

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E175 OF 2021

DR. MARGARET MIGIRO & 15 OTHERS
.....**CLAIMANTS**

VERSUS

THE REGISTERED TRUSTEES
NATIONAL COUNCIL OF CHURCHES OF KENYA.....1ST
RESPONDENT

JUMUIA HOSPITALS LIMITED.....2ND
RESPONDENT

RULING

- 1.** This ruling relates to the Claimants/Applicants Notice of Motion application dated 17th November, 2025, made pursuant to Articles 22, 25, 48, 50 (1) and 159 (2) of the Constitution, and Rule 74 of the Employment and Labour Relations Court (Procedure) Rules No.133 of 2024. The Applicants pray THAT: -
 - i.** Spent
 - ii.** The Honourable Court be pleased to review, vary and/or set a side paragraph 65 of its judgment dated and delivered on 30.10.2025 and award compensation to each Claimant for unlawful and unfair redundancy as per

- prayer (c) of the Memorandum of Claim dated 16. 2.2021.
- iii.** The Honourable Court be pleased to review, vary and/or set a side paragraph 67 of its judgment dated and delivered on 30.10.2025 and order that the Respondents do pay to the Claimants public holidays worked as per prayer (e) of the Memorandum of Claim dated 16.2.2021.
 - iv.** The Honourable Court be pleased to review, vary and/or set a side paragraph 67 of its judgment dated and delivered on 30.10.2025 and order that the Respondent do pay the Claimants' withheld salaries as tabulated in paragraph 18 as per prayer (b) of the Memorandum of Claim dated 16. 2.2021.
 - v.** The Honourable Court be pleased to review, vary and/or set a side paragraph 67 of its judgment dated and delivered on 30.10.2025 and order that the Respondent do pay the Claimants Kshs. 20, 499,313/- as tabulated in paragraph 18 of the Claim as per prayer (b) of the Memorandum of Claim dated 16. 2.2021.
 - vi.** The Honourable Court be pleased to review, vary and/or set a side paragraph 65 of its judgment dated and delivered on 30.10.2025 and order that the Respondents do issue the Claimants compliant certificates of service as per prayer (h) of the Memorandum of Claim dated 16. 2.2021.
 - vii.** Costs of the application be awarded to the Claimants.

2. The application is supported by grounds on the face thereof and the affidavit sworn by **Alfred Mutwiri Njeru**, the 10th Claimant/Applicant herein.
3. The Claimants/Applicants aver that in the Judgment delivered by this court on 30th October, 2025, in this matter, the court at paragraph 65 of the said Judgment stated thus:-
“It is also safe to mention that though the Claimants asked the court to declare their termination by redundancy unfair, they did not proceed to seek damages/compensation for the unfair termination. As always, parties are bound by their pleadings, and this court will be in error to award that which was not prayed for.”
4. The Claimants point out that in their claim, they specifically requested compensation for unlawful and unfair redundancy, and argue that the court’s failure to award this relief, despite finding in several paragraphs of the judgment that the termination was unfair, is a clear error on the face of the record. The Claimants thus seek that the court review its decision because they have been denied the compensation, they believe they are entitled to.
5. The Claimants argue that the court had already found the redundancy process unlawful on the basis that the Respondents failed to follow the required legal procedure

and lacked a valid justification, but despite these findings, no compensation was awarded.

- 6.** They maintain that correcting this error will not prejudice the Respondents, but failure to do so will cause them serious injustice, including financial loss and violation of their right to access justice. The Claimants further emphasize that their application was filed promptly and in good faith, and urge the court to exercise its discretion to review the decision and grant the compensation sought.
- 7.** The Respondents opposed the Motion vide a Replying affidavit sworn by **Ms. Edith Njeri**, the Respondents' Human Resources Manager, on 3rd December, 2025.
- 8.** The deponent states that a court may review its decision to correct a clear and obvious error that is apparent on the face of the record, and one that does not require detailed argument and is unmistakable. She further avers that such an error must be obvious to anyone reading the record and not open to differing interpretations.
- 9.** The deponent states that in this case, the Applicants are seeking a review of the judgment delivered on 30th October 2025 on the ground that the court made such an error, specifically, that in paragraph 65 of the judgment, the court stated that the Claimants had not sought compensation for unfair termination.
- 10.** The Respondent states that the Claimants are not entitled to a review because the court already properly addressed

and awarded the remedies available under the law. They contend that compensation for unlawful redundancy, as pleaded by the Claimants, is not the same as compensation for unfair termination, and that, according to them, the law does not provide a separate remedy specifically for “unlawful redundancy” beyond what is covered under the statutory provisions already applied by the court.

11. They further argue that compensation for unfair termination is a distinct remedy governed by specific legal provisions, which must be clearly and expressly pleaded, including the amount claimed, and since the Claimants did not specifically plead for this type of compensation or quantify it, the court was correct in declining to award it. The Respondents maintain that there is no apparent error in the judgment, and the application for review is unfounded.

12. The Respondents further argue that the Claimants failed to properly draft and particularize their prayers, noting that they did not specifically plead for compensation for unfair termination, but instead framed their claim around unlawful redundancy, effectively duplicating similar reliefs. The Respondents state that pleadings must clearly inform both the court and the opposing party of the exact nature of the claim so that the issues for determination are precise and fair.

13. The Respondents further argue that claims for damages or compensation must not only be expressly pleaded but also

properly justified and, where applicable, quantified, as without such specificity, the court lacks the basis and jurisdiction to grant those remedies.

14. In conclusion, the deponent avers that although the Claimants listed compensation among their prayers, they maintain it was not properly framed or particularized as compensation for unfair termination, and therefore the court was correct in declining to award it.

15. The application was urged orally in court on 9th March, 2026, when both parties, through their respective counsels, reiterated their pleadings.

Analysis and Determination

16. This application seeks review of the judgment delivered by this Court on 30th October 2025, particularly paragraphs 65 and 67, on the basis of an error apparent on the face of the record. The issue for determination is whether the Claimants/Applicants are entitled to the reliefs sought.

17. The law on review is now well settled. A court may review its decision where there is discovery of new and important evidence, a mistake or error apparent on the face of the record, or for any other sufficient reason.

18. In ***National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR***, the Court of Appeal held:-

“A review may be granted whenever the court considers that it is necessary to

***correct an apparent error or omission...
The error must be self-evident and should
not require an elaborate argument.”***

19. Further in ***Nyamogo & Nyamogo Advocates v Kogo [2001] eKLR***, the Court explained what amounts to an error apparent in the following words: -

“An error apparent on the face of the record cannot be one which requires an elaborate argument... it must be obvious and patent.”

20. On whether there is an ‘error apparent’ on the face of the record in the Judgment delivered in this matter on 30th October, 2025, the impugned paragraph 65 of the judgment states that the Claimants did not seek damages/compensation for unfair termination.

21. The record, however, shows that under prayer (c) of the Memorandum of Claim, the Claimants expressly sought compensation for the unlawful and unfair declaration of redundancy.

22. The Respondents’ argument is that compensation for unlawful redundancy is distinct and not equivalent to compensation for unfair termination under Section 49 of the Employment Act.

23. It is, however, apparent from the jurisprudence of this Court that redundancy is a form of termination, and where

redundancy is procedurally or substantively flawed, it amounts to unfair termination. In ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] eKLR***, the Court held that failure to comply with Section 40 of the Employment Act renders a redundancy unfair.

24. I therefore have no doubt on my mind that a claim for compensation for unfair declaration of redundancy is for all intents the same as a claim for compensation for unfair termination.

25. The issue, therefore, is whether the Court's finding on paragraphs 65 and 67 of the Judgment amounts to an obvious error on the face of the record.

26. The reliefs the court listed in paragraph 1 of the said judgment were picked from the Claimants' witness statements, which are word-for-word with those in the judgment. It is also evident that those are the same prayers listed in paragraph 13 of the Claimants' Memorandum of Claim dated 16th February, 2021.

27. A look at the final prayers under the same Memorandum of Claim indicates that indeed, the Claimants sought compensation as prayer (c) under the said Claim.

28. The omission by the court is apparent, and the same occurred by pure inadvertence. The error occurred due to the court's assumption that it picked the prayers in

paragraph 1 of the Judgment from the final reliefs in the Memorandum of Claim. It is, however, apparent that the reliefs that the court picked are those in paragraph 13 of the Memorandum of Claim.

- 29.** The court already found the Claimants' termination by redundancy unfair and would, as a matter of course, have made the award of compensation if not for having missed the Claimants' prayer for compensation and indicated as such in the said Judgment.
- 30.** It is therefore evident that the Court's conclusion that no compensation was sought is factually incorrect, and which is not a matter requiring interpretation or argument, as it is discernible from a plain reading of the pleadings. The error is obvious to anyone reading the record and not open to differing interpretations.
- 31.** Further, the correction will not in any way prejudice the Respondents who are in possession of both the judgment and the subject memorandum of claim, and know for a fact that the said prayer was indeed sought by the Claimants under their claim.
- 32.** Accordingly, I find and hold that the application meets the threshold for review.
- 33.** In whole, I find the Claimants/Applicants' application merited and the Judgment delivered by this Court on 30th

October, 2025, is hereby reviewed in terms of the following orders: -

Compensation for unlawful and unfair declaration of redundancy

- 34.** The court found the Claimants' termination on account of redundancy unfair, and which entitles them to compensation. (See ***Benjamin Langwen v National Environment Management Authority (2016) eKLR***)
- 35.** In ***Alfred Muthomi & 2 Others v National Bank of Kenya Limited [2018] eKLR*** the Court held that in granting 12 months' salary compensation for unfair termination, it considered the Claimants long service.
- 36.** The court at paragraphs 59 and 60 of the subject judgment held that the Claimants' redundancy was unnecessary for the reason that the Respondents proceeded to fill the same vacancies they declared redundant. Taking this finding into consideration and the holding in ***Elizabeth Wakanyi Kibe v Telkom Kenya Ltd [2014] eKLR*** where the Court cited the case of ***D.K. Marete v Teachers Service Commission Cause No. 379 of 2009*** to hold that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees but are meant to redress economic injuries in a proportionate way, I deem an award of 7 months' salary sufficient compensation for the unfair termination.

Payment of Kshs. 20,499,313

37. This prayer, though not earlier on singularly addressed in the judgment for the reasons explained in this ruling, is without merit, on the premise that the payment sought comprises withheld salaries, severance pay, and leave pay which were already covered in the said judgment.

Public Holidays

38. The Claimants did not lead any evidence to show that they worked on public holidays. The specifics of the days each Claimant worked and the particular holidays on which they worked are not part of the evidence produced before this court.

39. This prayer is thus devoid of merit and is dismissed.

Compliant Certificates of Service

40. A certificate of service is an entitlement of every employee upon termination or separation with the employer by whatever means, pursuant to Section 51 of the Employment Act.

41. Further, the Section provides that a certificate of service shall contain the employer's name and postal address, the employee's name, the date the employee started working, the type of work, the usual workplace, and the date the employment ended.

42. The Respondents are thus by law obligated to issue the Claimants with Certificates of service that meet the requirements of Section 51.

43. In whole, the Motion succeeds and the Judgment delivered in this matter on 30.10.2025, is hereby reviewed in terms of the following orders: -

- a) That the Respondent shall pay each of the Claimants 7 months' salary as compensation for the unfair termination.
- b) That the Respondents shall forthwith issue the Claimants with compliant Certificates of Service.
- c) I make no orders on costs.

44. Orders of the Court.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19TH DAY OF MARCH, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Midenga present for the Claimants/Applicants

Ms. Kagendo present for the Respondents

Ms. Esther -C/A