upset you; however, we will make the necessary adjustment as possible. We will process your final, and if needed, we may give a reference letter for your job quest.

If you have any questions concerning your termination and payment, contact the director.

We appreciate your effort to Grand Turaco Hotel throughout your employment. We hope you discover new and rewarding possibilities.

Best Regards

Employee Name:

ID NO:

DATE:

SIGN

39. Conversely, the respondent adduced letters issued to all the grievants dated 25th September 2025 indicating the final pay payable to the grievants, a tabulation of the final dues and a cheque of the final dues. A sample letter read as follows –

Grand Turaco Hotel

KAKAMEGA MUMIAS ROAD, Mobile 0110703751 Email:hotelgrandturaco@gmail.com

LETTER OF TERMINATION DUE TO REDUNDANCY

REF: PAMELA MULAMA

Dear Pamela,

Date 25/9/2025

We're sorry to inform you that your job with Grand Turaco Hotel will end on 30th September 2025 due to redundancy.

The decision to eliminate your position was based on the company's current financial constraints & due to low sales. It is unrelated to how successfully you performed your duties or how you conducted yourself in any way.

We know the news may upset you, but we will make the necessary adjustment as possible. We will process your final pay as follows;

1. *One Month Notice Pay- Kshs15,783*
2. *September pay – Kshs15783*
3. *Severance pay – (2yr of competed service)- Kshs15,783*
4. *Unutilized leave days’ pay- kss11,706*
5. *Gazettes Holidays pay- Kshs12,100 (No statutory deductions. Should self-declare)*

Total pay without statutory deductions= Kshs59,055

Net pay less stator deductions = Kshs66,442

Statutory deductions will be remitted to the relevant authorities.

Attached to this letter is a breakdown of the above.

If needed, we may give a reference letter for your job quest.

If you have any questions concerning your termination and payment, contact the director.

We appreciate your effort to Grand Turaco Hotel through your employment. Your total net pay will be Kshs66,442/-. This sums as the last and final payment for your terminal dues.

Best regards,

Director

Grand Turaco Hotel

Sign.....

Date

Employee Name

NICHOLAS OMONDI

ID 2719*8262

Sign.....

Date 27/9/2025

40. The three other grievants were each issued with a letter containing the same terms as above, save for the tabulated final dues. Nicholas Omondi received a cheque of Kshs56 768/=; Kevin Lubutse received Kshs89,379/=; and, Milkah Saeni received Kshs20,040/=.
41. There was no information on the status of Moris Mukavale, Lydia Otwero, and Tabitha Pendo. However, the claimant conceded that five of the grievants were paid their terminal dues while two were reinstated. The respondent also argued and submitted that Moris Mukavale did not have a contract having joined in May 2025 while Lydia Otwero and Tabitha Pendo were retained.
42. The claimant's application is interlocutory in nature seeking to stop the 'intended' redundancy against its members. As at the time the application was filed on 30th September 2025, five grievants had already been paid their terminal dues and their employment terminated while two had been retained. This, therefore, means that the application as at the time of filing had been overtaken by events rendering the entire application nugatory.
43. From the record contained in the physical file in court there was no substantive suit filed with the application for the court to make a determination on whether the now finalized termination on redundancy was lawful or not. Likewise, there is no basis or foundation for the court to grant remedies, including compensation,

payment of any outstanding terminal dues, issuance of certificates of service, costs, and interest.

44. The court finds and holds that the application dated 30th September 2025 was overtaken by events and is hereby dismissed with no orders as to costs.

45. However, if the claimant indeed filed a substantive cause alongside the application it is free to pursue that cause to its logical conclusion.

VII. ORDER

46. The court orders that –

(i) The application dated 30th September 2025 is hereby dismissed.

(ii) Each party shall bear own costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 19TH DAY OF MARCH 2026.**

.....
DAVID NDERITU
JUDGE