

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E788 OF 2024

BANKING INSURANCE AND FINANCE UNION (KENYA).....
CLAIMANT

VERSUS

JUBILEE LIFE INSURANCE COMPANY
KENYA.....RESPONDENT

J U D G M E N T

1. Through a Statement of Claim dated 17th September 2024, the Claimant states that it has a valid Recognition Agreement with the Respondent and that, pursuant thereto, the parties have negotiated and executed several Collective Bargaining Agreements (CBAs).
2. The Claimant further avers that in 2018 it recruited a number of unionisable employees who joined its membership by executing check-off forms, thereby signifying their intention to join the union. According to the Claimant, these check-off forms were subsequently served upon the Respondent for purposes of effecting deduction and remittance of trade union dues.
3. The Claimant contends that the Respondent declined to deduct and remit the union dues as required, prompting the institution of a suit which, according to the

Claimant, remains pending. The Claimant further asserts that the Respondent has declined to engage in negotiations for a fresh CBA, an issue which is likewise the subject of separate ongoing proceedings.

4. The Claimant further avers that on 22nd August 2024, it received a notice from the Respondent indicating its intention to declare one of the two union members redundant.
5. According to the Claimant, the said employee, **Felix Musonye Likami**, who is the grievant in the present matter, had been subjected to considerable pressure by the Respondent to resign from the union. The Claimant contends that this amounts to victimisation on account of the grievant's trade union membership and constitutes an unfair labour practice.
6. In view of the foregoing, the Claimant seeks the following reliefs against the Respondent on behalf of the grievant:
 - a) *That the claimant union prays to this Honourable court to find and declare that the intended and or the redundancy of Felix Musonye Likami is unlawful, unfair and therefore invalid.*
 - b) *That the Honourable Court reinstate the subject employee, Felix Musonye Likami, back to his position in the company to continue with his role as a Driver until the normal retirement age of sixty (60) years.*

- c) That the claimant further prays to the Honourable Court to compensate the redundant employee twelve (12) months' salary as compensation for having suffered unfair and unlawful termination of employment by way of redundancy.*
- d) That claimant finally prays to the Honourable Court to award damages of Ksh 1,500,000 (One million, five hundred thousand only) to the redundant employee for having suffered unfair/unlawful loss of employment.*
- e) Costs of this suit.*

7. The Respondent opposed the Claim through its Memorandum of Reply dated 28th October 2024, in which it asserts that the redundancy process affecting the grievant was conducted lawfully.
8. The Respondent maintains that the decision to declare the grievant redundant was made in good faith and in compliance with the law. The Respondent avers that the grievant served as the Chief Executive Officer's (CEO) driver and that the former CEO, whom the grievant used to drive, had attained the retirement age.
9. The Respondent contends that following the appointment of a new CEO who opted to drive himself, there were no alternative positions into which the grievant could be redeployed.

10. On the basis of the foregoing, the Respondent has urged the Court to dismiss the Claim with costs.

11. The matter proceeded for hearing on 29th October 2025, during which both parties presented oral evidence in support of their respective cases.

Claimant's Case

12. The grievant herein, **Felix Musonye Likami**, testified in support of his case and, at the outset, adopted his witness statement as his evidence in chief. He also produced the initial and further lists and bundles of documents filed on his behalf as exhibits before the Court.

13. Mr. Felix Musonye Likami testified that he was employed by the Respondent on 28th November 2016 as a general driver under Job Group B. It was his evidence that he was never designated as a chauffeur nor assigned to serve a specific officer within the company.

14. He further testified that on 24th August 2024, he received a letter from the Respondent notifying him of the termination of his employment on account of redundancy.

15. Mr. Musonye further stated that he was a member of the Claimant union and that at the time of his termination, there were only two (2) union members remaining within the Respondent's establishment.

- 16.He also stated that at one point, the Respondent had several union members. According to him, many of his colleagues who were members of the union were coerced, intimidated, or enticed into withdrawing their union membership.
- 17.He further averred that although a CBA had been negotiated by the parties as far back as 2018, it had not been signed to date, and the matter was still pending determination before the Court.
- 18.Mr. Musonye further stated that on several occasions he was approached and requested to resign from the union, but he declined to do so.
- 19.He further testified that the Claimant union was invited to attend a meeting at the Respondent's offices on 28th August 2024 to negotiate the terms and conditions of his redundancy, but the parties did not reach any agreement.
- 20.Mr. Musonye also stated that he was later approached individually to engage in negotiations with the employer without the involvement or representation of the union. He added that the union was not aware of several meetings that were subsequently held between himself and the Respondent.
- 21.He testified that he was offered severance pay calculated at thirty-five (35) days for each year worked, together with one (1) month's salary in lieu of notice. It was his

view that the union would have been the most appropriate party to engage the management on his behalf in relation to the matter.

22. Mr. Musonye further averred that he was later intimidated and, having already been removed from the payroll, he was informed on 2nd October 2024 that he would only be able to access his benefits if he signed a discharge form.

23. According to him, he signed the discharge form reluctantly and against his wishes, as he needed to access his benefits in order to settle his financial obligations.

24. It was Mr. Musonye's evidence that the Respondent victimized him on account of his trade union membership and his refusal to resign from the union, unlike some of his colleagues. He further stated that his position as a driver was subsequently taken over by an employee from G4S.

Respondent's Case

25. The Respondent presented oral evidence through **Winnie Rono**, who testified as RW1. Ms. Rono introduced herself as the Respondent's Human Resources Business Partner. Equally, she adopted her initial and further witness statements as her evidence in chief. She further produced the Respondent's initial and further lists and bundles of documents as exhibits before the Court.

26. Ms. Rono testified that Mr. Musonye was initially employed by Jubilee Insurance Company of Kenya Limited under an employment contract dated 28th November

2016 as a pool driver. She stated that in 2017, he was transferred to the valuation centre, where he drove courtesy vehicles until sometime in 2021, when he was reassigned as a driver in the CEO's office.

27. It was Ms. Rono's evidence that around 2014, there were regulatory changes within the insurance sector that necessitated a mandatory restructuring and reorganization of the business. She explained that following approvals issued by the Insurance Regulatory Authority in 2019 through a Gazette Notice, the business underwent a composite split, resulting in Jubilee Insurance Company of Kenya Limited transferring its motor and health insurance portfolios to separate entities.

28. She further averred that as a result of these changes, Mr. Musonye's role effectively became redundant. However, instead of terminating his employment on that basis, the Respondent transferred him to Jubilee Life Insurance Limited as a driver in the CEO's office, where he was specifically assigned to drive the CEO.

29. Ms. Rono further stated that when the former CEO left the company, the incoming CEO opted to drive himself and therefore did not require the services of a driver. She added that the Human Resources Department attempted to identify alternative positions for Mr. Musonye, but he did not possess the qualifications required for any of the available roles, which ultimately led to the redundancy process being initiated.

30. She further testified that the Respondent at all times endeavored to ensure that the consultative meetings were meaningful and aimed at exploring the possibility of absorbing Mr. Musonye into other suitable roles. In this regard, the Respondent conducted a total of three (3) consultative meetings.

31. According to Ms. Rono, the first meeting took place on 22nd August 2024, when Mr. Musonye received an invitation to the consultative meetings, similar to the Claimant union, and an informal discussion was held regarding the intended redundancy. She added that Mr. Musonye was at all times aware that the Claimant had also been invited to participate in the consultative process.

32. Ms. Rono further testified that the second meeting was held on 28th August 2024 in the presence of the Claimant. However, the meeting ended prematurely after the Claimant's representative, **Tom Odero**, stormed out. As a result, no signed minutes were generated for that meeting. She stated that during conciliation proceedings, the conciliator advised the parties to sign the minutes of the consultative meeting, but this had not been done due to the Claimant's failure to respond.

33. She further testified that the third meeting, held on 18th September 2024, was a final attempt to explore the possibility of assimilating Mr. Musonye into other available roles. However, upon further deliberation, the Respondent concluded that

it was not feasible to redeploy him because the available positions required a university-level education, which he did not possess.

34. According to Ms. Rono, the Respondent had no viable option but to declare Mr. Musonye redundant.

35. She further denied the allegation that the Respondent coerced Mr. Musonye into signing the discharge voucher. In this regard, she testified that Mr. Musonye voluntarily participated in an employee exit interview during which he rated the Respondent as “*Good*” in all categories and stated that he would recommend the Respondent company as a place to work, describing it as “*a better place.*”

Submissions

36. Upon the close of the hearing, the Court directed the parties to file their written submissions within specified timelines. When the matter came up for mention on 27th November 2025, neither party had filed their submissions, prompting the Court to grant further leave for the same to be filed within extended timelines and to schedule the matter for mention on 3rd February 2026.

37. When the matter came up for mention on 3rd February 2026, the parties had still not filed their written submissions. At the time of writing this judgment, neither party had filed any written submissions.

Analysis and Determination

38. Flowing from the record, the Court has identified the following issues for determination:

- a) **Whether the termination of the grievant on account of redundancy was substantively justified;**
- b) **Whether the Respondent complied with the procedural requirements governing redundancy; and**
- c) **Whether the grievant is entitled to the reliefs sought.**

Substantive justification for the termination?

39. It is evident from the record that the grievant's employment was terminated on account of redundancy. As such and pursuant to **Section 45(2)(b)(ii) of the Employment Act**, the Respondent bears the burden of demonstrating that the reason for the grievant's termination was fair, valid, and based on its operational requirements.

40. The Respondent attributed the redundancy to the retirement of its Chief Executive Officer (CEO), after which the incoming CEO opted to drive himself. The Respondent further stated that the company had transitioned to an outsourced transport model and taxi carpooling system in order to enhance efficiency, reduce costs, and promote sustainability in line with its broader strategic objectives.

41. The Claimant, however, contended that the grievant's redundancy was unjustified and was motivated by the grievant's membership in the union.

42. In his testimony before the Court, the grievant averred that he had never been designated as a chauffeur nor assigned to serve a particular officer within the Respondent company.

43. On its part, the Respondent, through RW1, testified that following regulatory changes within the insurance sector that necessitated the restructuring and reorganisation of the business, the company underwent a composite split leading to the establishment of separate entities. As a result, the grievant was transferred to Jubilee Life Insurance Limited as a driver attached to the CEO's office.

44. In support of this position, the Respondent produced a letter dated 19th January 2021 through which the grievant was transferred from Jubilee Holdings Limited to Jubilee Life Insurance Limited as a driver in the CEO's office. The said letter was copied to **Ajit Kumar**, the CEO-Life.

45. In view of the foregoing evidence, the grievant's assertion that he had never been designated to serve any specific officer within the Respondent company cannot be sustained.

46. The Respondent further produced a copy of a farewell dinner programme dated 26th July 2024 in respect of Ajit Kumar.

47. Notably, the grievant did not dispute that Ajit Kumar retired from the Respondent company sometime in July 2024. Indeed, he admitted as much in his testimony

before the Court. Accordingly, the Court has no reason to doubt the Respondent's position that the CEO whom the grievant had been assigned to drive exited the company upon retirement.

48. It was also indicated in the notice of potential redundancy that the new CEO had opted to drive himself and that the company had transitioned to an outsourced transport model.

49. Emerging jurisprudence underscores that courts should refrain from unduly interfering with an employer's discretion in making and implementing strategic business decisions within its operations. Accordingly, it is not the role of the Court to question or interfere with the Respondent's strategic business objectives concerning its transport model.

50. With regard to the grievant's contention that his redundancy was motivated by his union membership, it is noteworthy that during his examination in chief, he testified that the other union member within the Respondent's establishment worked in the filing section. However, he did not indicate or suggest that the said employee had similarly been terminated from employment.

51. In the circumstances, and in the absence of evidence demonstrating otherwise, the Court finds no basis to conclude that the grievant's termination on account of redundancy was unrelated to the Respondent's operational requirements.

52. In sum, the Court is satisfied that the Respondent has demonstrated, to the required standard, that the grievant's termination on account of redundancy was founded on a fair and valid reason and was connected to its operational requirements.

Procedural fairness?

53. Concerning the requirement for 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.*

54. In the present case, the record bears that the Respondent issued the grievant with a notice of potential redundancy dated 22nd August 2024. In that notice, which was copied to the Claimant union, the Respondent communicated its intention to declare the grievant redundant. The grievant was further informed that over the ensuing thirty (30) days, the Respondent's management would engage him, together with the Claimant union, in consultations aimed at exploring possible alternatives to the redundancy and/or measures to mitigate its adverse effects.

55. A similar notice was also issued to the Ministry of Labour and Social Protection.

56. The Court finds that the said notice complied with the requirements of **Section 40(1)(a) and (b) of the Employment Act**, as it communicated the intention to terminate employment on account of redundancy, identified the employee to be affected, and was issued within the prescribed thirty (30) day period.

57. With regard to the requirement to undertake consultations, the Respondent averred that it engaged the grievant in three (3) consultative meetings.

58. In this regard, the Respondent produced minutes of a meeting held on 28th August 2024 at which the Claimant union was present and during which the issue of the

grievant's potential redundancy was discussed. According to RW1, the meeting ended prematurely after the Claimant's representative, Tom Otero, stormed out of the meeting.

59. The Respondent further produced a meeting invitation sent on 17th September 2024 by **Peter Kimani**, inviting the grievant and other participants to a meeting. However, there is no evidence on record to demonstrate that the Claimant union was invited to attend that meeting.

60. In his testimony, the grievant stated that he was invited to attend the subsequent consultative meetings alone, without the participation of the Claimant union. He further stated that the union was not aware of the subsequent consultative meetings he held with the Respondent.

61. The Respondent did not provide any explanation for the exclusion of the Claimant union from the subsequent consultation meetings concerning the grievant's potential redundancy. While it may be true that the Claimant's representative may have left the meeting of 28th August 2024 prematurely, that in itself did not justify excluding the union from any subsequent consultative engagements.

62. Moreover, the Respondent did not produce minutes of the subsequent consultative meetings allegedly held with the grievant. Consequently, the Court is unable to ascertain whether the consultations undertaken in those meetings met the standard

contemplated under *Article 13 of Convention No. 158 and Recommendation No. 166 of the International Labour Organisation (ILO)*.

63.Indeed, the Court cannot determine whether in those consultative meetings, the parties explored possible measures to avert the redundancy or to minimise its adverse effects on the grievant. It is therefore difficult to establish whether the consultations were meaningful or merely undertaken as a formality.

64.It should be appreciated that pre-redundancy consultations constitute a critical component of the redundancy process and must therefore be substantive rather than cosmetic.

65.For these reasons, the Court is not persuaded that the consultative meetings undertaken between the Respondent and the grievant satisfied the purpose envisaged under Article 13 of the aforementioned ILO Convention. Further, given that the grievant was a union member, the Claimant was an essential participant in the consultative process, and its exclusion compromised the integrity of the subsequent consultations.

66.The Claimant also challenged the selection criteria applied by the Respondent in effecting the grievant's redundancy.

67.A review of the record indicates that the grievant was the only driver assigned to the Respondent's CEO. The grievant testified that another driver was assigned to

the Respondent's former Chairman, while he further alleged that an additional driver was employed shortly after he was declared redundant.

68. However, there is no evidence on record to support the grievant's assertion that another driver was employed shortly after his exit from the company.

69. It therefore appears that at the time the grievant was declared redundant, there were only two drivers in the Respondent's employment, with the other driver assigned to serve the Respondent's former Chairman.

70. In the circumstances, it is the Court's considered view that the requirement to apply selection criteria under **Section 40(1)(c) of the Employment Act** was not applicable in the present case.

71. With respect to the statutory payments required under **Section 40(1)(e), (f), and (g) of the Employment Act**, the Respondent's termination letter dated 23rd September 2024 indicated that the grievant would receive severance pay for 7.81 years worked (calculated at 35 days for each completed year of service), payment for 19.11 accrued but untaken leave days, one month's salary in lieu of notice, salary for days worked up to 23rd September 2024, and overtime dues.

72. The grievant confirmed that he received the said terminal dues as reflected in the discharge voucher dated 2nd October 2024.

73. It is notable that although the Claimant indicated that it was not satisfied with the grievant's separation package, it did not demonstrate how the payments made fell short of the grievant's lawful entitlement. In any event, the Claimant has not sought any specific relief in that regard.

74. Consequently, the Court finds no basis to conclude that the Respondent failed to pay the grievant his statutory entitlements under **Section 40(1)(e), (f), and (g) of the Employment Act.**

75. Nonetheless, the Court finds that the Respondent did not substantially comply with the procedural requirements under Section 40(1) of the Employment Act, as it failed to demonstrate that meaningful pre-redundancy consultations were undertaken as contemplated under **Article 13 of Convention No. 158 and Recommendation No. 166 of the ILO.** To that extent, the grievant's termination on account of redundancy was procedurally flawed.

Reliefs?

76. Having found that the Respondent did not substantially comply with the procedural requirements for pre-redundancy consultations as prescribed under **Article 13 of Convention No. 158 and Recommendation No. 166 of the ILO,** the Court awards the grievant compensatory damages equivalent to two (2) months' gross salary. In determining this award, the Court has taken into account that the Respondent has satisfied the required standard of proof that the Claimant's redundancy was

founded on a valid and fair reason, connected to its operational requirements. Accordingly, the damages awarded are nominal.

77. The grievant's prayer for reinstatement is declined, as the Court has found that the termination of his employment on account of redundancy was fair, valid, and based on the Respondent's operational requirements. Similarly, the claim for damages for unfair or unlawful loss of employment is dismissed.

Orders

78. In the end, the Court awards the Claimant compensatory damages of **Kshs 103,684/**, 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.

79. There will be no orders as to costs, as both parties failed to comply with the directions regarding the filing of written submissions.

DATED, SIGNED and DELIVERED at MERU this 13th day of March 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Odero

For the Respondent Ms. Oliwa

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 15th March 2020 and subsequent directions of 21st 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