



**Keana v Quavatel Limited (Cause E704 of 2023)
[2026] KEELRC 964 (KLR) (16 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 964 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E704 OF 2023
CN BAARI, J
APRIL 16, 2026**

BETWEEN

EDWARD SAGINI KEANA CLAIMANT

AND

QUAVATEL LIMITED RESPONDENT

JUDGMENT

1. For determination is the Claimant's Memorandum of Claim dated 29th August, 2023, wherein the Claimant seeks the following reliefs as against the Respondent: -
 - i. A declaration that the Claimant's employment was unfairly and unlawfully terminated by the Respondent;
 - ii. Damages for unfair and unlawful termination by the Company calculated as 12 Months' Net Salary at United States Dollars Two Thousand (USD 2,000) per month, amounting to United States Dollars (USD 24,000);
 - iii. Severance pay calculated as fifteen days for each year worked, i.e., for seven (7) years of service at United States Dollars Two Thousand (USD 2,000), amounting to United States Dollars Seven Thousand (USD 7,000);
 - iv. Payment of One Month's Salary In lieu of Notice at United States Dollars Two Thousand (USD 2,000);
 - v. Payment of the Claimant's withheld salary for the two months, amounting to United States Dollars Four Thousand (USD 4,000);
 - vi. Payment of unutilized leave days (14.25 leave days) amounting to United States Dollars One Thousand and Twenty (USD 1,020);



- vii. Payment of United States Dollars Two Thousand (USD 2,000) as relocation allowance to enable the Claimant relocate back to Kenya from Uganda;
 - viii. An Order for the Respondent to issue the Claimant with a Certificate of Service;
 - ix. Interest on (b) to (g) from the date of filing suit until payment in full; and
 - x. Costs of the suit with interests thereon.
2. Conversely, the Respondent filed a Response to the Memorandum of claim dated 1st July, 2024. Subsequent thereto, the Claimant filed a Reply to the Respondent's Response to Memorandum of Claim dated 31st July, 2024, in reply.
 3. The Claimant's case was heard on 19th November, 2024, when the Claimant (CW 1) testified in support of his case. He adopted his witness statement dated 29th August, 2023, and produced his list and bundle of documents of even date as exhibits in the matter and were marked as Claimant's exhibits Nos. 1-22.
 4. The Respondent's case was heard on 26th November, 2025, when the Respondent's witness (RW 1), Mr. Ali Maawi, testified in support of the Respondent's case. He adopted his witness statement and produced his list and bundle of documents dated 1st July, 2024, as exhibits in the matter and were marked as Respondent's exhibits Nos. 1-6.
 5. Submissions were received from both parties.

The Claimant's case

6. The Claimant's case is that he was an employee of the Respondent and that he rose through the ranks from an intern engaged on 1st February 2016 to the position of Project Manager on 1st August 2018. He avers that he previously served as a Mapping Surveyor and Planning Engineer.
7. It is his case that upon his appointment as Project Manager, he earned a gross salary of KShs.170,000, which was subject to periodic review, and was later deployed outside Kenya, first to Uganda and subsequently to Juba, South Sudan. He avers that at the time of his termination, he was earning a net monthly salary of USD 2,000.
8. It is the Claimant's case that on 13th June 2023, the Respondent informed him that due to financial constraints affecting its Juba operations, it could no longer sustain his salary and proposed to redeploy him to Kenya for an upcoming project at a significantly reduced gross salary of Kshs.100,000. The Claimant avers that he declined this offer on account of the drastic reduction in pay, and although he made a counteroffer of Kshs 200,000, the same was rejected, resulting in a stalemate.
9. The Claimant contends that despite his refusal, the Respondent insisted that he either accept the reduced salary or face termination, and thereafter directed him to organize for clearance without formally communicating a termination decision.
10. The Claimant further avers that he persistently sought clarity on his employment status and requested formal communication of the termination through emails dated 10th and 13th July 2023, but the Respondent declined to issue a termination notice, and instead, sought to have him execute a Mutual Separation Agreement, which he declined on the basis that it was unfavourable and procured under undue influence.
11. He states that despite further requests on 20th, 28th, and 31st July 2023, the Respondent failed to issue a formal termination letter and instead required him to travel to Nairobi to collect the same. He further



contends that he was eventually issued with a Notice of Termination on Account of Redundancy dated 1st July 2023, which he physically received on 7th August 2023, and that it indicated that his employment had already been terminated with effect from 31st July 2023, thereby rendering the notice retrospective and ineffective.

12. It is the Claimant's case that the purported redundancy was unlawful and unprocedural as the Respondent failed to comply with the mandatory requirements of the law, including issuance of prior notice to him and the Labour Officer, undertaking consultations, and demonstrating that his position had become redundant or that other employees were similarly affected.
13. The Claimant further avers that the Respondent improperly calculated his terminal dues using a salary of Kshs.170,000 instead of his prevailing net salary of USD 2,000, thereby underpaying him. He asserts that the Respondent unlawfully withheld his salary for the months of June and July 2023, notwithstanding that he continued working during that period.
14. The Claimant contends that although he had previously been paid relocation allowances when transferred to Uganda and later to Juba, the Respondent failed to provide a similar allowance upon termination to facilitate his relocation back to Kenya.
15. The Claimant's position is that his employment was unfairly and unlawfully terminated under the guise of redundancy, in violation of statutory provisions and his right to fair labour practices, and that he is consequently entitled to payment of withheld salary, proper computation of terminal dues including notice pay, severance pay, and accrued leave, as well as relocation allowance.
16. The Claimant denies the Respondent's assertion that his employment ended in October 2021 and maintains that he remained continuously employed under the original contract dated 1st August 2018 as a Project Manager. He avers that his deployments to Uganda and later to Juba, South Sudan, were merely internal transfers within the Respondent's operations and did not amount to termination or the creation of a new employment relationship.
17. The Claimant further asserts that the Respondent continued to treat him as its employee, including issuing him with a termination letter dated 1st July 2023, thereby confirming that the employment relationship subsisted until that date.
18. On remuneration, the Claimant maintains that following a contractual review in April 2022, he earned a net monthly salary of USD 2,000, contrary to the Respondent's assertion.

The Respondent's Case

19. The Respondent's case is that it employed the Claimant as pleaded, but maintains that throughout the period of service, the Claimant was accorded a conducive working environment and all his contractual and statutory entitlements, including payment of salary.
20. The Respondent denies that the Claimant's employment was terminated as alleged and avers that in or about October 2021, the Claimant voluntarily expressed his intention to leave employment in order to take up a position with Quavatel South Sudan.
21. It is the Respondent's case that the parties mutually terminated the employment relationship, following which the Claimant secured employment with the said South Sudan entity. The Respondent emphasizes that although there may be shared directorship between the two entities, they are separate and distinct legal persons.



22. The Respondent avers that any subsequent termination of the Claimant's employment arose not from its actions but from the cessation of operations of Quavatel South Sudan, whose activities were indefinitely halted by the Government of South Sudan. The Respondent states that, following this shutdown, the company engaged its employees, including the Claimant, in consultations, issued redundancy notices, and offered severance pay in compliance with the law, as well as alternative employment opportunities.
23. The Respondent contends that all procedural and legal requirements relating to redundancy were adhered to and that the termination was lawful and fair. It further avers that it has at all times been ready and willing to settle any lawful dues payable to the Claimant, but the Claimant has refused to accept the same by declining to sign the requisite discharge and acknowledgment documents.
24. The Respondent disputes the Claimant's assertion on remuneration, maintaining that he earned Kshs.170,000 per month at the time of separation, and not USD 2,000 as alleged.
25. On cross-examination, RW1 stated that the Respondent issued the Claimant a Notice of termination on account of redundancy dated 1st July, 2023, drafted by Quavatel Kenya Limited, which was to terminate the contract of 1st August, 2018.
26. RW1 stated that the Respondent discussed the redundancy with the Claimant, but the minutes of the said meeting have not been placed before the Court. Further, RW1 stated that the Respondent did not serve the Labour Officer with the redundancy notice.
27. On remuneration, RW1 stated that the amount credited to the Claimant was USD 2000 by Quavatel South Sudan.

The Claimant's Submissions

28. It is the Claimant's submission that he remained an employee of the Respondent's Kenyan entity up to the point of termination. He contends that the Respondent's assertion that he had transitioned to a South Sudan entity was unsupported by evidence and contradicted by its own documents.
29. The Claimant acknowledged that redundancy is a legitimate ground for termination, but submitted that it must meet both substantive and procedural requirements under section 40 of the *Employment Act*. He sought to rely on *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, where the Court of Appeal affirmed that redundancy is only lawful where it is based on valid operational requirements and carried out in accordance with fair procedure.
30. On procedural fairness, the Claimant submitted that the Respondent failed to issue notice to the Labour Officer and failed to conduct any consultation prior to termination. He relied on *Barclays Bank of Kenya Limited & another v Gladys Muthoni & 20 others* [2018] eKLR, where the Court emphasized that consultation prior to redundancy must be real and meaningful, and not merely procedural.
31. On entitlement to terminal dues, the Claimant submitted that, having been unlawfully terminated, he was entitled to payment of accrued leave, notice pay, unpaid salary, severance pay, and relocation allowance. He placed reliance in *David Nyagudi Okoth & another v Corn Products Kenya Limited (now Ingredion Holdings LLC)* [2014] eKLR, where the Court held that severance pay should be calculated based on the employee's last salary.
32. On the claim for damages for unfair termination, the Claimant relied on the Supreme Court decision in *Kenfreight (EA) Limited v Benson K. Nguti* [2019] eKLR (Supreme Court Petition No. 37 of 2018),



where the Court clarified that once termination is found to be unfair, the trial court has discretion to award appropriate remedies under section 49.

33. On costs, the Claimant relied on Section 27 of the [Civil Procedure Act](#) and cited *Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* [2013] eKLR, which cited *Levben Products v Alexander Films (SA) (Pty) Ltd 1957 (4) SA 225 (SR)*, for the principle that costs follow the event unless the court for good reason orders otherwise.
34. The Claimant finally maintains that the redundancy was not valid and was carried out in blatant violation of statutory safeguards. He urged the Court to find the termination unlawful and unfair, and to award him terminal dues, maximum compensation, and costs of the suit.

The Respondent's submissions

35. The Respondent submits that it was not the Claimant's employer at the material time of termination. It maintains that Quava-Tel Limited and Quava-Tel Limited South Sudan are distinct legal entities, relying on *Salomon v Salomon & Co Ltd* [1897] AC 22 and the Supreme Court decision in *Gatuma v Kenya Breweries Ltd & 3 others (Petition E023 of 2023)* [2024] KESC 52 (KLR), which affirmed the principle of separate corporate personality.
36. The Respondent further submitted that liability cannot be transferred between related entities unless the corporate veil is lifted, which requires proof of fraud, sham, or agency, none of which the Claimant demonstrated.
37. On whether redundancy arose, the Respondent submitted that no redundancy occurred in law. It submits that although operations in South Sudan ceased due to a government shutdown, the Claimant was not declared redundant, but was instead offered alternative employment, which he rejected.
38. On the issue of unfair termination, the Respondent submitted that it acted fairly and in good faith by offering redeployment and a termination package. It submits further that the Claimant declined multiple offers of continued employment on revised terms and insisted on unsustainable remuneration.
39. The Respondent further submitted that it complied with statutory requirements by issuing notice and offering payment in lieu thereof, as well as severance pay. The Respondent rejected the Claimant's assertion of procedural unfairness, arguing that a termination notice need not follow a rigid format and that communication, including electronic communication, suffices.
40. It further submitted that consultation is not mandatory, and relying on *Kenya Scientific Research International Technical and Institutions Workers Union v Kenya Agricultural and Livestock Research Organisation (Sugar Research Institute)* [2019] eKLR, and that in any event, the Claimant was engaged and given opportunities to accept alternative arrangements.
41. On entitlement to reliefs, the Respondent submitted that the Claimant was not entitled to any remedies as he was not its employee. In the alternative, it argued that even if an employment relationship were established, it had complied with the law and any termination was justified. It further submits that the Claimant's conduct disentitled him to relief, as he refused reasonable offers, declined to accept severance payments, and failed to mitigate his loss. Relying on Section 49(4) of the [Employment Act](#), the Respondent urged the Court to consider the Claimant's conduct and deny the reliefs sought.
50. The Respondent prays that the Court dismiss the claim with costs.



Analysis and Determination

42. Upon careful consideration of the pleadings herein, the parties' testimony, and the rival submissions, the dispute turns on three core issues: -
- i. Whether an employment relationship existed between the Claimant and the Respondent at the time of termination, and if it did;
 - ii. Whether the termination on account of redundancy was lawful and fair; and
 - iii. Whether the Claimant is entitled to the reliefs sought

Whether there existed an employment relationship at the time of termination

43. The Claimant's case is that he was an employee of the Respondent who rose through the ranks from an intern to the position of Project Manager. He contends that the Respondent issued him a Notice of Termination of employment on account of redundancy dated 1st July 2023, but which he physically received on 7th August 2023.
44. On its part, the Respondent argues that the Claimant ceased being its employee in October 2021 and instead became an employee of a separate entity registered and based in South Sudan. The Respondent maintains that although there may be shared directorship between the two entities, they are separate and distinct legal persons.
45. In *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] eKLR, the Court of Appeal held that in determining whether or not there exists an employer/employee relationship, the court must look beyond technical arrangements to the true employer in fact and control.
46. It is not disputed that the Claimant's original contract was with the Respondent herein. The Respondent has not led any evidence of the termination of that contract, as no resignation, discharge, or payment of final dues has been produced.
47. There is also no denying that the Respondent issued a redundancy notice dated 1st July 2023 to the Claimant, referring to that same contract, and which, in my view, is an acknowledgment of the subsistence of the employment relationship.
48. Further, RW1, on cross-examination, admitted that the redundancy notice was issued by the Respondent and that the same targeted the 2018 contract.
49. These facts clearly contradict the Respondent's assertion that the employment relationship ended in 2021. The alleged transition to the South Sudan entity did not, from the evidence before this court, extinguish the original employment relationship between the parties.
50. In the premise, I find and hold that the Claimant remained an employee of the Respondent up to July 2023.

Whether the termination on account of redundancy was lawful and fair

51. The Respondent terminated the Claimant's employment on account of redundancy. Section 40 of the *Employment Act* sets out mandatory conditions for a lawful redundancy, including the requirement to issue one month's notice to both the employee and the Labour Officer, consultation with the employee, adherence to an objective selection criterion, and payment of severance, amongst others.



52. The Court of Appeal in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* (Supra) held that redundancy must meet both the substantive justification and the procedural fairness tests. Further in *Barclays Bank of Kenya Limited & another v Gladys Muthoni & 20 others* [2018] eKLR, the Court emphasized that consultation must be real, meaningful, and held prior to the decision, and not merely cosmetic.
53. The evidence before this court is that the redundancy notice was dated 1st July 2023 and was to take effect on 31st July 2023. The Claimant contends that he only received the notice on 7th August 2023, and his contention was not controverted.
54. Further, RW1 confirmed that no notice was served on the Labour Officer. The Respondent did not provide any documentary proof of consultations with the Claimant prior to the issuance of the redundancy notice, and his assertion is that he was pressured to accept revised terms of service or sign a separation agreement.
55. It is now settled that failure to notify the Labour Officer of the intention to declare redundancy is fatal to a redundancy. (See *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR).
56. I have therefore no doubt in my mind that the retrospective notice issued to the Claimant defeats the purpose of Section 40, which is to allow time for consultation and mitigation.
57. In light of the foregoing, I reach the conclusion that the redundancy grossly violated Section 40 and is therefore procedurally unfair and unlawful, and so I hold.
58. On whether the redundancy was substantively justified, the Respondent cites financial constraints and the shutdown of South Sudan operations for the redundancy. Financial constraints that lead to an entity's shutdown may constitute a valid ground for redundancy. The Respondent, however, did not lead evidence to show that the Claimant's role was abolished or unavailable in the existing Kenyan entity. Further, although the Claimant was offered redeployment, the same was at a drastically reduced salary. Courts have held that redundancy must not be used as a disguise for coercing employees into accepting diminished employment terms.
59. Finally, while the court acknowledges that economic reasons may have existed, the Respondent failed to demonstrate a genuine and properly executed redundancy process.
60. In the end, I find the termination of the Claimant's employment on account of redundancy substantively unfair and unlawful.

Whether the Claimant is entitled to the reliefs sought

61. The court, having found the termination of the Claimant's employment both procedurally and substantively unfair, now proceeds to address each of the reliefs sought.

Damages for unfair termination

62. Section 49(1)(c) of the *Employment Act*, 2007, empowers the court to grant up to 12 months' salary as compensation for unfair termination. In *Alphonse Maghanga Mwachanya v Operation 680 Limited* [2013] eKLR, the Court held that, in determining an award of compensation, the court is to consider the 13 factors set out in section 49(4) of the *Employment Act*.
63. Further in *Elizabeth Wakanyi Kibe v Telkom Kenya Ltd* [2014] eKLR, the Court cited the case of *D.K. Marete v Teachers Service Commission Cause No. 379 of 2009*, where it was held that remedies are not



aimed at facilitating the unjust enrichment of aggrieved employees, but are meant to redress economic injuries in a proportionate way.

64. Taking into account the Claimant's 7 years of service to the Respondent and further considering that he did not in any way contribute to the termination, I deem an award of six (6) months' salary sufficient compensation for the unfair termination of employment, and is hereby awarded.

Notice Pay

65. In the notice of termination dated 1st July, 2023, the Respondent included one month's pay in lieu of notice as part of the Claimant's terminal dues. The Respondent has not led evidence showing that the payment was remitted to the Claimant.
66. The Claim is thus found merited and is allowed as prayed.

Severance Pay

67. The Claimant, having been declared redundant, is no doubt entitled to severance pay pursuant to Section 40 of the *Employment Act*. The Respondent also acknowledged this entitlement in its notice to the Claimant dated 1st July 2023, and has not shown that it made the payment to the Claimant upon termination. In *David Nyagudi Okoth & another v Corn Products Kenya Limited* [2014] eKLR, it was held that severance is based on the last salary.
68. The evidence before court shows the Claimant's last salary was USD 2000, the awards will thus be based on this last salary.
69. The claim succeeds and is equally allowed as prayed.

Withheld salary (June & July 2023)

70. The Claimant's position is that he worked in the months of June and July, and was never compensated. The Respondent did not disprove this position, and the claim succeeds and is awarded as prayed.

Leave Pay

71. The Respondent did not rebut the claim for leave pay. It is allowed.

Relocation Allowance

72. The claim for relocation allowance is unsupported by the contract between the parties, and it fails.

Certificate of service

73. Issuance of a certificate of service is mandatory under Section 51 of the *Employment Act*, and the same must thus be issued.
74. Although the Claimant's employment contract clearly states salary and benefits in Kenya shillings, the evidence before the court, however, shows that his role was international and he was, in practice, paid in USD. On this basis, the awards herein shall be computed in USD.
75. In whole, the Claimant's Claim succeeds and orders granted as follows:-
- a. A declaration that the Claimant's employment was unfairly and unlawfully terminated.
 - b. That the Respondent shall pay the Claimant six (6) months' salary as compensation for the unfair termination at USD 12,000



- c. That the Respondent shall pay the Claimant one month's salary in lieu of notice at USD 2000
- d. That the Respondent shall pay the Claimant Severance pay at USD 7000
- e. That the Respondent shall pay the Claimant the withheld salary for June and July 2023 at USD 4000
- f. That the Respondent shall pay the Claimant for the unutilized leave days at USD 1,020
- g. That the Respondent shall issue the Claimant with a certificate of service within 14 days of this Judgment.
- h. That the Respondent shall bear the costs of the suit.

76. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16TH DAY OF APRIL, 2026.

C. N. BAARI

JUDGE

Appearance:

Ms. Mumbi present for the Claimant

Mr. Dayib present for the Respondent

Ms. Esther S- C/A

